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July 31, 2003

Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, D. C. 20423



*DID #0102221002*

**RE:** Docket No. AB-847 (Sub-No. 2X), *Toledo, Peoria & Western Railway Corporation-Discontinuance Exemption-(Between Kenneth and Winamac) in Cass and Pulaski Counties, IN*  
Docket No. AB-855 (Sub-No. 1X), *A & R Line, Inc.-Abandonment Exemption-(Between Kenneth and Winamac) in Cass and Pulaski Counties, IN*

*208573*

*208574*

*DID # 0102221003*

Dear Secretary Williams:

Enclosed are the original and 10 copies of a Petition for Exemption for abandonment and discontinuance of service in the above-entitled proceedings and two checks for the filing fee of \$9,400 for both proceedings. Also enclosed are three computer diskettes of the petition, environmental report and historic report.

Please time and date stamp the additional copy of this letter and the petition and return them with our messenger. Thank you for your assistance.

If you have any questions, call or email me.

Sincerely yours,

Louis E. Gitomer  
Attorney for A & R Line, Inc. and  
Toledo, Peoria & Western  
Railway Corporation

Office of Proceedings  
ENTERED  
JUL 31 2003  
Part of  
Public Record

Enclosures

208573  
ORIGINAL

BEFORE THE  
SURFACE TRANSPORTATION BOARD

Docket No. AB-847 (Sub-No. 2X)

TOLEDO, PEORIA & WESTERN RAILWAY CORPORATION-DISCONTINUANCE  
EXEMPTION-(BETWEEN KENNETH AND WINAMAC) IN CASS AND PULASKI  
COUNTIES, IN

Docket No. AB-855 (Sub-No. 1X)

A & R LINE, INC.-ABANDONMENT EXEMPTION-(BETWEEN KENNETH AND  
WINAMAC) IN CASS AND PULASKI COUNTIES, IN

PETITION FOR EXEMPTION



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TOLEDO, PEORIA & WESTERN  
RAILWAY CORPORATION

Dated: July 31, 2003

BEFORE THE  
SURFACE TRANSPORTATION BOARD

Docket No. AB-847 (Sub-No. 2X)



TOLEDO, PEORIA & WESTERN RAILWAY CORPORATION-DISCONTINUANCE  
EXEMPTION-(BETWEEN KENNETH AND WINAMAC) IN CASS AND PULASKI  
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Docket No. AB-855 (Sub-No. 1X)

A & R LINE, INC.-ABANDONMENT EXEMPTION-(BETWEEN KENNETH AND  
WINAMAC) IN CASS AND PULASKI COUNTIES, IN

PETITION FOR EXEMPTION

Toledo, Peoria & Western Railway Corporation ("TP&W") and A & R Line, Inc. ("A&R") petition the Surface Transportation Board ("STB") to exempt, under 49 U.S.C. § 10502 TP&W's discontinuance of service over and A&R's abandonment of A&R's entire 15.9-mile rail line between milepost 5.1W near Kenneth, IN, and milepost 21.0W, near Winamac, IN, the end of the line, in Cass and Pulaski Counties, IN (the "Line") from the prior approval requirements of 49 U.S.C. § 10903. TP&W and A&R are jointly referred to as "Petitioners". The abandonment and discontinuance of service are justified because Cargill Incorporated ("Cargill"), the only shipper on the Line, has stopped using the Line, closed its facilities, and does not oppose the abandonment and discontinuance of service. There is no longer a demand for rail service.

**PROPOSED TRANSACTION**

Petitioners propose to abandon and discontinue service over A&R's entire 15.9-mile rail line between milepost 5.1W, near Kenneth, IN and milepost 21.0W, at Winamac, IN, the end of

the line, in Cass and Pulaski Counties, IN. The Line traverses Zip Codes 47550, 46978, 46985, and 46996. A map of the Line is attached as Exhibit A. Exhibit B consists of the Environmental Report in including the letters transmitting the Environmental Report in Exhibit 2 thereto. The Historic Report is in Exhibit C, the draft Federal Register Notice is in Exhibit D, and copies of the newspaper publication and the required certification are in Exhibit E. The certificate of service is in Exhibit F.

Based on information in Petitioners' possession, the Line does not contain federally granted right-of-way. Any documentation in Petitioners' possession concerning title will be made available to those requesting it.

### **BACKGROUND**

The Line was formerly a main line of The Pennsylvania Railroad Company, which was transferred to the Consolidated Rail Corporation ("Conrail") in 1976 as part of the Final System Plan. Conrail sold the Line to the Winamac Southern Railway Company ("WSRC") in 1993. *Winamac Southern Railway Company—Acquisition and Operation Exemption—Lines of Consolidated Rail Corporation*, ICC Finance Docket No. 32257 (ICC served April 7, 1993). WSRC sold the Line to A&R in 1995, but continued to operate over the Line. *A. & R. Line, Inc.—Acquisition Exemption—Winamac Southern Railway Company*, ICC Finance Docket No. 32694 (ICC served July 6, 1995). Cargill acquired the stock in A&R from Mr. Frick<sup>1</sup> in 1997, to ensure service to its grain elevator in Winamac at milepost 20.0W. *Cargill, Incorporated—Acquisition of Control Exemption—A & R Line, Inc. and J.K. Line, Inc.*, STB Finance Docket No. 33458 (STB served September 19, 1997). Also in 1997, TP&W leased the Line and began to

operate over it. *Toledo, Peoria & Western Railway Corporation—Lease and Operation Exemption—A & R Line, Inc.*, STB Finance Docket No. 33482 (STB served October 16, 1997). Once it closed the elevator on the Line, Cargill sold A&R to RailAmerica. *RailAmerica, Inc., et al.—Control and Merger Exemption—A&R Line, Inc., and J.K. Line, Inc.*, STB Finance Docket No. 34269 (STB served December 12, 2002).

Prior to Cargill closing the grain elevator at Winamac, TP&W was providing service on an as needed basis. TP&W transported 301 carloads of corn in 2001, 60 carloads of corn in 2002, and no carloads to date in 2003. The last service on the Line occurred on September 16, 2002.

In addition to there being no demand for service over the Line, abandonment of and discontinuance of service over the Line would allow Petitioners to eliminate about \$ 80,000 in annual maintenance costs and to sell or reuse \$ 525,000 worth of rail, ties and other track materials. Petitioners do not intend to salvage the bridges on the Line. Indeed, Petitioners believe that trail use may be the best alternative use for the Line. Therefore, Petitioners will not incur any cost to remove bridges.

#### **ARGUMENT SUPPORTING THE ABANDONMENT**

Petitioners seek an exemption under 49 U.S.C. § 10502 from the applicable requirements of 49 U.S.C. § 10903 in order to abandon and discontinue service over the Line.

Under 49 U.S.C. § 10502, the STB must exempt a transaction from regulation when it finds that:

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<sup>1</sup> Mr. Frick acquired control of A&R in 1995. *Daniel R. Frick—Continuance in Control Exemption—J.K. Line, Inc., Winamac Southern Railway Company, and A. & R. Line, Inc.*, ICC Finance Docket No. 32693 (ICC served July 6, 1995).

(1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and

(2) either:

(a) the transaction is of limited scope, or

(b) regulation is not necessary to protect shippers from the abuse of market power.

The legislative history of Section 10502 reveals a clear Congressional intent that the STB should liberally use its exemption authority to free certain transactions from the administrative and financial costs associated with continued regulation. In enacting the Staggers Rail Act of 1980, Pub. L. No. 96-488, 94 Stat. 1895, Congress encouraged the STB's predecessor agency to liberally use the expanded exemption authority under former Section 10505:

The policy underlying this provision is that while Congress has been able to identify broad areas of commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with the policies of this Act, the Commission will pursue partial and complete exemption from remaining regulation.

H.R. Rep. No. 1430, 96th Cong. 2d Sess. 105 (1980). See also *Exemption From Regulation--Boxcar Traffic*, 367 I.C.C. 424, 428 (1983), vacated and remanded on other grounds, *Brae Corp. v. United States*, 740 F.2d 1023 (D.C. Cir 1984). Congress reaffirmed this policy in the conference report accompanying the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, which re-enacted the rail exemption provision as Section 10502. H.R. Rep. No. 422, 104th Cong., 1st Sess. 168-69 (1995).

**A. The Application of 49 U.S.C. § 10903 Is Not Necessary to Carry Out the Rail Transportation Policy**

Detailed scrutiny of this transaction is not necessary to carry out the rail transportation policy. An exemption would minimize the unnecessary expense associated with the preparation and filing of a formal abandonment and discontinuance of service application, expedite regulatory decisions and reduce regulatory barriers to exit. 49 U.S.C. § 10101 (2) and (7). The abandonment by A&R and the discontinuance of service by TP&W will not result in a loss of rail service. Cargill, the only shipper formerly on the Line, has closed its grain elevator in Winamac and stopped using rail service there. Cargill has agreed not to oppose this abandonment and discontinuance of service. Granting this exemption, therefore, fosters sound economic conditions and encourages efficient management by permitting the rationalization of an unnecessary rail line. 49 U.S.C. § 10101 (3), (5) and (9). Other aspects of the rail transportation policy are not adversely affected. For example, competition and the continuation of a sound rail transportation system are not affected since the public will not be deprived of any needed rail services.

**B. This Transaction Is Of Limited Scope**

The proposed transaction is of limited scope. Petitioners seek to abandon and discontinue service over a 15.9-mile line in two counties in Indiana.

**C. This Transaction Will Not Result In An Abuse Of Market Power.**

Petitioners are abandoning and discontinuing service over the Line. There are no shippers located on the Line. Cargill, the only shipper on the Line, has closed its facility in Winamac and agreed not to oppose this abandonment and discontinuance of service.

Since no shipper will lose service, Petitioners do not anticipate any opposition to the proposed abandonment and discontinuance of service.

#### **ENVIRONMENTAL REPORT**

An Environmental Report is in Exhibit B.

#### **HISTORIC REPORT**

A Historic Report is in Exhibit C.

#### **FEDERAL REGISTER NOTICE**

A draft Federal Register notice is attached hereto as Exhibit D.

#### **LABOR PROTECTION**

The interests of railroad employees of TP&W who may be adversely affected by the proposed discontinuance of service will be adequately protected by the labor protective conditions in *Oregon Short Line R. Co.--Abandonment--Goshen*, 360 I.C.C. 91 (1979).

A&R is abandoning its entire line of railroad. A&R has no employees; all of its functions are performed by TP&W. The STB does not normally impose employee protective conditions when a carrier abandons service over its entire line unless the evidence shows the existence of: (1) a corporate affiliate that will continue substantially similar rail operations; or (2) a corporate parent that will realize substantial financial benefits over and above relief from the burden of deficit operations by its subsidiary railroad. See *Northampton and Bath R. Co.--Abandonment*, 354 I.C.C. 784 (1978) (*Northampton*).

A&R's affiliate, TP&W will discontinue service over the Line and protect its affected employees. A&R has no employees of its own. If the STB grants A&R an exemption to abandon the Line and TP&W an exemption to discontinue service over the Line, Petitioners will salvage the Line. No affiliate of A&R today will continue rail operations.

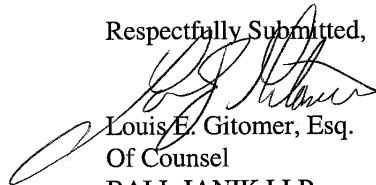
Since A&R is abandoning its entire line, has no employees to protect and no affiliate will take over operations, A&R requests the STB to refrain from imposing the standard labor conditions *Oregon Short Line R. Co.--Abandonment--Goshen*, 360 I.C.C. 91 (1979) on A&R. The employees of TP&W who will be affected by its discontinuance of service will be protected under *Oregon Short Line R. Co.--Abandonment--Goshen*, 360 I.C.C. 91 (1979). Petitioners urge the STB not to impose protective conditions on A&R because there are no A&R employees to protect. The imposition of conditions could lead to frivolous claims and unnecessary administrative expenses.

### CONCLUSION

Application of the regulatory requirements and procedures of 49 U.S.C. § 10903 is not required to carry out the rail transportation policy set forth in 49 U.S.C. § 10101, as previously shown. Nor is STB regulation required to protect shippers from the abuse of market power. Moreover, this abandonment and discontinuance of service is of limited scope. Accordingly, Petitioners respectfully urge the STB to grant the proposed abandonment of and discontinuance of service over the 15.9-mile Line.

