

CLARK HILL

Justin J. Marks
T 202.772.0916
F 202.772.0930
Email: jmarks@ClarkHill.com

Clark Hill
1001 Pennsylvania Avenue NW
Suite 1300
Washington, DC 20004
T 202.772.0909
F 202.772.0919

clarkhill.com

301160

October 7, 2020

VIA E-FILING

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington, DC 20024

ENTERED
Office of Proceedings
October 7, 2020
Part of
Public Record

Re: Somerset Railroad Corporation – Abandonment Exemption –
in Niagara County, NY
Surface Transportation Board Docket No. AB 1303X

Dear Ms. Brown:

Enclosed for filing in the above referenced docket is a Petition for Exemption submitted on behalf of Somerset Railroad Corporation (“SRC”). The filing fee was paid via pay.gov.

Please let me know if you have any questions regarding this filing.

Sincerely,



Justin J. Marks
Counsel to Somerset Railroad Corporation

Enclosure

FILED
October 7, 2020
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
October 7, 2020
SURFACE
TRANSPORTATION BOARD

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. AB 1303X

SOMERSET RAILROAD CORPORATION
- ABANDONMENT EXEMPTION –
IN NIAGARA COUNTY, NY

PETITION FOR EXEMPTION

(color copies included)

Eric M. Hocky
Clark Hill PLC
Two Commerce Square
2001 Market St.
Suite 2620
Philadelphia, PA 19103
(215) 640-8523
ehocky@clarkhill.com

Justin J. Marks
Clark Hill PLC
1001 Pennsylvania Ave. N.W.
Suite 1300 South
Washington, DC 20004
(202) 772-0916
jmarks@clarkhill.com

*Counsel for Somerset Railroad
Corporation*

Dated: October 7, 2020

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. AB 1303X

SOMERSET RAILROAD CORPORATION
- ABANDONMENT EXEMPTION –
IN NIAGARA COUNTY, NY

PETITION FOR EXEMPTION

Pursuant to 49 U.S.C. §10502 and 49 C.F.R. parts 1121 and 1152, Somerset Railroad Corporation (“SRC”), a Class III railroad common carrier, files this petition seeking an exemption from the provisions of 49 U.S.C. §10903 to abandon between M.P. 2.2 and the power plant at the end of its line, a distance of approximately 13.39 miles (the “Subject Line”) in Niagara County, New York. A map of the Subject Line is attached hereto as Exhibit A. In support of its request for exemption, SRC represents as follows:

Background of Proposed Abandonment

The Subject Line is 13.39 miles long in a single county in New York and no longer serves any customers. It traverses through United States Postal Service ZIP Codes 14012, 14008, 14108, and 14094. Based on information in the possession of SRC, the Subject Line does not contain federally granted rights-of-way. Any documentation related to title in SRC’s possession will be made available to those requesting it.

The Subject Line is the stub end of a line of railroad that SRC originally constructed for the purposes of providing rail service to the now decommissioned Somerset power generation station (the “Generation Station”), owned by SRC’s parent company, at that time New York State Electric and Gas Corporation (“NYSEG”). *Somerset Railroad Corporation – Construction*

– *Niagara County, New York*, Interstate Commerce Commission FD No. 29254F, 366 ICC 144 (decided Mar. 29, 1982).¹ The current owner of the Generation Station and SRC is Riesling Power LLC. The Generation Station was decommissioned as of March 31, 2020. It had been the sole shipper over the Subject Line. SRC last provided rail service to the Generation Station in December 2019. SRC is currently using the Subject Line to move the Generation Station’s coal hopper cars to be scrapped.

At this time SRC anticipates salvaging the track, rail ties, and other track materials from the Subject Line following abandonment. It intends to leave the bridges in place.

Abandonment of Service Over the Subject Line Should Be Exempted

SRC’s abandonment of the Subject Line would require authorization pursuant to 49 U.S.C. §10903 unless the exemption requested herein is granted. The Board is directed by 49 U.S.C. §10502 to grant an exemption if it finds that (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. §10101, and (2) either the transaction is limited in scope or regulation is not needed to protect shippers from the abuse of market power. A grant of this petition is warranted because although the proposed abandonment here is not eligible for the two year out of service class exemption since SRC has been providing service to the Generation Station, the Generation Station was decommissioned on March 31, 2020 and no longer requires rail service (*see* the letter attached hereto as Exhibit D), and no other customers exist on the Subject Line. SRC should not be required to hold the Subject Line for two years with no prospects of service in order to get the benefits of the Board’s class exemption.

