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August 25, 2003

Part of
Public Record

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
The Mercury Building
1925 K Street, N.W., Suite 500
Washington, D.C. 20423



RE: AB-847 (Sub-No. 2X) TP&W Railway Discontinuance Exemption and
208782-AB-855 (Sub-No. 1X) A & R Line, Inc. Abandonment Exemption. Both filings pertain
to the railroad track segment located between Kenneth and Winamac in Cass and Pulaski
Counties, IN.

Dear Secretary Williams:

This letter pertains to the recent filing of a combined abandonment exemption and discontinuance of service petition for a rail corridor segment located within Indiana. The Indiana Department of Transportation - Railroad Section (INDOT), with this letter files its protest of the use of the exemption process for this petition currently being considered by the Surface Transportation Board. The reasons that INDOT is filing its protest (further detailed below) are 1) improper notification by the petitioner resulting in incorrect information provided in the July 10th, 2003 Environmental Report, 2) incorrect and insufficient information provided in the July 31st, 2003 Petition for Exemption and 3) questionable line ownership changes in the recent past that deserve additional scrutiny. INDOT also believes the petition should not automatically be allowed to proceed under the exemption procedure because local traffic has moved over the line within the past two years (as recently as September of 2002) and we believe there is potential for new ownership to operate the line.

INDOT opposes the filings due to 1) improper notification procedures that resulted in less than accurate information being provided in the petitioner's July 10th, 2003 Environmental Report. Petitioner claimed several times in the July 10th Report that various parties had been contacted about the abandonment and had not responded to these notification letters. The date that these notification letters were mailed however was July 10, 2003. It would have been impossible for

any of the parties to have responded in time for their comments to be included in the environmental report which was also dated and mailed July 10, 2003.

2) Incorrect and inadequate information provided in the July 31, 2003 Petition for Exemption. Petitioner claims there is no demand for service over the line. INDOT disagrees with this assumption. The rail line provides access to a large grain elevator in Winamac, IN that could be utilized for grain shipments by rail for the hundreds of farmers located within the surrounding primary service area of over 1,000 square miles. While the TP&W's abandonment petition listed only 301 carloads of corn in 2001 and 60 carloads of corn in 2002, the annual report filings provided to INDOT by the A&R Line Railroad for those years showed a total of 418 carloads moved in 2001 and 463 carloads in 2002. As recently as the year 2000 the line carried 927 carloads. Pursuant to 49 CFR 1152.50(d)(3) this misrepresentation of a crucial fact alone warrants the denial of the exemption.

The economy in this region of North-central Indiana is focused primarily on agri-business and it is important that the State helps to promote the preservation of cost efficient transportation for the region. It is very important that farmers are able to realize the highest potential profit for the sale of their corn and grain products. The lack of available rail service would lower their potential profit level, which would significantly hurt the economic earning potential for all of these farmers. Discussions have been occurring recently with potential owner operators of the grain facility and the rail lines. Along with this economic reason, INDOT believes it is in the state's best interest to help maintain this rail line and grain elevator so that rail can continue to be used instead of requiring the use of trucks to ship the grain. Petitioner's assumption that since only one major grain facility was using the line and it is now closed that no increase in truck traffic would occur, is patently flawed. The grain is still being grown and must be shipped. As will be discussed below, Cargill acquiescence in the abandonment is suspect. Cargill purchased the line from a closely affiliated railroad and now sells it back to the same entity. The utility of the grain operation in question would be reduced markedly if rail service is not available. Preserving the rail line would reduce deterioration of the local roads which would be caused by thousands of additional trucks carrying grain and other agricultural products. The filing itself indicated that Cargill purchased the line to assure continued rail access to their grain facility. This fact alone raises an inference that a future operator of the grain facility might want the same opportunity.

INDOT disputes a few other key issues that were presented in the petitioner's filing. These include petitioner's assumption that the right of way of the A&R Line is appropriate for future trail use. With this assumption, petitioner proposes to leave all bridges intact on this line (supposedly to be used as part of a future trail), thus releasing them from the costs associated with removing the bridge structures.