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Respectfully Submitted,



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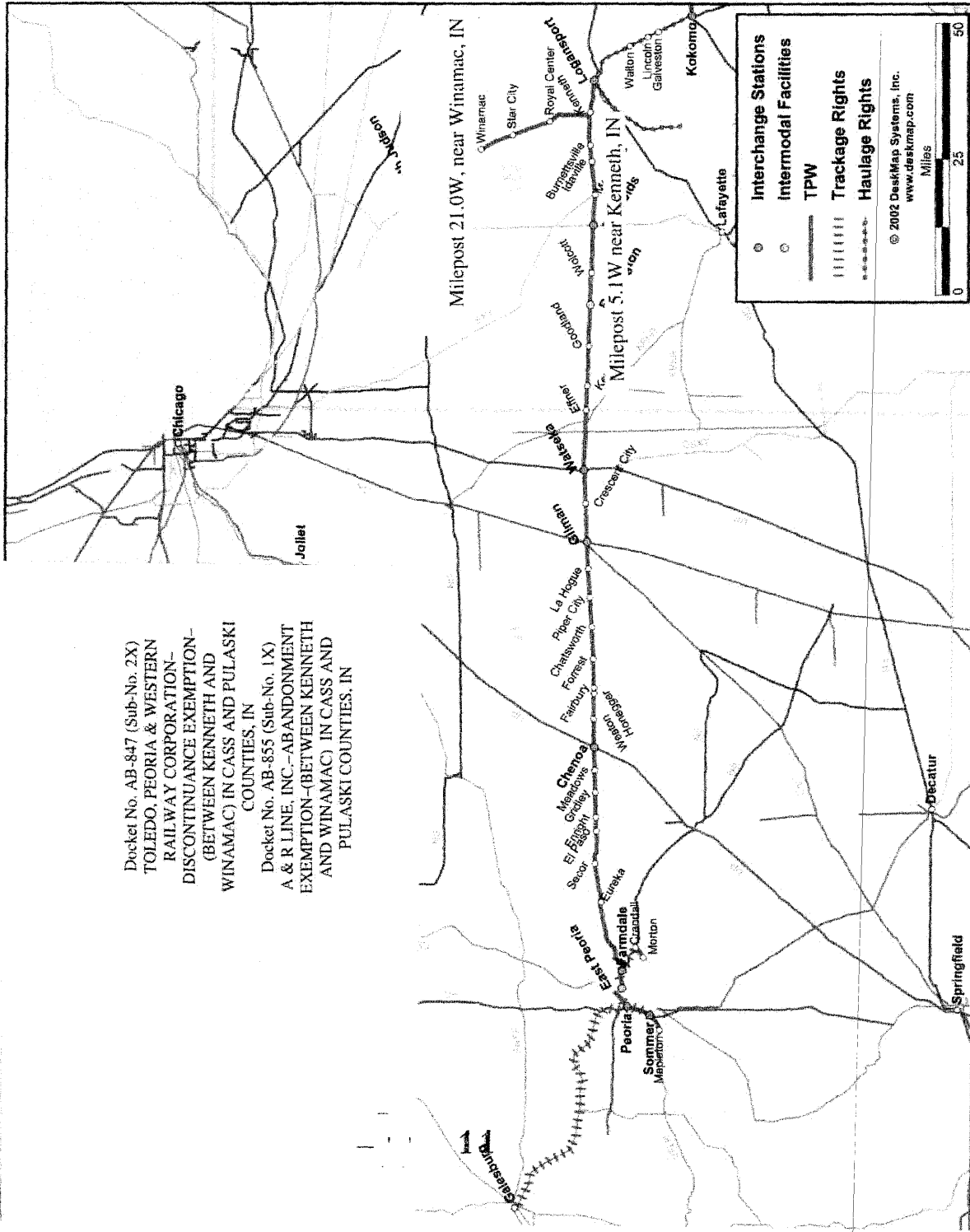
Attorneys for: A&R LINE, INC. and  
TOLEDO, PEORIA & WESTERN  
RAILWAY CORPORATION

Dated: July 31, 2003

# EXHIBIT A—MAP

Docket No. AB-847 (Sub-No. 2X)  
 TOLEDO, PEORIA & WESTERN  
 RAILWAY CORPORATION-  
 DISCONTINUANCE EXEMPTION-  
 (BETWEEN KENNETH AND  
 WINAMAC) IN CASS AND PULASKI  
 COUNTIES, IN

Docket No. AB-855 (Sub-No. 1X)  
 A & R LINE, INC.-ABANDONMENT  
 EXEMPTION-(BETWEEN KENNETH  
 AND WINAMAC) IN CASS AND  
 PULASKI COUNTIES, IN



# EXHIBIT B— ENVIRONMENTAL REPORT

**ENVIRONMENTAL REPORT**  
(49 C.F.R. 1105.7)

Docket No. AB-847 (Sub-No. 2X)

TOLEDO, PEORIA & WESTERN RAILWAY CORPORATION—DISCONTINUANCE  
EXEMPTION—(BETWEEN KENNETH AND WINAMAC) IN CASS AND PULASKI  
COUNTIES, IN

Docket No. AB-855 (Sub-No. 1X)

A & R LINE, INC.—ABANDONMENT EXEMPTION—(BETWEEN KENNETH AND  
WINAMAC) IN CASS AND PULASKI COUNTIES, IN

Dated: July 31, 2003

(1) Proposed Action and Alternatives. Describe the proposed action, including commodities transported, the planned disposition (if any) of any rail line and other structures that may be involved, and any possible changes in current operations or maintenance practices. Also describe any reasonable alternatives to the proposed action. Include a readable, detailed map and drawings clearly delineating the project.

Toledo, Peoria & Western Railway Corporation ("TP&W") proposes to discontinue service over and A & R Line, Inc. ("A&R") proposes to abandon A&R's 15.9-mile rail line between milepost 5.1W near Kenneth, IN, and milepost 21.0W, near Winamac, IN, the end of the line, in Cass and Pulaski Counties, IN (the "Line"). Upon receipt of abandonment authority, TP&W and A&R (collectively referred to as "Petitioners") intend to salvage the rail, crossties, and other track material, but not the bridges, and divest the right-of-way.

A&R and TP&W are subsidiaries of the Toledo, Peoria and Western Railroad Corporation ("Corporation").<sup>1</sup> TP&W leased the Line from A&R in 1997.<sup>2</sup> A&R was a

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<sup>1</sup> Corporation is an indirect subsidiary of RailAmerica, Inc. *RailAmerica, Inc.—Control Exemption—Florida Rail Lines, Inc., Toledo, Peoria and Western Railroad Corporation, Marksman Corporation and Toledo, Peoria & Western Railway Corporation*, STB Finance Docket No. 33777 (STB served September 17, 1999). *RailAmerica, Inc., et al.—Control and*

subsidiary of Cargill Incorporated (“Cargill”).<sup>3</sup> Corporation acquired control of A&R in 2003.

*See RailAmerica Control Exemption.*

When Cargill owned A&R, the Line served a Cargill owned grain elevator at Winamac, milepost 20.0W. TP&W transported grain over the Line. However, Cargill stopped shipping over the Line about September 16, 2002. No traffic has moved over the Line since that time.

The only alternative to abandonment and discontinuance of service over the Line would be not to abandon and discontinue service over the Line. No service has been provided on the Line since September 16, 2002, and Petitioners believe that there will be no future demand for rail service over the Line. Maintaining the Line and incurring opportunity costs where there is no traffic would not be a prudent use of carrier resources. Without the prospect of future traffic, much less enough traffic to turn the Line into a profitable venture, Petitioners have decided to seek abandonment of and discontinuance of service over the Line.

A map of the proposed abandonment and discontinuance of service is attached hereto as Exhibit 1.<sup>4</sup>

(2) Transportation System. Describe the effects of the proposed action on regional or local transportation systems and patterns. Estimate the amount of traffic (passenger or freight) that will be diverted to other transportation systems or modes as a result of the proposed action.

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*Merger Exemption—A&R Line, Inc., and J.K. Line, Inc.*, STB Finance Docket No. 34269 (STB served December 12, 2002) (the “*RailAmerica Control Exemption*”).

<sup>2</sup> *Toledo, Peoria & Western Railway Corporation—Lease and Operation Exemption—A & R Line, Inc.*, STB Finance Docket No. 33482 (STB served October 16, 1997).

<sup>3</sup> *Cargill, Incorporated—Acquisition of Control Exemption—A & R Line, Inc. and J.K. Line, Inc.*, STB Finance Docket No. 33458 (STB served September 19, 1997).

<sup>4</sup> The copy of the map that accompanied the information-gathering letters has been removed from those letters. That map was the same as the map in Exhibit 1 accompanying this Environmental Report.

No passenger traffic will be diverted to other modes as a result of the proposed abandonment and discontinuance of service. Cargill was the only shipper on the line and has stopped shipments over the Line. Hence, no rail freight traffic will be diverted to motor carrier. Accordingly, the proposed abandonment and discontinuance of service will have no adverse effects on regional or local transportation systems and patterns.

(3) Land Use. (i) Based on consultation with local and/or regional planning agencies and/or a review of the official planning documents prepared by such agencies, state whether the proposed action is consistent with existing land use plans. Describe any inconsistencies. (ii) Based on consultation with the U.S. Soil Conservation Service, state the effect of the proposed action on any prime agricultural land. (iii) If the action affects land or water uses within a designated coastal zone, include the coastal zone information required by 1105.9. (iv) If the proposed action is an abandonment, state whether or not the right-of-way is suitable for alternative public use under 49 U.S.C. § 10905 and explain why.

(i) Petitioners consider the proposed abandonment and discontinuance of service to be consistent with existing land use plans. In Winamac (2000 population 2,418) and the towns of Star City (2000 population 377) and Royal Center (2000 population 859), the land adjoining the Line is residential. All other points along the Line are rural. Petitioners contacted Cass and Pulaski Counties. *See* Exhibit 2. No response has been received from either of the counties. A copy of this Report has been mailed to the appropriate local and state agencies for their information and further comment.

(ii) Petitioners notified the United States Department of Agriculture (“USDA”) Soil Conservation Service of the proposed abandonment and discontinuance of service and requested assistance in identifying any potential effects on prime agricultural land. *See* Exhibit 2. By letter dated July 18, 2003 (*See* Exhibit 3), USDA responded that the project “will not cause conversion of prime farmland.”

(iii) The Line does not pass through a designated coastal zone.

(iv) The Line parallels U.S. Route 35 to just southeast of Royal Center, at which point the Line becomes a north-south route paralleling 600 West Road. An adequate road and highway network serves the area. Therefore, Petitioners believe that there is little or no likelihood that the rail corridor is needed for a transit or highway corridor. Petitioners believe that the best use of the Line may be as a recreational trail.

(4) Energy. (i) Describe the effect of the proposed action on transportation of energy resources. (ii) Describe the effect of the proposed action on recyclable commodities. (iii) State whether the proposed action will result in an increase or decrease in overall energy efficiency and explain why. (iv) If the proposed action will cause diversions from rail to motor carriage of more than: (A) 1,000 rail carloads a year; or (B) an average of 50 rail carloads per mile per year for any part of the affected line, quantify the resulting net change in energy consumption and show the data and methodology used to arrive at the figure given.

(i) The proposed abandonment and discontinuance of service will have no effect on the transportation of energy resources.

(ii) The proposed abandonment and discontinuance of service will have no effect on the transportation of recyclable commodities.

(iii) The proposed abandonment and discontinuance of service will have minimal effect on overall energy efficiency.

(iv) The proposed abandonment and discontinuance of service will not cause the diversion more than 1,000 rail carloads a year; or an average of 50 rail carloads per mile per year for any part of the Line of rail traffic to motor carriage.