¹ SRC also acquired from Consolidated Rail Corporation, the connecting line segment between M.P. 0,0 and M.P. 2.2; however, that segment is being retained and is not part of the abandonment proposed herein.

Under 49 U.S.C. §10502 and 49 C.F.R. §1152.60, there is no requirement for a carrier to submit all of the detailed financial data that would be required if abandonment authority were being sought under 49 U.S.C. §10903 and the regulations relating thereto. Indeed, there is no specific requirement that any financial data be submitted.²

This proposed abandonment of a line with no active customers (and no foreseeable need for rail service) located in a single county of New York does not require detailed scrutiny to carry out the rail policies of 49 U.S.C. §10101 and is in keeping with the Board's overall policy of removing unnecessary regulatory barriers from carriers. The Subject Line is stub-ended and there is no overhead traffic that can use it. It is especially true in this situation that detailed scrutiny is not required given that the sole shipper since the line's construction, the Generation Station - owned by SRC's parent company, received its last unit train coal shipment in December 2019, is now decommissioned and no longer needs rail service, and supports the abandonment. *See Exhibit D.*

Approval of the requested exemption under 49 U.S.C. §10502 would enable SRC to abandon service over the Subject Line without the extensive costs and delays that would otherwise occur if an application were required to be filed under Section 10903. Further, granting the exemption is in keeping with the following rail policies described in 49 U.S.C. §10101:

* * *

² Requirements to the contrary would run counter to the principal goals of an exemption proceeding. As the Interstate Commerce Commission found with respect to the two year out-of-service class exemption under 49 C.F.R. §1152.50: The exemption process now relieves carriers from the need to prepare the costing and valuation studies that are required for Section 10903 abandonment applications. This saves the carriers considerable time and money and allows for expeditious regulatory relief." *Exemption of Rail Line Abandonments or Discontinuance – Offers of Financial Assistance*, 4 ICC 2d 164 (1987).

(2) to minimize the need for Federal regulatory control over the rail transportation system and to require fair and expeditious regulatory decisions when regulation is required;

(3) to promote a safe and efficient rail transportation system by allowing rail carriers to earn adequate revenues...

* * *

(5) to foster sound economic conditions in transportation...

* * *

(7) to reduce regulatory barriers to entry into and exit from the industry...

* * *

(9) to encourage honest and efficient management of railroads;

* * *

(15) to provide for the expeditious handling and resolution of all proceedings.

Moreover, the grant of the exemption will not be inconsistent with any of the 15 items which have been made a part of rail transportation policy by 49 U.S.C. §10101.

The scope of the exemption requested is limited and will have no direct impact on shippers. As noted, there are no remaining active shippers on the Subject Line.

Since the proposed transaction is of limited scope, it is not necessary for the Board to consider whether shippers need to be protected from abuse of market power. However, because no active shippers exist on the Subject Line, there is no likelihood of abuse of market power. As such, regulation is not needed to protect the shipper from abuse of market power.

No formal complaint by a user of rail service on the Subject Line, or a state or local government entity acting on behalf of such a user, regarding this abandonment either is pending with the Board or any U.S. District Court or has been decided in favor of a complainant within the last two years.

Additional Information

Although not required under the Board's regulations for abandonment petitions for exemption, SRC hereby provides the following additional information that would be required under 49 C.F.R. 1152.50(d)(2) and 1152.22 if the abandonment were sought pursuant to the Board's class exemption:

(a)(1) The exact name of the Applicant is Somerset Railroad Corporation.

(a)(2) SRC is a common carrier by railroad subject to 49 U.S.C. Subtitle IV, chapter 105.

SRC has been a common carrier since approximately 1982.³

(a)(3) SRC seeks to abandon the Subject Line extending between M.P. 2.2 and the power plant at the end of its line, a distance of approximately 13.39 miles in Niagara County, NY.

There are no stations on the Subject Line.

(a)(4) A Map of the Subject Line is attached hereto as Exhibit A.

(a)(7) The representative of SRC to whom correspondence should be sent is: Eric M. Hocky, Esq., Clark Hill, PLC, Two Commerce Square, 2001 Market St., Suite 2620, Philadelphia, PA 19103; (215) 640-8523; or Justin J. Marks, Clark Hill PLC, 1001 Pennsylvania Ave. N.W., Suite 1300 South, Washington, DC 20004; (202) 772-0916.

