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August 7, 2024

By Electronic Filing

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

Re: **Docket No. AB 284 (Sub-No. 5X)**
Iowa Northern Railway Company - Discontinuance of
Service Exemption - In Black Hawk County, Iowa

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding is a Petition for Exemption on behalf of Iowa Northern Railway Company. The filing fee for this matter has been tendered electronically via Pay.gov.

If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance with this matter.

Respectfully submitted,

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FILED
August 7, 2024
SURFACE
TRANSPORTATION BOARD

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. AB 284 (Sub-No. 5X)

**IOWA NORTHERN RAILWAY COMPANY
— DISCONTINUANCE OF SERVICE EXEMPTION—
IN BLACK HAWK COUNTY, IOWA**

PETITION FOR EXEMPTION

EXPEDITED CONSIDERATION REQUESTED

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August 7, 2024

Filing contains color images

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. AB 284 (Sub-No. 5X)

**IOWA NORTHERN RAILWAY COMPANY
— DISCONTINUANCE OF SERVICE EXEMPTION—
IN BLACK HAWK COUNTY, IOWA**

PETITION FOR EXEMPTION

Pursuant to 49 U.S.C. § 10502 and the Surface Transportation Board’s regulations at 49 C.F.R. parts 1121 and 1152, subpart G, Iowa Northern Railway Company (“IANR”) petitions the Board to exempt from the prior approval requirements of 49 U.S.C. § 10903, IANR’s discontinuance of lease operations over approximately 6.9 miles of railroad line between milepost 325.1 (Waterloo) and milepost 332.0 (Dewar) in Black Hawk County, Iowa, shown on the map attached as Exhibit A (the “Waterloo Industrial Lead”).

Factual Background

IANR, a Class III rail carrier, was authorized to operate the Waterloo Industrial Lead pursuant to a lease with the line’s owner, Union Pacific Railroad Company (“UPRR”) in 2019.¹ UPRR has provided IANR with a notice of UPRR’s intent to terminate IANR’s lease of the Waterloo Industrial Lead. IANR

¹ See *Iowa Northern Railway Company—Lease Exemption with Interchange Commitment—Rail Line of Union Pacific Railroad Company*, FD 36277 (STB served March 20, 2019).

understands that Waterloo Railroad, LLC (“WTRL”) has reached a lease agreement in principle with UPRR. The proposed discontinuance of service will allow IANR to effectuate an orderly transfer of rail operations from IANR to WTRL. The proposed discontinuance will not leave any Waterloo Industrial Lead customer without access to railroad common carrier service, because IANR will not consummate discontinuance until WTRL obtains STB authority to operate on the Waterloo Industrial Lead.

After consummation of IANR’s discontinuance of its lease operating rights, IANR will operate over the Waterloo Industrial Lead on existing overhead trackage rights.

Because IANR has provided common carrier service on the Waterloo Industrial Lead within the past two years, IANR is not eligible for the class exemption set forth at 49 C.F.R. § 1152.50. However, as discussed below, IANR’s petition satisfies the 49 U.S.C. § 10502 exemption criteria, and, thus, should be granted.

The Waterloo Industrial Lead, which is approximately 6.9 miles of railroad line between milepost 325.1 (Waterloo) and milepost 332.0 (Dewar), is located entirely in Black Hawk County, Iowa. The Waterloo Industrial Lead traverses United States Postal Service ZIP Codes 50701, 50702, 50703 and 50707 and contains the following stations: Dewar and Armour, Iowa. Based on information in IANR’s possession, the Waterloo Industrial Lead does not contain any federally

granted rights-of-way. Any documentation in IANR's possession will be made available promptly to those requesting it.²

Petitioner's Representative

IANR is represented by:

Kevin M. Sheys
Carolyn G. Kraska
Law Office of Kevin M. Sheys LLC
42 Brush Hill Road
Sherborn, MA 01770
(240) 463-4663
ksheys@railreglaw.com

Board Jurisdiction and Statutory Standard

The Board has jurisdiction over IANR's proposed discontinuance of service on the Waterloo Industrial Lead pursuant to 49 U.S.C. § 10903. Generally, § 10903 requires a rail carrier to obtain formal Board authority under an application procedure to discontinue common carrier rail service. However, 49 U.S.C. § 10502(a) requires the Board to exempt a person, transaction, or service from the statutory and regulatory requirements otherwise applicable to a rail carrier when the Board determines that (1) application of those requirements is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101 (the "RTP"); and (2) either (a) the transaction is of limited scope or (b) regulation is not needed to protect shippers from an abuse of market power.