(5) Air. (i) If the proposed action will result in either: (A) An increase in rail traffic of at least 100 percent (measured in gross ton miles annually) or an increase of at least eight trains a day on any segment of rail line affected by the proposal, or (B) an increase in rail yard activity of at least 100 percent (measured by carload activity), or (C) an average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on any affected road segment, quantify the anticipated effect on air emissions. For a proposal under 49 U.S.C. § 10901 (or § 10505) to construct a new line or reinstitute service over a previously abandoned line, only the eight train a day provision in sub-section (5)(i)(A) will apply. (ii) If the proposed

action affects a class I or nonattainment area under the Clean Air Act, and will result in either: (A) an increase in rail traffic of at least 50 percent (measured in gross ton miles annually) or an increase of at least three trains a day on any segment of rail line; (B) an increase in rail yard activity of at least 20 percent (measured by carload activity); or (C) an average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on a given road segment, then state whether any expected increased emissions are within the parameters established by the State Implementation Plan. However, for a rail construction under 49 U.S.C. § 10901 (or 49 U.S.C. § 10505), or a case involving the reinstitution of service over a previously abandoned line, only the three train a day threshold in this item shall apply. (iii) If transportation of ozone depleting materials (such as nitrogen oxide and freon) is contemplated, identify: the materials and quantity; the frequency of service; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and spills; contingency plans to deal with accidental spills; and the likelihood of an accidental release of ozone depleting materials in the event of a collision or derailment.

(i) The proposed abandonment and discontinuance of service will not result in meeting or exceeding the specified thresholds.

(ii) The proposed abandonment and discontinuance of service will not result in meeting or exceeding the specified thresholds.

(iii) The proposed abandonment and discontinuance of service will not affect the transportation of ozone depleting materials.

(6) Noise. If any of the thresholds identified in item (5)(i) of this section are surpassed, state whether the proposed action will cause: (i) an incremental increase in noise levels of three decibels Ldn or more; or (ii) an increase to a noise level of 65 decibels Ldn or greater. If so, identify sensitive receptors (e.g., schools, libraries, hospitals, residences, retirement communities, and nursing homes) in the project area, and quantify the noise increase for these receptors if the thresholds are surpassed.

Not applicable.

(7) Safety. (i) Describe any effects of the proposed action on public health and safety (including vehicle delay time at railroad grade crossings). (ii) If hazardous materials are expected to be transported, identify: the materials and quantity; the frequency of service; whether chemicals are being transported that, if mixed, could react to form more hazardous compounds; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and hazardous spills; the contingency plans to deal with accidental spills; and the likelihood of an accidental release of hazardous materials. (iii) If there are any known hazardous waste sites or sites where there have been known hazardous materials

spills on the right-of-way, identify the location of those sites and the types of hazardous materials involved.

(i) The proposed abandonment and discontinuance of service will have no detrimental effects on public health and safety. The removal of 34 grade crossings and the associated signs and structures will enhance public safety by eliminating distractions to vehicular and pedestrian traffic crossing the Line. The highways at which grade crossings will be eliminated include U.S. Route 24 and Indiana Route 16.

(ii) The proposed abandonment and discontinuance of service will not affect the transportation of hazardous materials.

(iii) Petitioners are not aware of any known hazardous material waste sites or sites where known hazardous material spills have occurred on or along the rail corridor of the Line.

(8) Biological Resources. (i) Based on consultation with the U.S. Fish and Wildlife Service, state whether the proposed action is likely to adversely affect endangered or threatened species or areas designated as a critical habitat, and if so, describe the effects. (ii) State whether wildlife sanctuaries or refuges, National or State parks or forests will be affected, and describe any effects.

(i) Petitioners do not believe that the proposed abandonment and discontinuance of service are likely to adversely affect endangered or threatened species or areas designated as a critical habitat. *See* Exhibit 2. A copy of this Report has been supplied to the U.S. Fish and Wildlife Service for its information and further comment.

(ii) Petitioners are unaware of any wildlife sanctuaries or refuges, National or State parks or forests that would be adversely affected by the proposed abandonment. Petitioners notified the National Parks Service of the proposed abandonment and discontinuance of service and requested assistance in identifying any potential effects on wildlife sanctuaries or refuges, National or State parks or forests. *See* Exhibit 2. To date, no response to this request has been

received. A copy of this Report is being supplied to the National Park Service for its information and comment.

(9) Water. (i) Based on consultation with State water quality officials, state whether the proposed action is consistent with applicable Federal, State or local water quality standards. Describe any inconsistencies. (ii) Based on consultation with the U.S. Army Corps of Engineers, state whether permits under section 404 of the Clean Water Act (33 U.S.C. § 1344) are required for the proposed action and whether any designated wetlands or 100-year flood plains will be affected. Describe the effects. (iii) State whether permits under section 402 of the Clean Water Act (33 U.S.C. § 1342) are required for the proposed action.

(i) Petitioners are confident that the proposed abandonment and discontinuance of service will be consistent with applicable water quality standards. Petitioners do not intend to salvage the bridges on the Line, instead, they believe that the bridges should be left in place for trail use. Petitioners contacted the Indiana Department of Natural Resources ("INDNR") and the United States Environmental Protection Agency ("USEPA"). INDNR and USEPA have not indicated that the proposed abandonment and discontinuance of service will not be consistent with applicable water quality standards. *See* Exhibit 2. By letter dated July 24, 2003 (*See* Exhibit 3), INDNR responded setting forth the requirements that might be necessary to comply with under certain conditions that Petitioners do not believe will occur during salvage. A copy of this Report has been supplied to the INDNR and USEPA for their information and further comment.

(ii) Petitioners believe that no permits under section 404 of the Clean Water Act are required for the proposed abandonment and discontinuance of service and that no designated wetlands or 100-year flood plains will be affected by the proposed abandonment and discontinuance of service. Petitioners do not intend to remove the bridges on the Line that cross bodies of water. Petitioners contacted the U.S. Army Corps of Engineers and have received no

response to date. *See* Exhibit 2. A copy of this Report has been supplied to the U.S. Army Corps of Engineers for its information and comment.

(iii) Petitioners believe that no permit under section 402 of the Clean Water Act would be required for track removal. Petitioners contacted the INDNR and the USEPA. INDNR and USEPA have not indicated that the proposed abandonment and discontinuance of service will require a permit under section 402 of the Clean Water Act for track removal. *See* Exhibit 2. By letter dated July 24, 2003 (See Exhibit 3), INDNR responded setting forth the requirements that might be necessary to comply with under certain conditions that Petitioners do not believe will occur during salvage. A copy of this Report has been supplied to the INDNR and USEPA for their information and further comment.

(10) Proposed Mitigation. Describe any actions that are proposed to mitigate adverse environmental impacts, indicating why the proposed mitigation is appropriate.

Petitioners do not expect any adverse environmental impact from the proposed abandonment and discontinuance of service and, therefore, sees no need for any mitigating actions. Petitioners will, of course, adhere to any remedial actions suggested by the recipients of this Report, which are required by the Board.

## EXHIBIT 1 – MAP

## EXHIBIT 2 – LETTERS



Toledo, Peoria and Western Railway Corporation

1990 East Washington Street, East Peoria, Illinois 61611-2961  
(309) 698-2600 • Fax (309) 698-2679

July 10, 2003

Mr. Richard Rusk  
County Commissioner  
Cass County  
200 Court Park  
County Courthouse  
Logansport, IN 46947-3114

RE: Docket No. AB-847 (Sub-No. 2X), *Toledo, Peoria & Western Railway Corporation-Discontinuance Exemption-(between Kenneth and Winamac) in Cass and Pulaski Counties, IN*  
Docket No. AB-855 (Sub-No. 1X), *A & R Line, Inc.-Abandonment Exemption-(between Kenneth and Winamac) in Cass and Pulaski Counties, IN*

Dear Mr. Rusk:

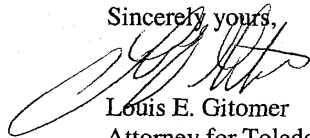
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Mr. Rusk  
July 10, 2003  
Page 2

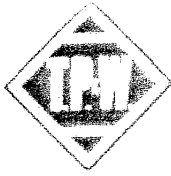
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Sincerely yours,



Louis E. Gitomer  
Attorney for Toledo, Peoria & Western Railway  
Corporation and A & R Line, Inc.

Enclosure



## Toledo, Peoria and Western Railway Corporation

1990 East Washington Street, East Peoria, Illinois 61611-2961  
(309) 698-2600 • Fax (309) 698-2679

July 10, 2003

Indiana State Clearinghouse  
Betty Cockrum, Budget Director  
State Budget Agency  
212 State House  
Indianapolis, IN 46204

RE: Docket No. AB-847 (Sub-No. 2X), *Toledo, Peoria & Western Railway Corporation—Discontinuance Exemption—(between Kenneth and Winamac) in Cass and Pulaski Counties, IN*  
Docket No. AB-855 (Sub-No. 1X), *A & R Line, Inc.—Abandonment Exemption—(between Kenneth and Winamac) in Cass and Pulaski Counties, IN*

Dear Ms. Cockrum:

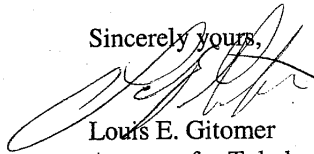
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Ms. Cockrum  
July 10, 2003  
Page 2

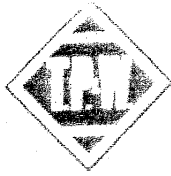
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Enclosure



## Toledo, Peoria and Western Railway Corporation

1990 East Washington Street, East Peoria, Illinois 61611-2961  
(309) 698-2600 • Fax (309) 698-2679

July 10, 2003

Department of Environmental Management  
P.O.Box 6015  
105 South Meridian Street  
Indianapolis, IN 46204-2739

RE: Docket No. AB-847 (Sub-No. 2X), *Toledo, Peoria & Western Railway Corporation-Discontinuance Exemption-(between Kenneth and Winamac) in Cass and Pulaski Counties, IN*  
Docket No. AB-855 (Sub-No. 1X), *A & R Line, Inc.-Abandonment Exemption-(between Kenneth and Winamac) in Cass and Pulaski Counties, IN*

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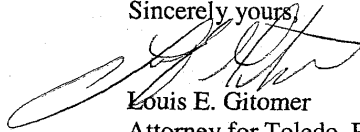
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Department of Environmental Management  
July 10, 2003  
Page 2

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Corporation and A & R Line, Inc.

Enclosure



## Toledo, Peoria and Western Railway Corporation

1990 East Washington Street, East Peoria, Illinois 61611-2961  
(309) 698-2600 • Fax (309) 698-2679

July 10, 2003

NGS Information Services  
National Geodetic Survey  
SSMC-3, #9202  
1315 East-West Highway  
Silver Spring, MD 20910-3282

RE: Docket No. AB-847 (Sub-No. 2X), *Toledo, Peoria & Western Railway Corporation—Discontinuance Exemption—(between Kenneth and Winamac) in Cass and Pulaski Counties, IN*  
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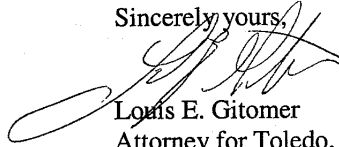
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National Geodetic Survey  
July 10, 2003  
Page 2

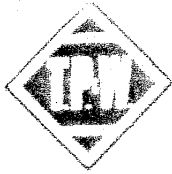
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Corporation and A & R Line, Inc.

Enclosure



## Toledo, Peoria and Western Railway Corporation

1990 East Washington Street, East Peoria, Illinois 61611-2961  
(309) 698-2600 • Fax (309) 698-2679

July 10, 2003

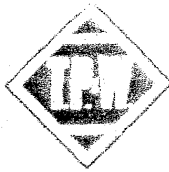
National Park Service  
Director  
National Park Service  
1849 C Street NW  
Washington, DC 20240

RE: Docket No. AB-847 (Sub-No. 2X), *Toledo, Peoria & Western Railway Corporation—Discontinuance Exemption—(between Kenneth and Winamac) in Cass and Pulaski Counties, IN*  
Docket No. AB-855 (Sub-No. 1X), *A & R Line, Inc.—Abandonment Exemption—(between Kenneth and Winamac) in Cass and Pulaski Counties, IN*

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## Toledo, Peoria and Western Railway Corporation

1990 East Washington Street, East Peoria, Illinois 61611-2961  
(309) 698-2600 • Fax (309) 698-2679

July 10, 2003

Natural Resource Conservation Service  
6013 Lakeside Boulevard  
Indianapolis, IN 46278

RE: Docket No. AB-847 (Sub-No. 2X), *Toledo, Peoria & Western Railway Corporation—Discontinuance Exemption—(between Kenneth and Winamac) in Cass and Pulaski Counties, IN*  
Docket No. AB-855 (Sub-No. 1X), *A & R Line, Inc.—Abandonment Exemption—(between Kenneth and Winamac) in Cass and Pulaski Counties, IN*

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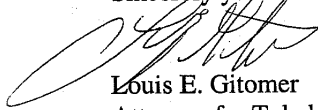
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Natural Resource Conservation Service  
July 10, 2003  
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Louis E. Gitomer  
Attorney for Toledo, Peoria & Western Railway  
Corporation and A & R Line, Inc.