(a)(8) The Subject Line traverses through United States Postal Service ZIP Codes 14012, 14008, 14108, and 14094.

(e)(4) SRC believes that the right-of-way may be suitable for trail use or other public purposes. SRC understands that the Town of Newfane may be interested in a portion of the right of way for trail use.

³ *Somerset Railroad Corporation – Construction – Niagara County, New York*, Interstate Commerce Commission FD No. 29254F, 366 ICC 144 (decided Mar. 29, 1982).

SRC proposes to consummate the abandonment at the earliest possible date permitted by the Board.

Employee Protection

SRC does not have any employees that will be affected by the proposed abandonment. Nevertheless, SRC acknowledges that its abandonment of the Subject Line will be made subject to the standard employee protective conditions as set forth in *Oregon Short Line Railroad Co. - Abandonment -- Goshen*, 360 I.C.C. 91 (1979).

Environmental and Historic Reports

SRC filed an Environmental / Historic Report (“EHR”) with the Board on September 14, 2020, more than twenty days prior to this filing and has transmitted a copy of the report to the agencies identified in 49 C.F.R. §1105.7(b). (A letter supplement to the EHR is being filed concurrently with the filing of this Petition.)

Notice

Pursuant to the provisions of 49 C.F.R. §1152.60(c), SRC has attached as Exhibit B, a draft Federal Register notice of its Petition to be published by the Board within 20 days of the Petition’s filing with the Board.

A copy of the notice dated September 15, 2020, that was sent to the required governmental agencies under 49 C.F.R. §1152.50(d)(1) is attached hereto as Exhibit C, and a copy of this Petition is being served on those agencies as required by 49 C.F.R. §1152.60(d).

The notice as required by 49 C.F.R. §1105.12 was published in *The Buffalo News* on August 25, 2020. A revised notice was published in *The Buffalo News* on September 19, 2020. Copies of the forms of notice and the proofs of publication were included in the EHR.

Conclusion

For the foregoing reasons, SRC requests that the Board, under 49 U.S.C. §10502, exempt its abandonment over the Subject Line from regulation under 49 U.S.C. §10903.

Respectfully submitted,



Eric M. Hocky
Clark Hill PLC
Two Commerce Square
2001 Market St.
Suite 2620
Philadelphia, PA 19103
(215) 640-8523 ehocky@clarkhill.com

Justin J. Marks
Clark Hill PLC
1001 Pennsylvania Ave. N.W.
Suite 1300 South
Washington, DC 20004
(202) 772-0916
jmarks@clarkhill.com

Counsel for Somerset Railroad Corporation

Dated: October 7, 2020

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of October, 2020, I served a copy of the foregoing

Petition for Exemption on the persons listed below by first class mail, postage prepaid:

United States Department of Agriculture Natural
Resources Conservation Service Lockport Service
Center
4487 Lake Ave
Lockport, NY 14094-1139
heath.eisele@ny.usda.gov

Environmental Protection Agency
Region 2
290 Broadway
New York, New York 10007-1866

United States Department of Agriculture Natural
Resources Conservation Service
Office of the Chief
1400 Independence Ave., SW
Room 5105-A
Washington, DC 20250

U.S. Army Corp of Engineers
Buffalo District
1776 Niagara St.
Buffalo, NY 14207
Public.affairs@lrb01.usace.army.mil

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

National Park Service
Region 1
1234 Market Street
20th Floor
Philadelphia, PA 19107

U.S. Fish & Wildlife Service
Northeast Region
Regional Director's Office
300 Westgate Center Dr.
Hadley, MA 01035-9589

National Geodetic Survey
Communications and Outreach Branch, NOAA,
N/NGS12
National Geodetic Survey, SSMC3 #9340
1315 East-West Highway
Silver Spring, MD 20910-3282
ngs.infocenter@noaa.gov

New York Coastal Management Program
Office of Planning and Development
New York Department of State
Suite 1010
One Commerce Place, 99 Washington Ave.
Albany, New York 12231-0001
opd@dos.ny.gov

Commissioner
New York State Department of Transportation
50 Wolf Road
Albany, New York 12232

New York State Department of Environmental
Conservation
625 Broadway
Albany, New York 12233-0001
contact@dec.ny.gov

New York State Clearinghouse
1220 Washington Avenue
Building 5 - Floor 1
Albany, NY 12226

Rebecca Wydysh, Chair of Niagara County
Legislature
John Syracuse, Vice Chair of Niagara County
Legislature
175 Hawley Street
Lockport, NY 14094