² See 49 C.F.R. § 1152.60(d).

A. Application of 49 U.S.C. § 10903 Is Not Necessary to Carry Out the RTP

Detailed scrutiny of the proposed discontinuance under 49 U.S.C. § 10903 is not necessary to carry out the RTP. An exemption would obviate the need for the expensive and time-consuming process that a formal discontinuance application under 49 U.S.C. § 10903 and 49 C.F.R. part 1152 would require. Granting IANR's petition is fully consistent with the RTP, as it will reduce barriers to exit, promote fair and expeditious regulatory decision-making, and result in the expeditious handling of this proceeding.³

B. The Transaction Is of Limited Scope

The proposed discontinuance is of limited scope. IANR seeks to discontinue lease operations over approximately 6.9 miles of line on which the owner (UPRR) intends to terminate IANR's lease and intends to enter a new lease with WTRL. The proposed transaction will effectuate an orderly transition from lease operations by IANR to lease operations by WTRL. No shipper will lose service (even temporarily) or otherwise be adversely affected by the discontinuance, because IANR will not consummate the discontinuance authority granted by the Board until WTRL has operating authority and all steps for a smooth transition of operations have been accomplished. WTRL will have an ongoing common carrier obligation to customers on the Waterloo Industrial Lead and UPRR will have a residual common

³ See 49 U.S.C. §§ 10101(2), (7) and (15).

carrier obligation. Under these circumstances, IANR's discontinuance is of limited scope and impact.

C. Regulation Is Not Necessary to Protect Shippers from Market Power Abuse

Because all current IANR shippers will continue to receive common carrier rail service provided by WTRL, IANR's proposed discontinuance will not result in any interruption of service or adversely affect any shipper served by the Waterloo Industrial Lead. The proposed discontinuance will not eliminate or reduce the rail service available to any shipper. Rather, the transaction will simply effectuate the orderly transfer of rail operations from IANR to WTRL. To ensure that shippers are fully aware of this proceeding, IANR is serving all active rail shippers located along the Waterloo Industrial Lead with a copy of this petition.

Labor Protection

Although no employees of IANR will be affected by the proposed discontinuance, it will be subject to the standard employee protective conditions as set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho*, 360 I.C.C. 91 (1979).

Environmental Review

The proposed discontinuance is exempt from environmental and historic reporting requirements under 49 C.F.R. §§ 1105.6(c) and 1105.8(b) because IANR seeks only to discontinue service, which does not require a carrier to prepare and

submit a combined environmental and historic report.⁴ Because IANR does not own the Waterloo Industrial Lead, IANR will not engage in any salvage activities or disposal or alteration of historic properties upon obtaining discontinuance authority. Further, Board approval would be required for the Waterloo Industrial Lead's owner (UPRR) to abandon service on the Waterloo Industrial Lead. Consequently, no environmental or historic report is required in these circumstances.

Expedited Consideration Requested

WTRL has filed a change of operator exemption in Docket No. 36798. IANR explained in that docket that it did not consent to the change of operator exemption because the extremely expedited process allowed therein (when consent is given) would not allow sufficient time for WTRL and IANR to ensure a smooth transition of operations. As of today, all steps necessary for a smooth transition of operations have not been completed. However, an expeditious Board decision granting this petition for exemption would provide IANR with authority to discontinue its operations promptly after WTRL has obtained operating authority and WTRL and IANR have completed all steps necessary for a smooth transition of operations. Accordingly, IANR requests that the Board expedite its decision in this docket.

⁴ See, e.g., *City of Tacoma, Dep't of Pub. Utils.—Discontinuance of Serv. Exemption— In Pierce Cnty., Wash.*, Docket Nos. AB 1239 (Sub-No. 3X), AB 1328X, slip op. at 5 (STB served June 26, 2023) (“[B]ecause there will be an environmental review if abandonment is sought in the future, environmental review is unnecessary here.”)