Enclosure



Toledo, Peoria and Western Railway Corporation

1990 East Washington Street, East Peoria, Illinois 61611-2961  
(309) 698-2600 • Fax (309) 698-2679

July 10, 2003

Head of Pulaski County  
112 East Main Street  
Winamac, IN 46996

RE: Docket No. AB-847 (Sub-No. 2X), *Toledo, Peoria & Western Railway Corporation—Discontinuance Exemption—(between Kenneth and Winamac) in Cass and Pulaski Counties, IN*  
Docket No. AB-855 (Sub-No. 1X), *A & R Line, Inc.—Abandonment Exemption—(between Kenneth and Winamac) in Cass and Pulaski Counties, IN*

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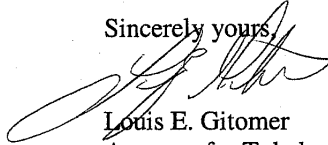
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Head of Pulaski County  
July 10, 2003  
Page 2

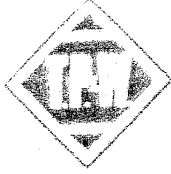
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Enclosure



Toledo, Peoria and Western Railway Corporation

1990 East Washington Street, East Peoria, Illinois 61611-2961  
(309) 698-2600 • Fax (309) 698-2679

July 10, 2003

US Army Corps of Engineers  
Louisville District  
600 Dr. Martin Luther King, Jr. Place  
Louisville, KY 40202-2232

RE: Docket No. AB-847 (Sub-No. 2X), *Toledo, Peoria & Western Railway Corporation—Discontinuance Exemption—(between Kenneth and Winamac) in Cass and Pulaski Counties, IN*  
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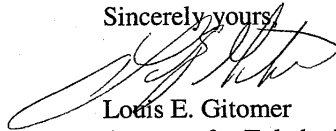
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US Army Corps of Engineers  
July 10, 2003  
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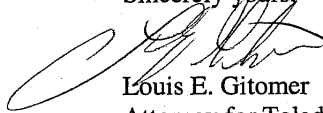
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Corporation and A & R Line, Inc.

Enclosure

United States Environmental Protection Agency  
July 10, 2003  
Page 2

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Attorney for Toledo, Peoria & Western Railway  
Corporation and A & R Line, Inc.

Enclosure



## Toledo, Peoria and Western Railway Corporation

1990 East Washington Street, East Peoria, Illinois 61611-2961  
(309) 698-2600 • Fax (309) 698-2679

July 10, 2003

US Fish and Wildlife Service  
Region 3  
One Federal Drive  
BHW Federal Building  
Fort Snelling  
Minneapolis, MN 55111

RE: Docket No. AB-847 (Sub-No. 2X), *Toledo, Peoria & Western Railway Corporation—Discontinuance Exemption—(between Kenneth and Winamac) in Cass and Pulaski Counties, IN*  
Docket No. AB-855 (Sub-No. 1X), *A & R Line, Inc.—Abandonment Exemption—(between Kenneth and Winamac) in Cass and Pulaski Counties, IN*

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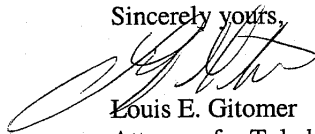
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US Fish and Wildlife Service  
July 10, 2003  
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Louis E. Gitomer  
Attorney for Toledo, Peoria & Western Railway  
Corporation and A & R Line, Inc.

Enclosure

## EXHIBIT 3 – REPLIES

07/29/2003 16:33 RAIL AMERICA → 12027836947

JUL-29-2009 WED 02:58 PM TPW RAILROAD

FAX NO. 3098982870

NO. 857 10003  
P. 03/03

United States Department of Agriculture



Natural Resources Conservation Service  
6013 Lakeside Blvd.  
Indianapolis, IN 46268

July 18, 2003

Louis Gitomer  
Attorney for Toledo, Peoria &  
Western Railway Corporation and  
J.K. Line, Inc.  
1990 E. Washington St.  
East Peoria, IL 61611-2961

Dear Mr. Gitomer:

The project to abandon a 15.9-mile rail line in Cass and Pulaski Counties, Indiana, as referred to in your letter of July 10, 2003, will not cause a conversion of prime farmland.

If you need additional information, please contact Phil Bousman at 317-290-3200, extension 385.

Sincerely,

 **ACTING FOR**  
JANE E. HARDISTY  
State Conservationist

The Natural Resources Conservation Service provides leadership in a partnership effort to help people conserve, maintain, and improve our natural resources and environment.

An Equal Opportunity Provider and Employer



## INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

*We make Indiana a cleaner, healthier place to live.*

Frank O'Bannon  
Governor

Lori F. Kaplan  
Commissioner

100 North Senate Avenue  
P.O. Box 6015  
Indianapolis, Indiana 46206-6015  
(317) 232-8603  
(800) 451-6027  
[www.in.gov/idem](http://www.in.gov/idem)

July 24, 2003

Louis Gitomer  
Toledo, Peoria and Western Railway Corporation  
1455 F Street, NW, Suite 225  
Washington, D.C. 20005

Dear Louis Gitomer

RE: U.S. STB Docket # AB-847 (2X) and AB-855 for Discontinuance and Abandonment of 15.9 Mile Rail Line from Kenneth to Winamac, IN

The Indiana Department of Environmental Management (IDEM) has reviewed the above-noted project with respect to applicable environmental rules, law and standards. Our review did not raise any specific comment regarding the environmental requirements for your proposed project. IDEM recommends that you consider the following issues as you move forward:

### **WATER AND BIOTIC QUALITY**

1. Section 404 of the Clean Water Act requires that you obtain a permit from the U.S. Army Corps of Engineers (USACE) before dredging and/or filling in any wetlands or other waters of the state of Indiana, such as rivers, lakes, streams, and ditches. Thus, as a project owner or sponsor, it is your responsibility to ensure that no wetlands are disturbed without the proper permit. Although you may initially refer to the U.S. Fish and Wildlife Service National Wetland Inventory maps as a means of identifying potential areas of concern, please be mindful that those maps do not depict jurisdictional wetlands.

A valid jurisdictional wetlands determination can only be made by the Corps of Engineers, using the 1987 Wetland Delineation Manual. Much of northern Indiana is served by the Corps of Engineers District Office in Detroit, while the central and southern portions of the state are served by their Louisville District Office. Contacts for these offices can be found at: [www.in.gov/idem/water/planbr/401/reglinks.html](http://www.in.gov/idem/water/planbr/401/reglinks.html). IDEM recommends that, to the extent possible, impacts to wetlands and other resources simply be avoided.

2. In the event a Section 404 wetlands permit is required from the Corps of Engineers, you also must obtain a Section 401 Water Quality Certification from the IDEM Office of Water Quality. Even if the Corps of Engineers determines that the activity or area associated with your project is not under their jurisdiction, you may still need to obtain authorization for the project from this office. The relocation, channelization, widening, or other such alteration of a stream would also require a 401 Water Quality Certification. Contact the Office of Water Quality at 317-233-8488 for additional information. In general, IDEM is opposed to such changes to streams, and would require additional information in order to provide more project specific comments.
3. If your project will involve over a 0.5 acre of wetland impact, stream relocation, or other large-scale alterations to waterbodies such as the creation of a dam or a water diversion, you should seek additional input from Section 401 Water Quality Certification staff. Consult this web site: [www.in.gov/ideM/water/planbr/401/staff.html](http://www.in.gov/ideM/water/planbr/401/staff.html) for the appropriate staff contact to discuss your project further.
4. The physical disturbance of the stream and riparian vegetation, especially large trees overhanging any affected waterbodies should be limited to only that which is absolutely necessary to complete the project. The shade provided by the large overhanging trees helps maintain proper stream temperatures and dissolved oxygen for aquatic life.
5. For projects involving construction activity (which includes clearing, grading, excavation and other land disturbing activities) that result in the disturbance of five (5), or more, acres of total land area, contact the Office of Water Quality - Permits Branch (317-233-0468) regarding the need for of a Rule 5 Storm Water Permit. (See: [www.in.gov/ideM/guides/permit/water/stormwaterconstruction.html](http://www.in.gov/ideM/guides/permit/water/stormwaterconstruction.html) and [www.in.gov/ideM/water/npdes/permits/wetwthr/storm/rule5.html](http://www.in.gov/ideM/water/npdes/permits/wetwthr/storm/rule5.html) ). If the land disturbing activity results in the disturbance of less than five (5) acres of total land area, but is part of a larger common plan of development or sale (such as the development of a subdivision or industrial park), it is still subject to storm water permitting. In addition, new federal standards lowering the acreage threshold for which a permit is required, are expected to take effect later this year. Hence, if your project area is greater than one acre, and you intend to begin your project after October 31, 2003, you should first check with IDEM to see whether the new Rule 5, one acre permitting threshold has taken affect.
6. Regardless of the size of your project, IDEM recommends that appropriate structures and techniques be utilized both during the construction phase, and after completion of the project, to minimize soil erosion. The use of straw bale barriers, silt fencing, earthen berms or other appropriate techniques around disturbed areas are recommended to prevent soil from leaving the construction site. Information and assistance regarding control of construction-related soil erosion are available from the Soil and Water Conservation District (SWCD) offices, co-located with the local field office of the USDA Natural Resource Conservation Service (NRCS) in each county. (To find a SWCD office: [www.agry.purdue.edu/swq/swcd.htm](http://www.agry.purdue.edu/swq/swcd.htm))
7. For projects involving work within floodways of waterbodies, contact the Department of Natural Resources - Division of Water (317/232-4160) regarding the need for permits.
8. For projects involving impacts to fish and botanical resources, contact the Department of Natural Resources - Division of Fish and Wildlife (317/232-4080) for addition project input.

9. For projects involving water main construction, water main extensions, and new public water supplies, contact the Office of Water Quality - Drinking Water Branch (317-308-3299) regarding the need for permits. ([www.in.gov/ideM/guides/permit/water/drinkingwater.html](http://www.in.gov/ideM/guides/permit/water/drinkingwater.html))
10. For projects involving effluent discharges to waters of the State of Indiana, contact the Office of Water Quality - Permits Branch (317-233-0468) regarding the need for a National Pollutant Discharge Elimination System (NPDES) permit.
11. For projects involving the construction of wastewater facilities and sewer lines, contact the Office of Water Quality - Permits Branch (317-232-8675) regarding the need for permits. ([www.in.gov/ideM/guides/permit/water/wwconstructionpermits.html](http://www.in.gov/ideM/guides/permit/water/wwconstructionpermits.html))

## **AIR QUALITY**

The above-noted project should be designed to minimize any impact on ambient air quality in, or near, the project area. The project must comply with all federal and state air pollution regulations. Consideration should be given to the following:

1. Regarding open burning, and disposing of organic debris generated by land clearing activities; some types of open burning are allowed ([www.in.gov/ideM/guides/permit/air/openburning.html#maintenance](http://www.in.gov/ideM/guides/permit/air/openburning.html#maintenance)) under specific conditions ([www.in.gov/ideM/guides/permit/air/openburning.html#conditionsallowed](http://www.in.gov/ideM/guides/permit/air/openburning.html#conditionsallowed)). You also can seek an open burning variance from IDEM. See: [www.in.gov/ideM/guides/permit/air/openburning.html#variances](http://www.in.gov/ideM/guides/permit/air/openburning.html#variances).

However, IDEM generally recommends that you take vegetative wastes to a registered yard waste composting facility or that the waste be chipped or shredded with composting on site (you must register with IDEM if more than 2,000 pounds is to be composted; contact 317/232-0066). The finished compost can then be used as a mulch or soil amendment. You also may bury any vegetative wastes (such as leaves, twigs, branches, limbs, tree trunks and stumps) onsite, although burying large quantities of such material can lead to subsidence problems, later on.