United States Department of the Army
Military Surface Deployment and Distribution
Command
Transportation Engineering Agency
ATTN: SDTE-SA (Railroads for National
Defense)
1 Soldier Way, Building 1900W
Scott AFB, IL 62225

Office of Chief of Forest Service
U.S. Department of Agriculture
1400 Independence Ave., SW
Washington, DC 20250-1111

Mr. Tim Horenburg, Supervisor
Town of Newfane
supervisor@townofnewfane.com

U.S. Department of the Interior -
National Park Service
RTCA Program
1849 C Street, NW
Washington, DC 20240



Justin J. Marks
CLARK HILL PLC
1001 Pennsylvania Ave. N.W.
Suite 1300 South
Washington, DC 20004
202.772.0916
jmarks@clarkhill.com

EXHIBIT A

MAP

LAKE ONTARIO

End of the
Line

Somerset
Plant Site

"Hojack" Railroad
(abandoned)

Somerset
Railroad

Conrail

MP 2.2

Lockport

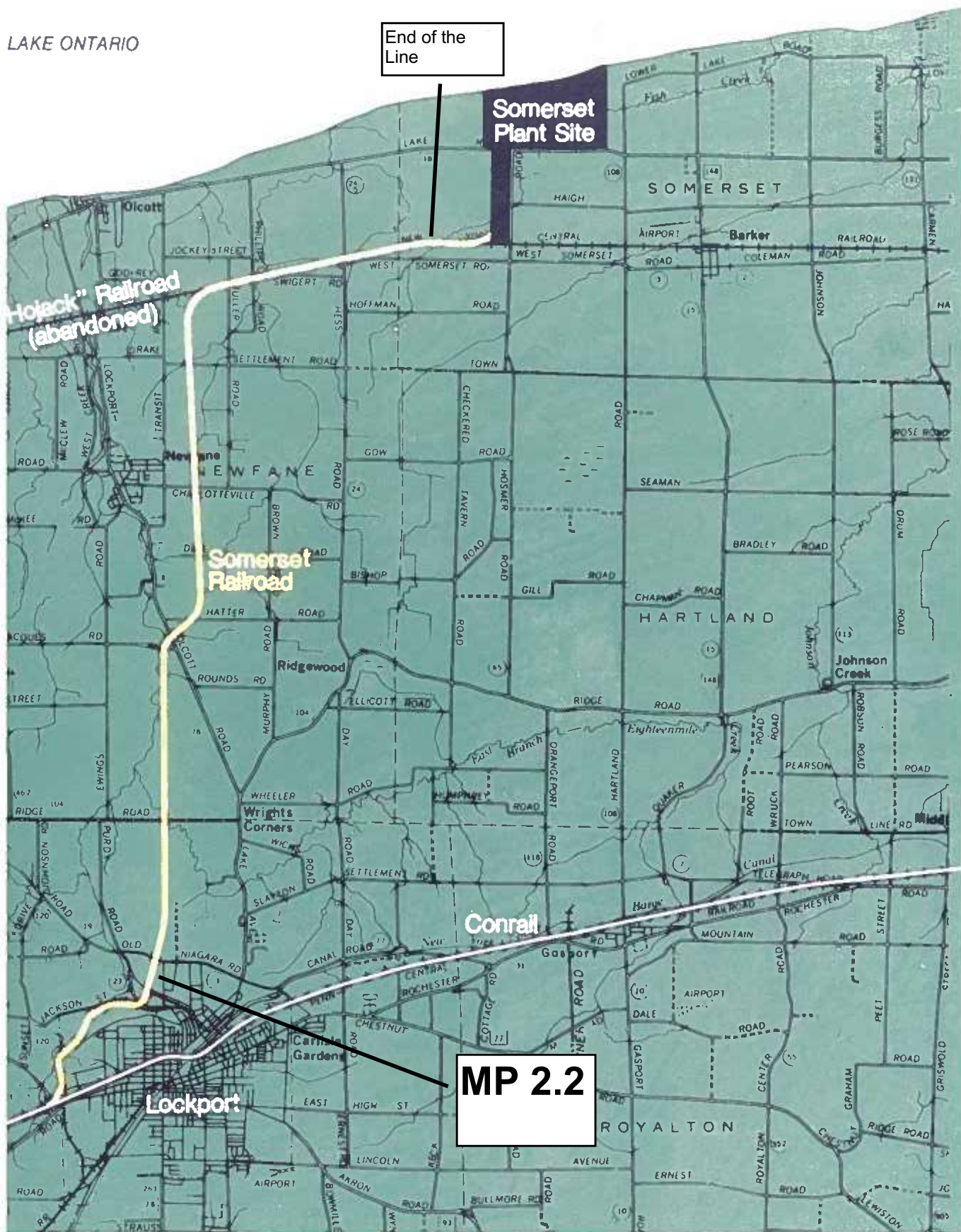


EXHIBIT B

DRAFT FEDERAL REGISTER NOTICE

STB No. AB-1303X

Notice of Petition for Exemption To Abandon Rail Service

On October 1, 2020, Somerset Railroad Corporation filed with the Surface Transportation Board, Washington, D.C. 20423, a petition for exemption for the abandonment of a line of railroad extending from railroad milepost 2.2 to the Somerset power generation station at the end of the line, which traverses through United States Postal Service ZIP Codes, 14012, 14008, 14108, and 14094, a distance of 13.39 miles, in Niagara County, New York. There are no stations on the line.

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 will be protected by conditions outlined in *Oregon Short Line Railroad Co. - Abandonment -- Goshen*, 360 I.C.C. 91 (1979).

Any offer of financial assistance will be due no later than 10 days after service of a decision granting the petition for exemption.