INDOT has discussed this trail issue with local officials and has been told that there is no local interest in using the right of way for a trail. County officials clearly do not want the bridges to remain as they consider them an expensive liability and do not have the funds necessary to remove the bridges themselves. INDOT has also contacted all members of Indiana's Governor-appointed Transportation Corridor Planning Board. This Board has members representing various potential future users of such a corridor, including people representing recreational (trail)

usage, utility usage, passenger / commuter rail usage, adjacent property owners and freight railroad interests. Input from this group supported continued freight rail use of the line. Other potential uses were either considered inappropriate or did not receive any discussion that would indicate support. With the lack of support and interest for utilization of the corridor for trail use, INDOT would insist that all bridges be removed with the cost for this work being paid for by the owners of the railroad. Under Indiana nuisance law and the rail abandonment statute at Ind. Code 8-3-1-21.1, INDOT would insist that the railroad assume its responsibility to remove these structures in order to provide for the safety of the citizens in this area and to eliminate potential environmental issues resulting from the continued presence of these structures.

If abandonment is approved, INDOT will also enforce the statutory requirement that the railroad pay for the removal of the track from every public highway surface and must realign each roadway so that it is returned to its original surface level.

INDOT also takes issue with the petitioner's examination of biological resources in the area. The petitioner claimed that they were "unaware of any wildlife sanctuaries or refuges, National or State parks or forests that would be adversely affected by the proposed abandonment". The abandonment of the rail line would result in substantial increases in truck traffic on local roads. The primary highway running north from the grain elevator at Winimac is U.S. Highway 35 which runs directly through the middle of the Winimac State Fish and Wildlife Area and the Tippecanoe River State Park. U.S. 35 also passes the Bass Lake State Fish Hatchery. State Route 10, another route that would see significant increases in truck traffic runs directly past the Bass Lake State Beach. The Surface Transportation Board should clearly require additional review to occur in order to understand the full impacts that the petitioner's proposed abandonment would have on the biological resources in this area.

3) INDOT believes the AR Line filing (Winimac to Kenneth) in Indiana (Docket No. AB-847 (Sub. No. 2X) and AB-855 (Sub No. 1X)) has similar circumstances to those in a recent Illinois case also involving the TP&W Railroad Corporation. In the Illinois case, (AB-448 (Sub No. 2X)) the STB found that subsidiary railroads associated with the TP&W had "abused the STB's processes because they had bought the line to scrap it rather than to operate it as a going concern." (SF&L Railway, Inc. - Acquisition and Operation Exemption -- Toledo, Peoria and Western Railway Corporation between La Harpe and Peoria, IL, STB Finance Docket No. 33995). INDOT believes that by transferring the ownership of the line to Cargill, allowing them to benefit from it for a short time and then buying the line back from Cargill for the obvious purpose of reaping the salvage value, similar tactics were utilized by the TP&W and A&R Line railroads to attempt to put this rail segment out of service with no intent to try to preserve it for continued freight use.

To summarize, INDOT strongly opposes the use of the exemption process for the filing because we feel there are too many questions about the planned abandonment that need to be more closely examined through the more detailed, regular abandonment procedures. We believe the economics of the situation should be more closely scrutinized along with some of the questionable line ownership issues that have occurred in the recent past. Because there have been rail shipments made on this line within the past two years, the filing does not automatically qualify to be able to use the exemption process. For these primary reasons, INDOT encourages

the STB to make a decision not to allow this abandonment and discontinuance filing to proceed utilizing the exemption process.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry Goode". The signature is fluid and cursive, with the first name "Larry" and last name "Goode" clearly distinguishable.

Larry Goode, Chief
INDOT Division of Multi-Modal Transportation

cc: Louis E. Gitomer, Attorney for J.K. Line, Inc. and
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