2. Reasonable precautions must be taken to minimize fugitive dust emissions from construction and demolition activities. For example, wetting the area with water, constructing wind barriers, or treating dusty areas with chemical stabilizers (such as calcium chloride or several other commercial products). Dirt tracked onto paved roads from unpaved areas should be minimized. See: [www.in.gov/ideM/guides/permit/air/fugitivedust.html](http://www.in.gov/ideM/guides/permit/air/fugitivedust.html).

Additionally, if construction or demolition is conducted in a wooded area where blackbirds have roosted or abandoned buildings or building sections in which pigeons or bats have roosted for 3-5 years precautionary measures should be taken to avoid an outbreak of histoplasmosis. This disease is caused by the fungus *Histoplasma capsulatum*, which stems from bird or bat droppings that have accumulated in one area for 3-5 years. The spores from this fungus become airborne when the area is disturbed and can cause infections over an entire community downwind of the site. The area should be wetted down prior to cleanup or demolition of the project site. For more detailed information on histoplasmosis prevention and control, please contact the Acute Disease Control Division of the Indiana State Department of Health at (317) 233-7272.

3. Ensure that asphalt paving plants are permitted and operate properly. The use of cutback asphalt, or asphalt emulsion containing more than seven percent (7%) oil distillate, is prohibited during the months April through October. See 326 IAC 8-5-2, Asphalt Paving Rule ([www.ai.org/legislative/iac/t03260/a00080.pdf](http://www.ai.org/legislative/iac/t03260/a00080.pdf))
4. With respect to asbestos removal: all facilities slated for renovation or demolition (except residential buildings that have (4) four or fewer dwelling units and which will not be used for commercial purposes) must be inspected by an Indiana-licensed asbestos inspector prior to the commencement of any renovation or demolition activities. If regulated asbestos-containing material (RACM) that may become airborne is found, any subsequent demolition, renovation, or asbestos removal activities must be performed in accordance with the proper notification and emission control requirements.

If no asbestos is found where a renovation activity will occur, or if the renovation involves removal of less than 260 linear feet of RACM off of pipes, less than 160 square feet of RACM off of other facility components, or less than 35 cubic feet of RACM off of all facility components, the owner or operator of the project does not need to notify IDEM before beginning the renovation activity.

For questions on asbestos demolition and renovation activities, you can also call IDEM's Lead/Asbestos section at 1-888-574-8150.

However, in all cases where a demolition activity will occur (even if no asbestos is found), the owner or operator must still notify IDEM 10 working days prior to the demolition, using the form found at [www.in.gov/icpr/webfile/formsdiv/44593.pdf](http://www.in.gov/icpr/webfile/formsdiv/44593.pdf).

Anyone submitting a renovation/demolition notification form will be billed a notification fee based upon the amount of friable asbestos containing material to be removed or demolished. Projects that involve the removal of more than 2,600 linear feet of friable asbestos containing materials on pipes, or 1,600 square feet or 400 cubic feet of friable asbestos containing material on other facility components, will be billed a fee of \$150 per project; projects below these amounts will be billed a fee of \$50 per project. All notification remitters will be billed on a quarterly basis.

For more information about IDEM policy regarding asbestos removal and disposal, visit: [www.in.gov/idem/guides/permit/waste/asbestosremoval.html](http://www.in.gov/idem/guides/permit/waste/asbestosremoval.html).

5. With respect to lead-based paint removal: IDEM encourages all efforts to minimize human exposure to lead-based paint chips and dust. IDEM is particularly concerned that young children exposed to lead can suffer from learning disabilities. Although lead-based paint abatement efforts are not mandatory, any abatement that is conducted within housing built before January 1, 1978, or a child-occupied facility is required to comply with all lead-based paint work practice standards, licensing and notification requirements. For more information about lead-based paint removal visit: [www.in.gov/idem/guides/permit/waste/leadabatement.html](http://www.in.gov/idem/guides/permit/waste/leadabatement.html).
6. If your project involves the construction of a new source of air emissions or the modification of an existing source of air emissions or air pollution control equipment, it will need to be reviewed by the IDEM Office of Air Quality (OAQ). A registration or permit may be

required under 326 IAC 2 (View at: [www.ai.org/legislative/iac/t03260/a00020.pdf](http://www.ai.org/legislative/iac/t03260/a00020.pdf).) New sources that use or emit hazardous air pollutants may be subject to Section 112 of the Clean Air Act and corresponding state air regulations governing hazardous air pollutants.

7. For more information on air permits visit: [www.in.gov/ide/guides/permit/air/index.html](http://www.in.gov/ide/guides/permit/air/index.html), or to initiate the IDEM air permitting process, please contact the Office of Air Quality Permit Reviewer of the Day at (317) 233-0178 or [OAMPROD@dem.state.in.us](mailto:OAMPROD@dem.state.in.us).

### **LAND QUALITY**

In order to maintain compliance with all applicable laws regarding contamination and/or proper waste disposal, IDEM recommends that:

1. If the site is found to contain any areas used to dispose of solid or hazardous waste, you need to contact the Office of Land Quality (OLQ) at 317-308-3103.
2. If any contaminated soils are discovered during this project, they may be subject to disposal as either special or hazardous waste. Please contact the OLQ at 317-308-3103 to obtain information on proper disposal procedures.
3. If PCBs are subsequently found at this site, please contact the Industrial Waste Section of OLQ at 317-308-3103 for information regarding management of any PCB wastes from this site.
4. If there are any asbestos disposal issues related to this site, please contact the Industrial Waste Section of OLQ at 317-308-3103 for information regarding the management of asbestos wastes." (Asbestos removal is addressed above, under Air Quality.)

The IDEM Office of Land Quality reserves the right to provide additional comments, or to undertake other appropriate actions, if additional information becomes available that reveals potential waste disposal or contamination problems at the site.

### **FINAL REMARKS**

Should you need to obtain any environmental permits in association with this proposed project, please be mindful that IC 13-15-8 requires that you notify all adjoining property owners and/or occupants within ten days your submittal of each permit application. However, if you are seeking multiple permits, you can still meet the notification requirement with a single notice if all required permit applications are submitted with the same ten day period. For additional information and forms: [www.in.gov/ide/guides/permit/landdevelopment/notification.html](http://www.in.gov/ide/guides/permit/landdevelopment/notification.html).

IDEM reserves the right for further review if the scope of the project, or any of its aspects, should change significantly from that which has been proposed, or we are made aware of factors which could have detrimental environmental effects.

Please note that this letter does not constitute a permit, license, endorsement or any other form of approval on the part of either the Indiana Department of Environmental Management or any other Indiana state agency.

The IDEM makes all information pertaining to environmental reviews available to the public. During regular business hours these files are accessible in the IDEM file room is located in Room N1201, Indiana Government Center North, 100 North Senate Avenue, Indianapolis.

Should you have any questions relating to our review or recommendations, please feel free to contact me at 317-233-4638 or at [dparry@dem.state.in.us](mailto:dparry@dem.state.in.us).

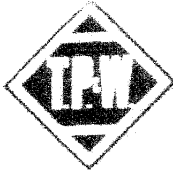
Sincerely,



David Parry  
Environmental Review Coordinator  
Office of Planning and Assessment

Project No. 4505

# EXHIBIT C—HISTORIC REPORT



## Toledo, Peoria and Western Railway Corporation

1990 East Washington Street, East Peoria, Illinois 61611-2961  
(309) 698-2600 • Fax (309) 698-2679

July 10, 2003

Department of Natural Resources  
Division of Historic Preservation and Archeology  
402 West Washington Street  
Room W274  
Indianapolis, IN 46204  
ATTN: John R. Gross, Division Director

RE: Docket No. AB-847 (Sub-No. 2X), *Toledo, Peoria & Western Railway Corporation-Discontinuance Exemption-(Between Kenneth and Winamac) in Cass and Pulaski Counties, IN*  
Docket No. AB-855 (Sub-No. 1X), *A & R Line, Inc.-Abandonment Exemption-(Between Kenneth and Winamac) in Cass and Pulaski Counties, IN*

Dear Mr. Gross:

On or about July 30, 2003, we expect to be filing with the Surface Transportation Board ("STB") a petition for exemption seeking authority for Toledo, Peoria & Western Railway Corporation to discontinue service over and A & R Line, Inc. to abandon a 15.9-mile rail line between milepost 5.1W near Keneth, IN, and milepost 21.0W near Winamac, IN, the end of the line, in Cass and Pulaski Counties, IN.

Attached is a Historic Report describing the proposed action and any expected historic effects, as well as a map of the affected area. We are providing this report so that you may review the information that will form the basis for the STB's independent historic analysis of this proceeding. If any of the information is misleading or incorrect, if you believe that pertinent information is missing, or if you have any questions about the Board's historic review process, please contact the Section of Environmental Analysis (SEA), Surface Transportation Board, 1925 K Street, NW, Washington, DC 20423, telephone 202-565-1538 and refer to the above Docket No. AB-847 (Sub-No. 2X) and Docket No. AB-855 (Sub-No. 1X).

Because the applicable statutes and regulations impose stringent deadlines for processing this action, your written comments to SEA (with a copy to our representative) would be appreciated within 3 weeks. Your comments will be considered by the Board in evaluating the historic impacts of the contemplated action. If there are any questions concerning this proposal,

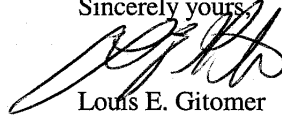
Mr. John R. Gross

July 10, 2003

Page 2

please contact our representative directly. Our representative in this matter is Louis E. Gitomer who may be contacted by telephone at 202-638-3307, email at [lgitomer@dc.bjllp.com](mailto:lgitomer@dc.bjllp.com), or mail at Ball Janik LLP, 1455 F Street, N.W., Suite 225, Washington, DC 20005.

Sincerely yours,

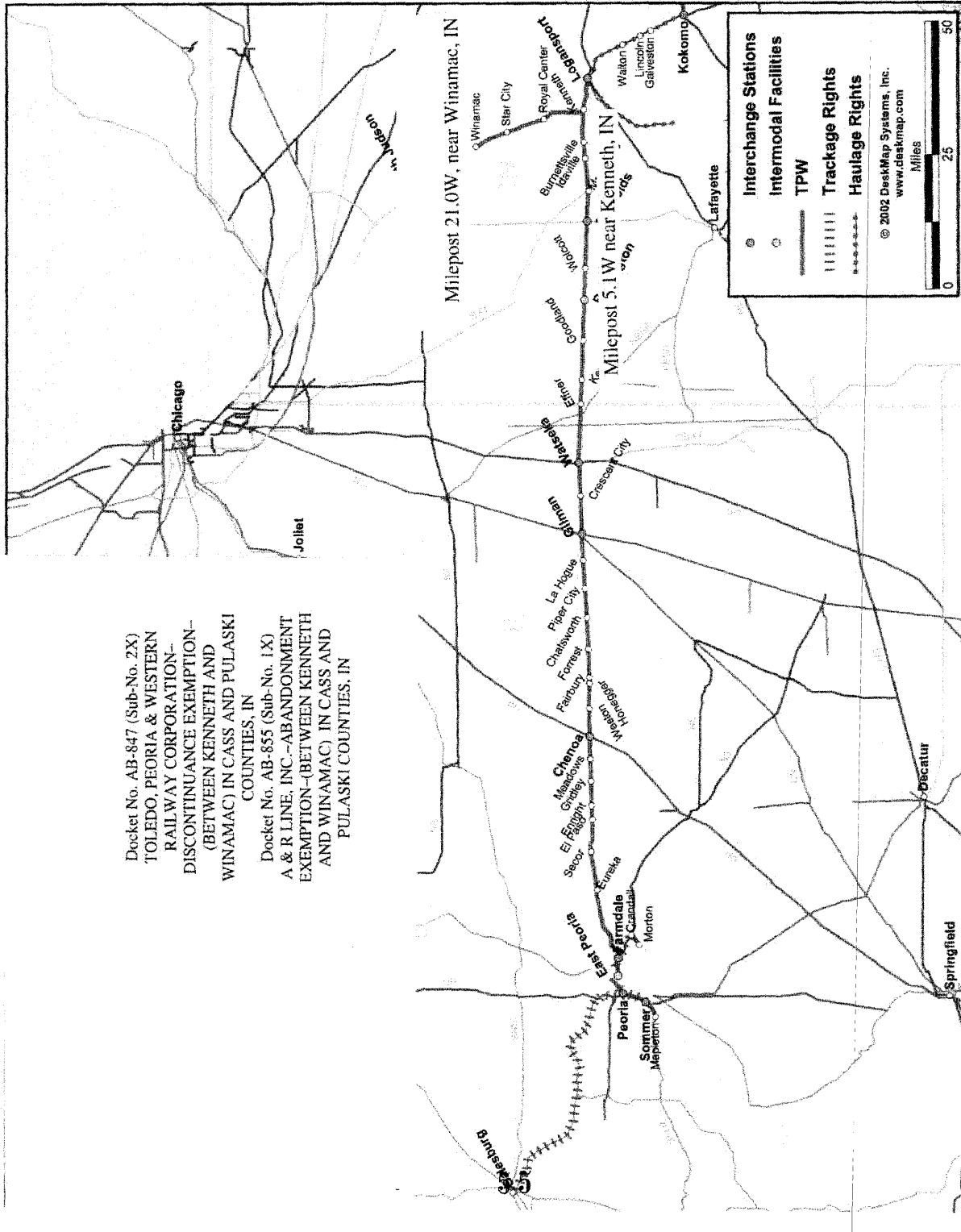
A handwritten signature in black ink, appearing to read 'L. Gitomer', written over the typed name.