All interested persons should be aware that following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use.

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 regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Office 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 Office 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 C

NOTICE TO AGENCIES UNDER 49 C.F.R. 1152.50(D)(1)

CLARK HILL

Justin J. Marks
T 202.772.0916
F 202.772.0930
Email: jmarks@ClarkHill.com

Clark Hill
1001 Pennsylvania Avenue NW
Suite 1300
Washington, DC 20004
T 202.772.0909
F 202.772.0919

clarkhill.com

September 15, 2020

VIA FIRST-CLASS MAIL

ALL AGENCIES ON THE
ATTACHED SERVICE LIST

Re: Somerset Railroad Corporation – Abandonment Exemption –
in Niagara County, NY
Surface Transportation Board Docket No. AB 1303X

Dear Sir or Madam:

This letter is being sent to you pursuant to the requirements of 49 C.F.R. §1152.50(d), to advise you that Somerset Railroad Corporation (“SRC”) intends to file a petition for exemption for SRC to abandon between M.P. 2.2 and the power plant at the end of its line, a distance of approximately 13.39 miles (the “Subject Line”). SRC plans to petition the Surface Transportation Board (“STB”) for an exemption under 49 USC §10502 from the provisions of 49 USC §10903 to enable SRC to abandon the Subject Line, on or after October 1, 2020 in STB Docket No. AB 1303X.

The Subject Line traverses through United States Postal Service ZIP Codes 14012, 14008, 14108, and 14094. A map is enclosed with this letter. The only customer on the Subject Line, the power plant – owned by SRC’s parent company, has been decommissioned, and no longer requires rail service.

Based upon information in SRC’s possession, the Subject 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.