Exhibits

A map of the Waterloo Industrial Lead that meets the requirements of 49 C.F.R. § 1152.22(a)(4) is attached as Exhibit A.

A draft Federal Register notice in the form prescribed at 49 C.F.R. § 1152.60(c) is attached as Exhibit B.

A certificate of compliance with the newspaper publication requirements at 49 C.F.R. § 1105.12 is attached as Exhibit C.

A certificate of compliance with the service requirements at 49 C.F.R. § 1152.50(d)(1) is attached as Exhibit D. See 49 C.F.R. § 1152.60(d).

* * *

For the foregoing reasons, IANR requests that the Board grant an exemption for IANR's discontinuance of service over the Waterloo Industrial Lead.

Respectfully submitted,

/s/ Kevin M. Sheys

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August 7, 2024

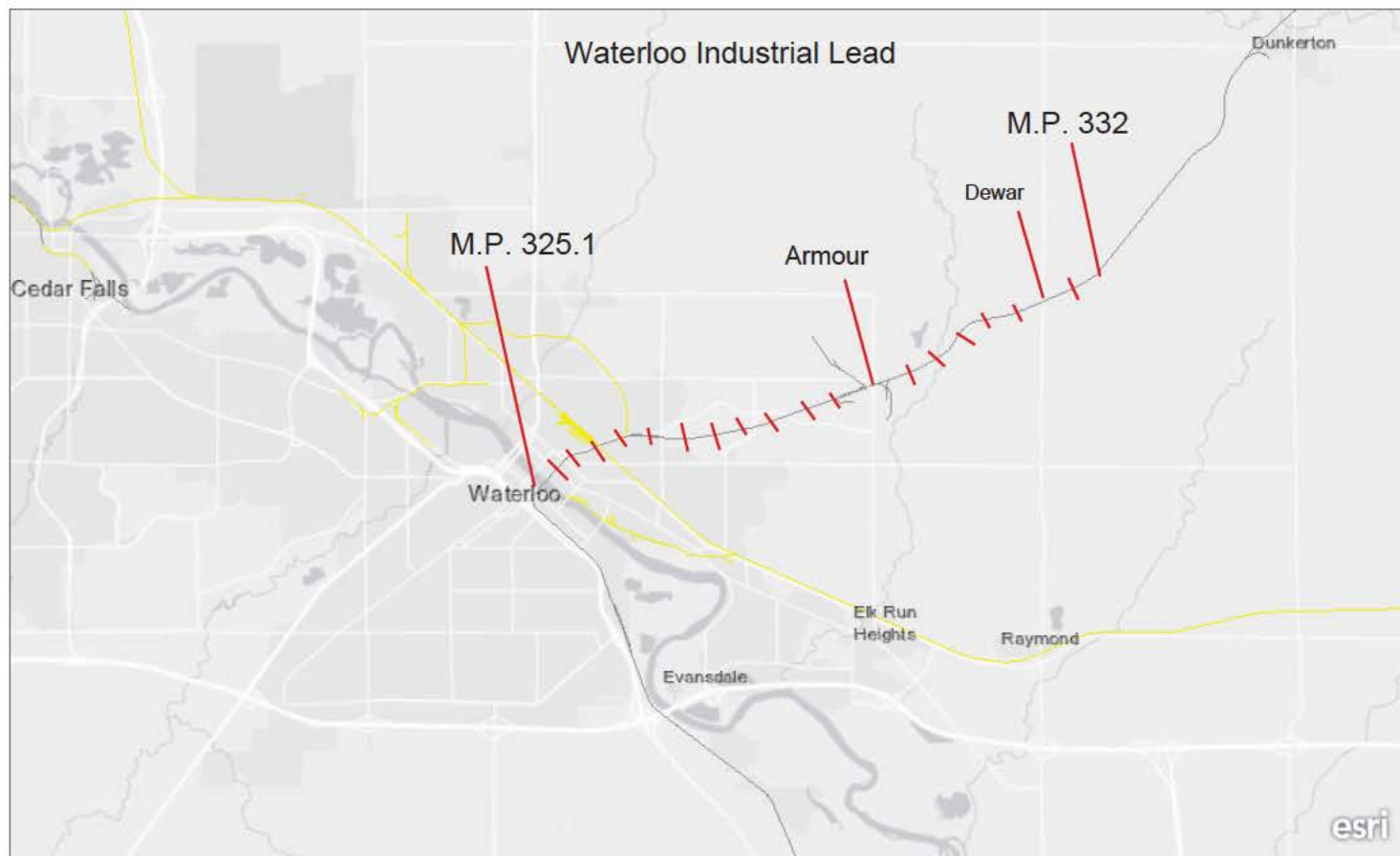


EXHIBIT B: DRAFT FEDERAL REGISTER NOTICE
(49 C.F.R. § 1152.60(c))