Louis E. Gitomer

Attorney for Toledo, Peoria & Western  
Railway Corporation and J. K. Line, Inc.

Docket No. AB-847 (Sub-No. 2X)  
 TOLEDO, PEORIA & WESTERN  
 RAILWAY CORPORATION-  
 DISCONTINUANCE EXEMPTION-  
 (BETWEEN KENNETH AND  
 WINAMAC) IN CASS AND PULASKI  
 COUNTIES, IN

Docket No. AB-855 (Sub-No. 1X)  
 A & R LINE, INC.-ABANDONMENT  
 EXEMPTION-(BETWEEN KENNETH  
 AND WINAMAC) IN CASS AND  
 PULASKI COUNTIES, IN



## **HISTORIC REPORT**

(49 C.F.R. 1105.8)

Docket No. AB-847 (Sub-No. 2X)

### **TOLEDO, PEORIA & WESTERN RAILWAY CORPORATION-DISCONTINUANCE EXEMPTION-(BETWEEN KENNETH AND WINAMAC) IN CASS AND PULASKI COUNTIES, IN**

Docket No. AB-855 (Sub-No. 1X)

### **A & R LINE, INC.-ABANDONMENT EXEMPTION-(BETWEEN KENNETH AND WINAMAC) IN CASS AND PULASKI COUNTIES, IN**

Dated: July 10, 2003

The Historic Report should contain the information required by 1105.7(e)(1) of the Environmental Report. The following is excerpted from the Environmental Report prepared for the proposed abandonment:

(1) Proposed Action and Alternatives. Describe the proposed action, including commodities transported, the planned disposition (if any) of any rail line and other structures that may be involved, and any possible changes in current operations or maintenance practices. Also describe any reasonable alternatives to the proposed action. Include a readable, detailed map and drawings clearly delineating the project.

Toledo, Peoria & Western Railway Corporation ("TP&W") proposes to discontinue service over and A & R Line, Inc. ("A&R") proposes to abandon A&R's 15.9-mile rail line between milepost 5.1W near Kenneth, IN, and milepost 21.0W, near Winamac, IN, the end of the line, in Cass and Pulaski Counties, IN (the "Line"). Upon receipt of abandonment authority, TP&W and A&R (collectively referred to as "Petitioners") intend to salvage the rail, cross-ties, and other track material, but not the bridges, and divest the right-of-way.

A&R and TP&W are subsidiaries of the Toledo, Peoria and Western Railroad Corporation (“Corporation”).<sup>1</sup> TP&W leased the Line from A&R in 1997.<sup>2</sup> A&R was a subsidiary of Cargill Incorporated (“Cargill”).<sup>3</sup> Corporation acquired control of A&R in 2003. *See RailAmerica Control Exemption.*

When Cargill owned A&R, the Line served a Cargill owned grain elevator at Winamac, milepost 20.0W. TP&W transported grain over the Line. However, Cargill stopped shipping over the Line about September 16, 2002. No traffic has moved over the Line since that time.

The only alternative to abandonment and discontinuance of service over the Line would be not to abandon and discontinue service over the Line. No service has been provided on the Line since September 16, 2002, and Petitioners believe that there will be no future demand for rail service over the Line. Maintaining the Line and incurring opportunity costs where there is no traffic would not be a prudent use of carrier resources. Without the prospect of future traffic, much less enough traffic to turn the Line into a profitable venture, Petitioners have decided to seek abandonment of and discontinuance of service over the Line.

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<sup>1</sup> Corporation is an indirect subsidiary of RailAmerica, Inc. *RailAmerica, Inc.—Control Exemption—Florida Rail Lines, Inc., Toledo, Peoria and Western Railroad Corporation, Marksman Corporation and Toledo, Peoria & Western Railway Corporation*, STB Finance Docket No. 33777 (STB served September 17, 1999). *RailAmerica, Inc., et al.—Control and Merger Exemption—A&R Line, Inc., and J.K. Line, Inc.*, STB Finance Docket No. 34269 (STB served December 12, 2002) (the “*RailAmerica Control Exemption*”).

<sup>2</sup> *Toledo, Peoria & Western Railway Corporation—Lease and Operation Exemption—A & R Line, Inc.*, STB Finance Docket No. 33482 (STB served October 16, 1997).

<sup>3</sup> *Cargill, Incorporated—Acquisition of Control Exemption—A & R Line, Inc. and J.K. Line, Inc.*, STB Finance Docket No. 33458 (STB served September 19, 1997).

A map of the proposed abandonment and discontinuance of service is attached hereto as Exhibit 1.<sup>4</sup>

### HISTORIC REPORT

1. A U.S.G.S. topographic map (or alternate map drawn to scale and sufficiently detailed to show buildings and other structures in the vicinity of the proposed action) showing the location of the proposed action, and the locations and approximate dimensions of railroad structures that are 50 years old or older and are part of the proposed action;

U.S. Geological Survey Maps have been supplied to the Indiana Historical Society ("INHS"). *See* Exhibit 2.

2. A written description of the right of way (including approximate widths, to the extent known), and the topography and urban and/or rural characteristics of the surrounding area;

The right-of-way is generally 100-feet wide. The right-of-way begins at milepost 5.1W at Kenneth, IN, which is where the Line connects with the TP&W's main east-west line. The elevation of the Line at this point is about 650 feet. The Line curves northwest from the east-west TP&W line, crosses U.S. Route 24 and becomes a north south-south line, paralleling 600 West Road. While curving to the north-south axis, the Line passes to the southwest of three ponds. The Line runs north, crossing eight roads and Crooked Creek, before it realigns to a northwest-southeast axis parallel to U.S. Route 35 southeast of Royal Center. The Line crosses 600 West Road and Fredricks Ditch before crossing four streets in Royal Center. Continuing parallel to Route 35 until the end of the Line in Winamac, the Line crosses 22 roads, including Indiana Route 16, three streets in Star City and five streets in Winamac, and the following bodies

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<sup>4</sup> The copy of the map that accompanied the information-gathering letters has been removed from those letters. That map was the same as the map in Exhibit 1 accompanying this Environmental Report.

of water, Little Indian Creek, Wilson Wiseley Ditch, Indian Creek, Mud Creek, Mill Creek, and the Tippecanoe River. Elevation at the end of the Line in Winamac is about 710 feet.

The area traversed by the Line is mainly rural except for the towns of Royal Center, Star, and Winamac. TP&W operated on an as needed basis to serve the Cargill facility in Winamac until it closed September 16, 2002. Since that time there have been no requests for service and TP&W has not operated over the Line.

3. Good quality photographs (actual photographic prints, not photocopies) of railroad structures on the property that are 50 years old or older and of the immediately surrounding area;

Photographs of the railroad structures on the Line that are 50 years old or older are enclosed as Exhibit 3.

4. The date(s) of construction of the structure(s), and the date(s) and extent of any major alterations, to the extent such information is known;

Following is a list of the bridges and other structures on the Line with the dates of construction or major alteration.

| TYPE OF STRUCTURE    | MILEPOST | DATE OF<br>CONSTRUCTION |
|----------------------|----------|-------------------------|
| Concrete Box Culvert | 1.80W    | unknown                 |
| Metal Arch Culvert   | 3.60W    | 1918                    |
| Bridge               | 7.20W    | unknown                 |
| Bridge               | 8.70W    | 1918                    |
| Bridge               | 11.54W   | 1928                    |
| Steel Pipe           | 13.67W   | 1911                    |
| Bridge               | 18.50W   | unknown                 |
| Bridge               | 19.10W   | unknown                 |

The bridge at Milepost 11.54W is a 54-foot long ballast deck plate girder bridge, built for double track with one track in place. The bridge at Milepost 18.50W is a 73-foot long open deck plate girder bridge over Mill Creek, built for double track with one track in place. The bridge at Milepost 19.10W is a 293-foot long open deck plate girder bridge over the Tippecanoe River, consisting of six spans, built for double track with one track in place.

Petitioners do not intend to remove any of these bridges and structures. Petitioners plan only to salvage the track and material while leaving the bridges and structures in tact for trail use.

Petitioners contacted INHS. *See* Exhibit 4. No response has been received. A copy of this Report has been mailed to INHS.

5. A brief narrative history of carrier operations in the area, and an explanation of what, if any, changes are contemplated as a result of the proposed action;

The Line was part of The Pennsylvania Railroad Company's route between Logansport, IN and Chicago, IL. The Line was transferred to the Consolidated Rail Corporation ("Conrail") as part of the Final System Plan in 1976. Conrail sold the Line to the Winamac Southern Railway Company ("WSRC") in 1993. *Winamac Southern Railway Company—Acquisition and Operation Exemption—Lines of Consolidated Rail Corporation*, ICC Finance Docket No. 32257 (ICC served April 7, 1993). WSRC sold the Line to A&R in 1995, but continued to operate over the Line. *A. & R. Line, Inc.—Acquisition Exemption--Winamac Southern Railway Company*, ICC Finance Docket No. 32694 (ICC served July 6, 1995). Cargill acquired the stock of A&R

from Mr. Frick<sup>5</sup> in 1997. *Cargill, Incorporated—Acquisition of Control Exemption—A & R Line, Inc. and J.K. Line, Inc.*, STB Finance Docket No. 33458 (STB served September 19, 1997).

Also in 1997, TP&W leased the Line and began to operate over it. *Toledo, Peoria & Western Railway Corporation—Lease and Operation Exemption—A & R Line, Inc.*, STB Finance Docket No. 33482 (STB served October 16, 1997). Once it closed the elevator on the Line, Cargill sold A&R to RailAmerica. *RailAmerica, Inc., et al.—Control and Merger Exemption—A&R Line, Inc., and J.K. Line, Inc.*, STB Finance Docket No. 34269 (STB served December 12, 2002).

As a result of the proposed abandonment and discontinuance of service, Petitioners will permanently cease operations over the Line, salvage the material from the Line, and divest the underlying right-of-way.

6. A brief summary of documents in the carrier's possession, such as engineering drawings, that might be useful in documenting a structure that is found to be historic;

Petitioners believe that bridge drawings are available.

7. An opinion (based on readily available information in the railroad's possession) as to whether the site and/or structures meet the criteria for listing on the National Register of Historic Places (36 C.F.R. 60.4), and whether there is a likelihood of archeological resources or any other previously unknown historic properties in the project area, and the basis for these opinions (including any consultations with the State Historic Preservation Office, local historical societies or universities);

Petitioners believe that the bridges and structures on the Line are not unusual or noteworthy for inclusion on the National Register of Historic Places. It is also Petitioners' opinion that there are no archeological resources or other railroad related historic properties in

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<sup>5</sup> Mr. Frick acquired control of A&R in 1995. *Daniel R. Frick—Continuance in Control Exemption—J.K. Line, Inc., Winamac Southern Railway Company, and A. & R. Line, Inc.*, ICC Finance Docket No. 32693 (ICC served July 6, 1995).

the project area.