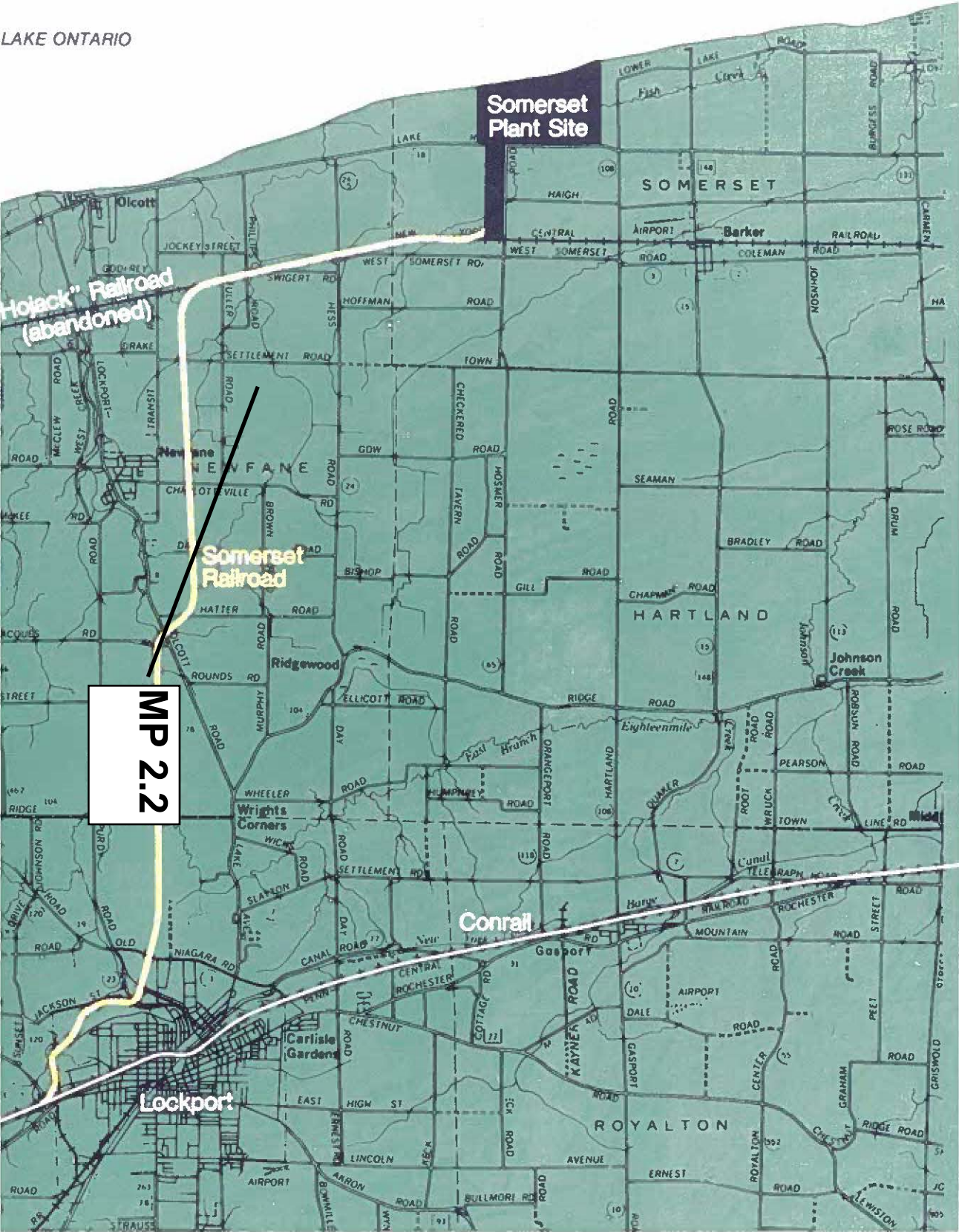
Sincerely,



Justin J. Marks
Counsel to Somerset Railroad Corporation

Enclosure

LAKE ONTARIO



Somerset
Plant Site

Hojack Railroad
(abandoned)

Somerset
Railroad

MP 2.2

Conrail

Lockport

Advance Notice List under 1152.50

United States Department of the Army Military Surface Deployment and Distribution Command Transportation Engineering Agency ATTN: SDTE-SA (Railroads for National Defense) 1 Soldier Way, Building 1900W Scott AFB, IL 62225	U.S. Department of the Interior - National Park Service RTCA Program 1849 C Street, NW Washington, DC 20240
Office of Chief of Forest Service U.S. Department of Agriculture 1400 Independence Ave., SW Washington, DC 20250-1111	Commissioner New York State Department of Transportation 50 Wolf Road Albany, New York 12232

EXHIBIT D

LETTER OF SUPPORT



RIESLING POWER LLC
SOMERSET OPERATING COMPANY, LLC
7725 Lake Road
Barker, New York 14012
Telephone: (716) 795-9501
Fax: (716) 795-3654

October 6, 2020

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington, DC 20024

Re: Somerset Railroad Corporation – Abandonment Exemption –
in Niagara County, NY
Surface Transportation Board Docket No. AB 1303X

Dear Ms. Brown:

Please accept this letter as evidence of our support of the Somerset Railroad Corporation's ("SRC") Petition for Exemption to abandon the line of railroad between milepost 2.2 and the Somerset power generation station at the end of its line, in Niagara County, New York.

Riesling Power LLC is the owner of both the Somerset power generation station and SRC. The Somerset power generation station received its last unit train coal shipment in December 2019. The Somerset power generation station was decommissioned effective March 31, 2020, and it no longer needs rail service. SRC's only use of the line is to move our coal hopper cars to be scrapped.

Riesling Power LLC respectfully requests that the Board grant SRC's Petition for Exemption.

Thank you,

Mila Barrett
Secretary, Riesling Power LLC