STB Docket No. AB 284 (Sub-No. 5X)

Notice of Petition for Exemption to Discontinue Service

On August 7, 2024, Iowa Northern Railway Company (“IANR”), a Class III rail carrier, filed with the Surface Transportation Board a petition under 49 U.S.C. 10502 for exemption from the prior approval requirements of 49 U.S.C. 10903 to discontinue service over approximately 6.9 miles of rail line in Black Hawk County, Iowa between railroad milepost 325.1 (Waterloo) and milepost 332 (Dewar)(the “Waterloo Industrial Lead”). The Waterloo Industrial Lead traverses United States Postal Service ZIP Codes 50701, 50702, 50703, and 50707 and includes the following stations: Dewar and Armour, Iowa.

According to IANR, the proposed discontinuance will effectuate an orderly transfer of rail operations from IANR, which currently operates the Waterloo Industrial Lead pursuant to a lease with Union Pacific Railroad Company, to Waterloo Railroad, LLC (“WTRL”) after WTRL obtains Surface Transportation Board authority to operate on the Waterloo Industrial Lead.

Based on the information in its possession, IANR states that the Waterloo Industrial Lead does not contain federally granted rights-of-way. Any documentation in IANR’s possession pertaining to federally granted rights-of-way will be made available to those requesting it.

As a condition to this exemption, any employee adversely affected by the discontinuance of service shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b).

Because this proceeding involves a discontinuance of service on, and not an abandonment of, a rail line, interim trail use/rail banking and public use conditions are not appropriate. Because there will be environmental review during any subsequent abandonment of the Waterloo Industrial Lead, this discontinuance does not require an environmental review.

Any offer of financial assistance (OFA) for subsidy under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption.

All filings in response to this notice must refer to Docket No. AB 284 (Sub-No. 5X) and must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423-0001. In addition, a copy of each pleading must be served on IANR's representative, Kevin M. Sheys, Law Office of Kevin M. Sheys, 42 Brush Hill Road, Sherborn, MA 01770.

Persons seeking further information concerning discontinuance procedures may contact the Surface Transportation Board or refer to the full abandonment and discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis.

Board decisions and notices are available at *www.stb.gov*.

Decided:_____

By the Board.

EXHIBIT C: CERTIFICATE OF PUBLICATION
(49 C.F.R. § 1105.12)

I certify that a notice of intent to discontinue rail service was published in the form prescribed by the Surface Transportation Board (49 C.F.R. § 1105.12). The notice was published on August 7, 2024, in the Cedar Rapids Gazette, a newspaper of general circulation in Black Hawk County, Iowa.

/s/ Kevin M. Sheys

Kevin M. Sheys

*Counsel for Iowa Northern Railway
Company*

August 7, 2024

EXHIBIT D: CERTIFICATE OF SERVICE
(49 C.F.R. § 1152.60(d))

Pursuant to 49 C.F.R. § 1152.60(d), I certify that this petition was served on August 7, 2024 (1) by e-mail to all active rail shippers on the Waterloo Industrial Lead and (2) via first class mail to the following:

State Public Service Commission

Iowa Department of Transportation
800 Lincoln Way
Ames, IA 50010

Department of Defense

Military Surface Deployment and Distribution Command
Transportation Engineering Agency
Railroads for National Defense Program
1 Soldier Way, Building 1900W
Scott AFB, IL 62225-5006

National Park Service

National Park Service
Recreation Resources Assistance Division
1849 C Street NW
Washington, DC 20240-0001

U.S. Department of Agriculture

Chief of the U.S. Forest Service
U.S. Department of Agriculture
1400 Independence Avenue SW
Washington, DC 20250