8. A description (based on readily available information in the railroad's possession) of any known prior subsurface ground disturbance or fill, environmental conditions (naturally occurring or manmade) that might affect the archeological recovery of resources (such as swampy conditions or the presence of toxic waste), and the surrounding terrain.

Petitioners believe that there are no existing records as to the nature of any known subsurface ground disturbance or fill, or environmental conditions that might affect the archeological recovery of any potential resources.

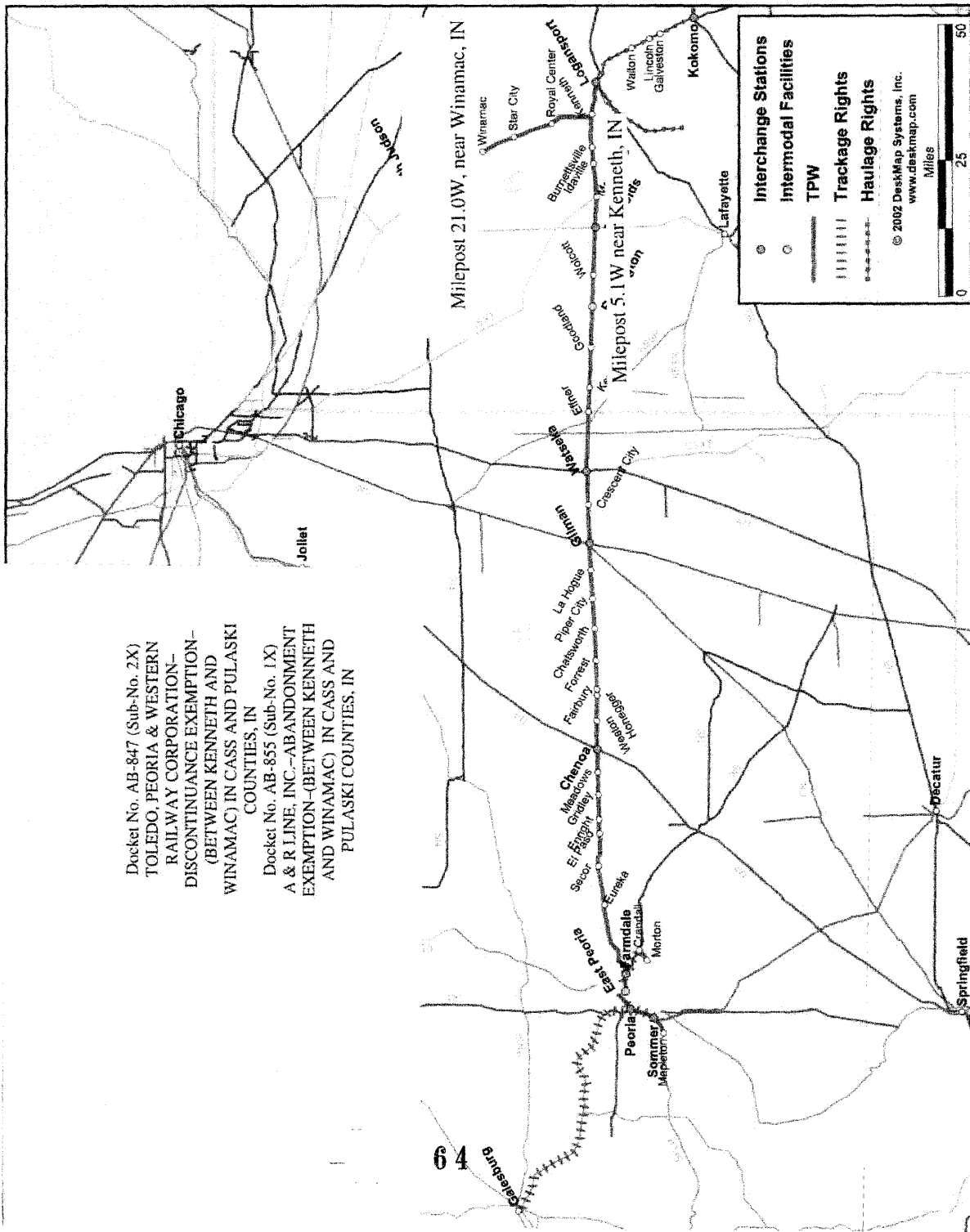
9. Within 30 days of receipt of the historic report, the State Historic Preservation Officer may request the following additional information regarding specific non railroad owned properties or groups of properties immediately adjacent to the railroad right-of-way: photographs of specified properties that can be readily seen from the railroad right-of-way (or other public rights-of-way adjacent to the property) and a written description of any previously discovered archeological sites, identifying the location and type of the site (*i.e.* prehistoric or native American).

Petitioners do not foresee the likelihood that any additional information will need to be supplied in association with the proposed line abandonment and discontinuance of service other than that information previously submitted. But, if any additional information is requested, Petitioners will promptly supply the necessary information.

## EXHIBIT 1 – MAP

Docket No. AB-847 (Sub-No. 2X)  
 TOLEDO, PEORIA & WESTERN  
 RAILWAY CORPORATION—  
 DISCONTINUANCE EXEMPTION—  
 (BETWEEN KENNETH AND  
 WINAMAC) IN CASS AND PULASKI  
 COUNTIES, IN

Docket No. AB-855 (Sub-No. 1X)  
 A & R LINE, INC.—ABANDONMENT  
 EXEMPTION—(BETWEEN KENNETH  
 AND WINAMAC) IN CASS AND  
 PULASKI COUNTIES, IN

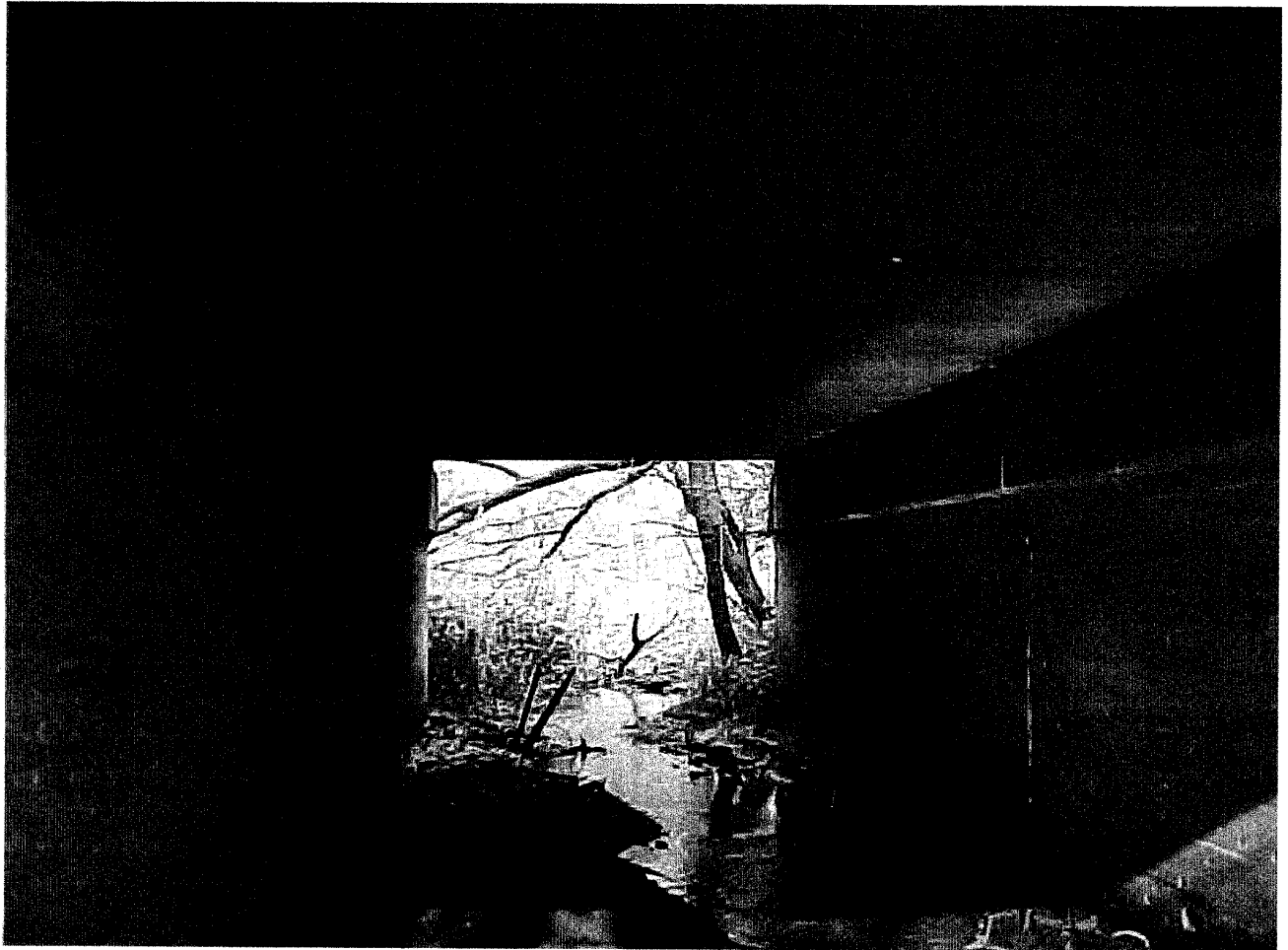


## EXHIBIT 2 – USGS MAPS (ATTACHED)

## EXHIBIT 3 – PHOTOGRAPHS

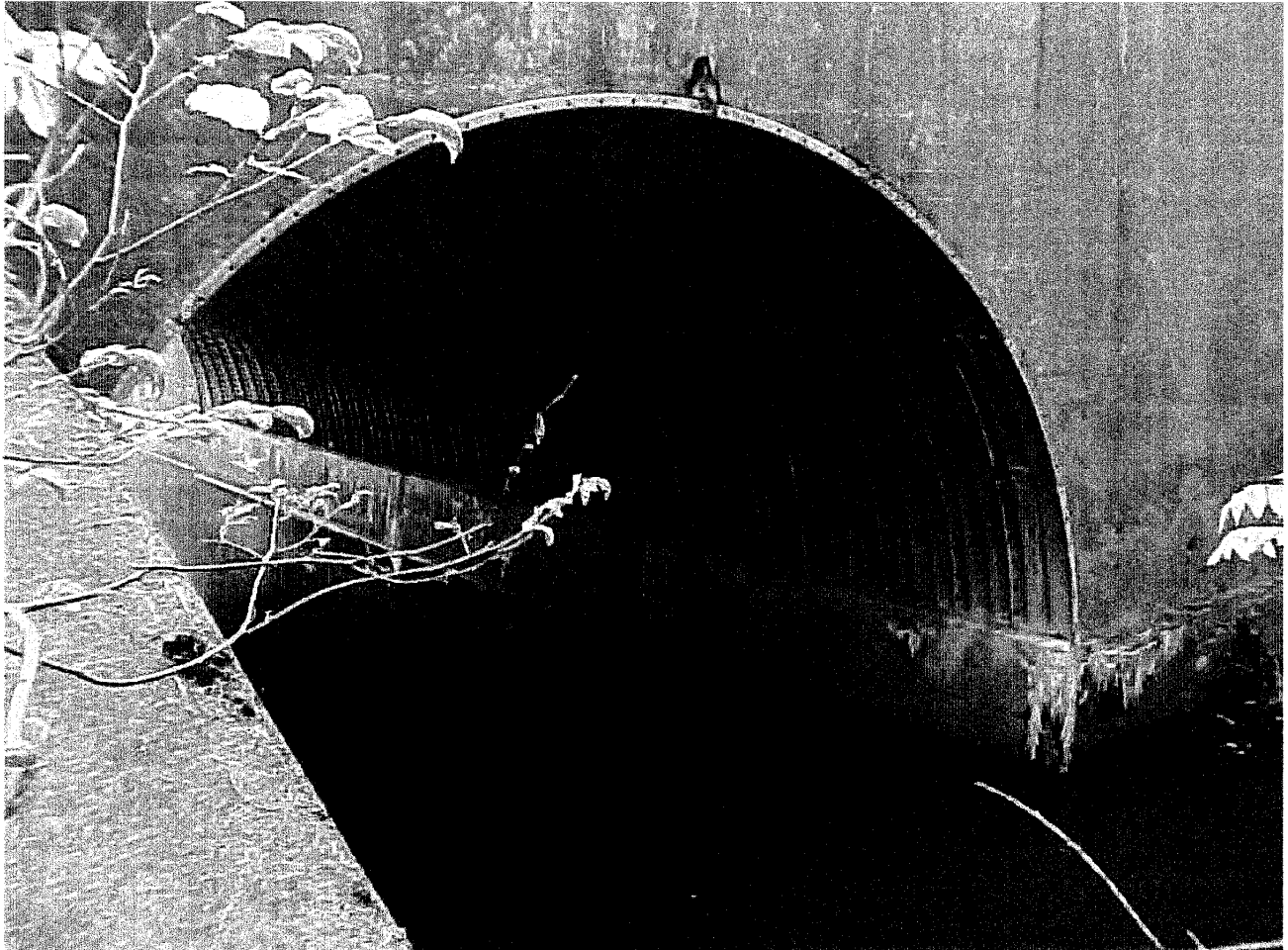
Milepost 1.8W





Milepost 3.60W





Milepost 7.20W







Milepost 8.70W





Milepost 11.54W







Milepost 18.50W



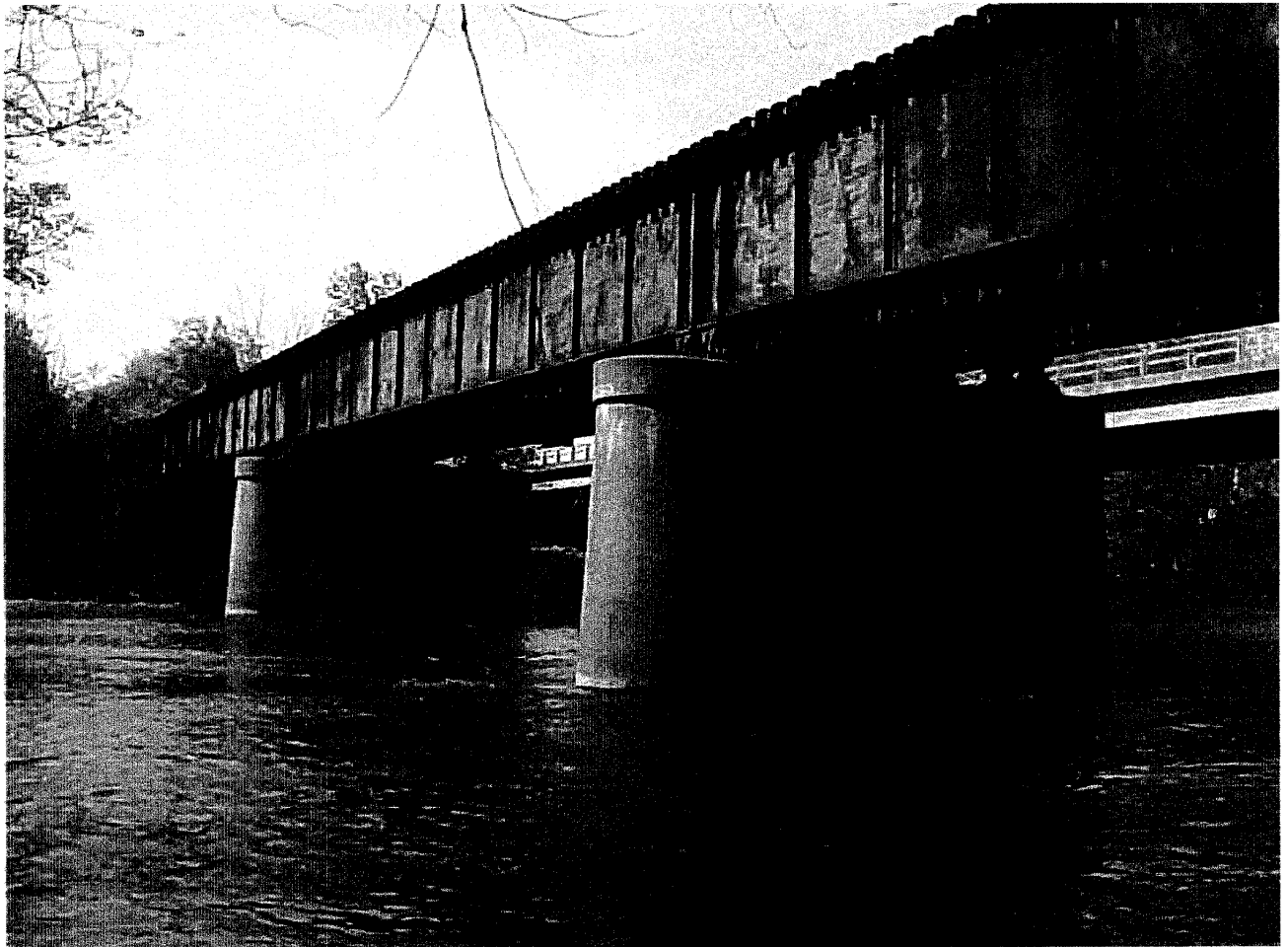




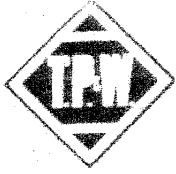
Milepost 19.10W







## EXHIBIT 4 - LETTER



## Toledo, Peoria and Western Railway Corporation

1990 East Washington Street, East Peoria, Illinois 61611-2961  
(309) 698-2600 • Fax (309) 698-2679

July 10, 2003

Department of Natural Resources  
Division of Historic Preservation and Archeology  
402 West Washington Street  
Room W274  
Indianapolis, IN 46204  
ATTN: John R. Gross, Division Director

RE: Docket No. AB-847 (Sub-No. 2X), *Toledo, Peoria & Western Railway Corporation-Discontinuance Exemption-(Between Kenneth and Winamac) in Cass and Pulaski Counties, IN*  
Docket No. AB-855 (Sub-No. 1X), *A & R Line, Inc.-Abandonment Exemption-(Between Kenneth and Winamac) in Cass and Pulaski Counties, IN*

Dear Mr. Gross:

On or about July 30, 2003, we expect to be filing with the Surface Transportation Board ("STB") a petition for exemption seeking authority for Toledo, Peoria & Western Railway Corporation to discontinue service over and A & R Line, Inc. to abandon a 15.9-mile rail line between milepost 5.1W near Keneth, IN, and milepost 21.0W near Winamac, IN, the end of the line, in Cass and Pulaski Counties, IN.

Attached is a Historic Report describing the proposed action and any expected historic effects, as well as a map of the affected area. We are providing this report so that you may review the information that will form the basis for the STB's independent historic analysis of this proceeding. If any of the information is misleading or incorrect, if you believe that pertinent information is missing, or if you have any questions about the Board's historic review process, please contact the Section of Environmental Analysis (SEA), Surface Transportation Board, 1925 K Street, NW, Washington, DC 20423, telephone 202-565-1538 and refer to the above Docket No. AB-847 (Sub-No. 2X) and Docket No. AB-855 (Sub-No. 1X).

Because the applicable statutes and regulations impose stringent deadlines for processing this action, your written comments to SEA (with a copy to our representative) would be appreciated within 3 weeks. Your comments will be considered by the Board in evaluating the historic impacts of the contemplated action. If there are any questions concerning this proposal,

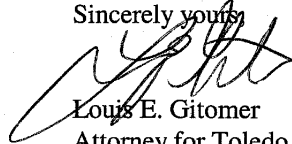
Mr. John R. Gross

July 10, 2003

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please contact our representative directly. Our representative in this matter is Louis E. Gitomer who may be contacted by telephone at 202-638-3307, email at [lgitomer@dc.bjllp.com](mailto:lgitomer@dc.bjllp.com), or mail at Ball Janik LLP, 1455 F Street, N.W., Suite 225, Washington, DC 20005.

Sincerely yours,

A handwritten signature in black ink, appearing to read "L. Gitomer", written over the typed name.

Louis E. Gitomer

Attorney for Toledo, Peoria & Western  
Railway Corporation and J. K. Line, Inc.

# EXHIBIT D—FEDERAL REGISTER NOTICE

Docket No. AB-847 (Sub-No. 2X)

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TOLEDO, PEORIA & WESTERN RAILWAY CORPORATION—DISCONTINUANCE  
EXEMPTION—(BETWEEN KENNETH AND WINAMAC) IN CASS AND PULASKI  
COUNTIES, IN

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Docket No. AB-855 (Sub-No. 1X)

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A & R LINE, INC.—ABANDONMENT EXEMPTION—(BETWEEN KENNETH AND  
WINAMAC) IN CASS AND PULASKI COUNTIES, IN

Notice of Petition for Exemption to Abandon and Discontinue Service

On July 31, 2003 Toledo, Peoria & Western Railway Corporation ("TP&W") and A & R Line, Inc. filed with the Surface Transportation Board, Washington, D.C. 20423, a petition for exemption for the discontinuance of service over and abandonment of, respectively, a line of railroad known as the A&R line a 15.9-mile rail line between milepost 5.1W near Kenneth, IN, and milepost 20.0W, near Winamac, IN, the end of the line, all of which traverses through United States Postal Service ZIP Codes 47550, 46978, 46985, and 46996, in Cass and Pulaski Counties, IN. The line for which the abandonment exemption request was filed includes the station of Winamac at milepost 21.0W.

The line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

The interest of railroad employees of TP&W will be protected by *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). A&R has no employees and is abandoning its entire rail line so no labor protection will be imposed on A&R.

Any request for a public use condition and any request for trail use/rail banking will be due no later than 20 days after notice of the filing of the petition for exemption is published in the Federal Register.

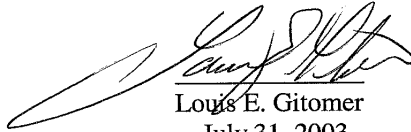
Persons seeking further information concerning abandonment procedures may contact the Surface Transportation Board or refer to the full abandonment and discontinuance regulations at 49 C.F.R. part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental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

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Section of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Section of Environmental Analysis. EAs in these abandonment proceedings normally will be made available within **60** days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

# EXHIBIT E—NEWSPAPER CERTIFICATION

### **CERTIFICATION**

I, Louis E. Gitomer certify that on July 24, 2003, A & R Line, Inc. Docket No. AB-855 (Sub-No. 1X) and Toledo, Peoria & Western Railway Corporation in Docket No. AB-847 (Sub-No. 2X) have published in a newspaper of general circulation in each county through which the line passes a notice that alerts the public to the proposed abandonment and discontinuance of service, to available reuse alternatives, and to how it may participate in the Surface Transportation Board proceeding.



Louis E. Gitomer  
July 31, 2003

# EXHIBIT F—CERTIFICATE OF SERVICE

### **CERTIFICATE OF SERVICE**

Pursuant to 49 C.F.R. §1152.60(d), the undersigned hereby certifies that the Petition for Exemption in Docket No. AB-847 (Sub-No. 2X), *Toledo, Peoria & Western Railway Corporation–Discontinuance Exemption–(Between Kenneth and Winamac) in Cass and Pulaski Counties, IN* and Docket No. AB-855 (Sub-No. 1X), *A & R Line, Inc.–Abandonment Exemption–(Between Kenneth and Winamac) in Cass and Pulaski Counties, IN* was mailed via first class mail, postage prepaid, on July 31, 2003, to the following parties:

#### **State Public Service Commission**

Indiana Department of Transportation  
100 N. Senate Ave  
IGC-N Room N901  
Indianapolis, IN 46204-2219

#### **Military Traffic Management Command**

MTMCTEA  
ATTN: Railroads for National Defense  
720 Thimble Shoals Blvd.  
Suite 130  
Newport News, VA 23606-2574

#### **National Park Service**

Mr. Tom Ross  
Chief of National Recreation and Trails  
U.S. Department of Interior - National Park Service  
Recreation Resources Assistance Division  
P.O. Box 37127  
Washington, DC 20013-7127

U.S. Department of Interior  
National Park Service  
Land Resources Division  
800 North Capitol St., N.E.  
Room 540  
Washington, DC 20002

**U.S. Department of Agriculture**

U.S. Department of Agriculture  
Chief of the Forest Service  
4<sup>th</sup> Floor, NW  
Sidney R. Yates Building  
201 14<sup>th</sup> Street, S.W.  
Washington, DC 20250

A handwritten signature in black ink, appearing to read "Louis E. Gitomer", is written over a horizontal line.

Louis E. Gitomer  
July 31, 2003