

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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MARK K. SMITH -- CONTINUANCE IN )  
CONTROL EXEMPTION -- ROCK ) FINANCE DOCKET  
RIVER RAILROAD, INC. ) NO. 35017

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VERIFIED NOTICE OF EXEMPTION  
UNDER 49 C.F.R. § 1180.2 (d)(2)

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**FEE RECEIVED**

APR - 6 2007

**SURFACE  
TRANSPORTATION BOARD**

MARK K. SMITH  
P.O. Box 474  
Watertown, WI 53094

Applicant

THOMAS F. McFARLAND  
THOMAS F. McFARLAND, P.C.  
208 South LaSalle Street, Suite 1890  
Chicago, IL 60604-1112  
(312) 236-0204  
(312) 201-9695 [fax]  
mcfarland@aol.com

Attorney for Applicant

ENTERED  
Office of Proceedings

APR 06 2007

Part of  
Public Record

**FILED**

APR - 6 2006

**SURFACE  
TRANSPORTATION BOARD**

DATE FILED: April 6, 2007

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CONTROL EXEMPTION -- ROCK ) FINANCE DOCKET  
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**VERIFIED NOTICE OF EXEMPTION  
UNDER 49 C.F.R. § 1180.2 (d)(2)**

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Pursuant to 49 C.F.R. § 1180.4(g)(1), MARK K. SMITH (Mr. Smith), a noncarrier, hereby files this notice of exemption under 49 C.F.R. § 1180.2(d)(2) for an exemption from the prior approval requirements of 49 U.S.C. § 11323 for his continuance in control of Rock River Railroad, Inc. (RRR), upon RRR becoming a rail carrier as a result of a notice of exemption for its operation of rail lines in Finance Docket No. \_\_\_\_\_, *Rock River Railroad, Inc. -- Acquisition and Operation Exemption -- Rail Line of Renew Energy, LLC at Jefferson, WI*, filed on April 6, 2007. Mr. Smith submits the following information required by Board regulations.

1. 49 C.F.R. § 1180.6(a)(1)(i) - (a) *All applications filed under 49 U.S.C. 11323 shall show in the title the names of the applicants and the nature of the proposed transaction. Beneath the title indicate the name, title, business address, and telephone number of the person(s) to whom correspondence with respect to the application should be addressed. The following information shall be included in all applications:*

*(1) A description of the proposed transaction, including appropriate references to any supporting exhibits and statements contained in the application and discussing the following:*

*(i) A brief summary of the proposed transaction, the name of applicants, their business address, telephone number, and the name of the counsel to whom questions regarding the transaction can be addressed.*

The person to whom correspondence with respect to the notice of exemption should be addressed is Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604-1112, (312) 236-0204, (312) 201-9695 fax, mcfarland@aol.com.

The transaction is a class exemption from 49 U.S.C. § 11323(a)(4) for Mr. Smith to continue in control of RRR upon RRR becoming a carrier as a result of the acquisition and operation exemption cited above. RRR will become a Class III rail carrier as a result of that exemption. Mr. Smith currently controls one other Class III rail carrier, i.e., Rail & Transload, Inc. (R&T). Applicant's full name is Mark K. Smith. Applicant's business address is P.O. Box 474, Watertown, WI 53094. Applicant's telephone number is (414) 378-9234. Applicant's counsel is Thomas F. McFarland, whose address and telephone number are 208 South LaSalle Street, Suite 1890, Chicago, IL 60604-1112, (312) 236-0204.

Mr. Smith certifies that:

- (1) the rail properties operated by R&T and those to be operated by RRR do not connect with each other or any railroads in their corporate family; and
- (2) the continuance in control is not part of a series of anticipated transactions that would connect the rail lines of R&T and RRR with each other or any railroads in their corporate family; and
- (3) the transaction does not involve a Class I or Class II rail carrier.

As such, the continuance in control qualifies for the class exemption under 49 C.F.R. § 1180.2(d)(2).

2. 49 C.F.R. § 1180.6(a)(1)(ii) - *The proposed time schedule for consummation of the proposed transaction.*

The acquisition of control will not be consummated earlier than thirty days after the filing of this notice of exemption.

3. 49 C.F.R. § 1180.6(a)(1)(iii) - *The purpose sought to be accomplished by the proposed transaction, e.g., operating economies, eliminating excess facilities, improving service, or improving the financial viability of the applicants.*

The purposes sought to be accomplished by the proposed acquisition of control are to achieve operating economies, to improve rail service to the public and to improve the financial viability of the commonly-controlled rail carriers.

4. 49 C.F.R. § 1180.6(a)(5) - *A list of the State(s) in which any part of the property of each applicant carrier is situated.*

RRR will operate wholly within Wisconsin. R&T operates wholly within Wisconsin. However, the rail lines of RRR and R&T will not connect with each other.

5. 49 C.F.R. § 1180.6(a)(6) - *Map (exhibit 1). Submit a general or key map indicating clearly, in separate colors or otherwise, the line(s) of applicant carriers in their true relations to each other, short line connections, other rail lines in the territory, and the principal geographic points in the region traversed. If a geographically limited transaction is proposed, a map detailing the transaction should also be included. In addition to the map accompanying each application, 20 unbound copies of the map shall be filed with the Board.*

Attached to this notice as Appendix 1-A is a map showing the rail lines to be operated by RRR shaded in yellow. Attached to this notice as Appendix 1-B is a map showing the rail lines operated by R&T. Attached to this notice as Appendix 1-C is a map showing the location of those rail lines in relation to each other.

6. 49 C.F.R. § 1180.7(ii) - *Explanation of the transaction. (ii) Agreement (exhibit 2). Submit a copy of any contract or other written instrument entered into, or proposed to be entered into, pertaining to the proposed transaction.*

The transaction is Mr. Smith's continuance in control of RRR upon RRR becoming a rail carrier. There is no formal agreement between Mr. Smith and RRR relating to that control.

### **LABOR PROTECTION**

Applicants are agreeable to the usual labor protective conditions imposed in common control transactions for rail carriers, i.e., those in *New York Dock Ry. -- Control -- Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

### **ENVIRONMENTAL AND HISTORIC CONSIDERATION**

The proposed transaction does not require environmental or historic reporting or assessment. *See* 49 C.F.R. § 1105.6(c)(2)(i) and 49 C.F.R. § 1105.8(b)(3).

### **VERIFICATION**

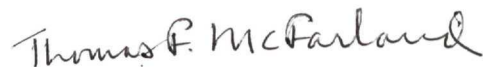
A verification of the facts in this notice is attached as Appendix 2.

WHEREFORE, the Board should publish a notice of this exemption in the Federal Register.

Respectfully submitted,

MARK K. SMITH  
P.O. Box 474  
Watertown, WI 53094

Applicant

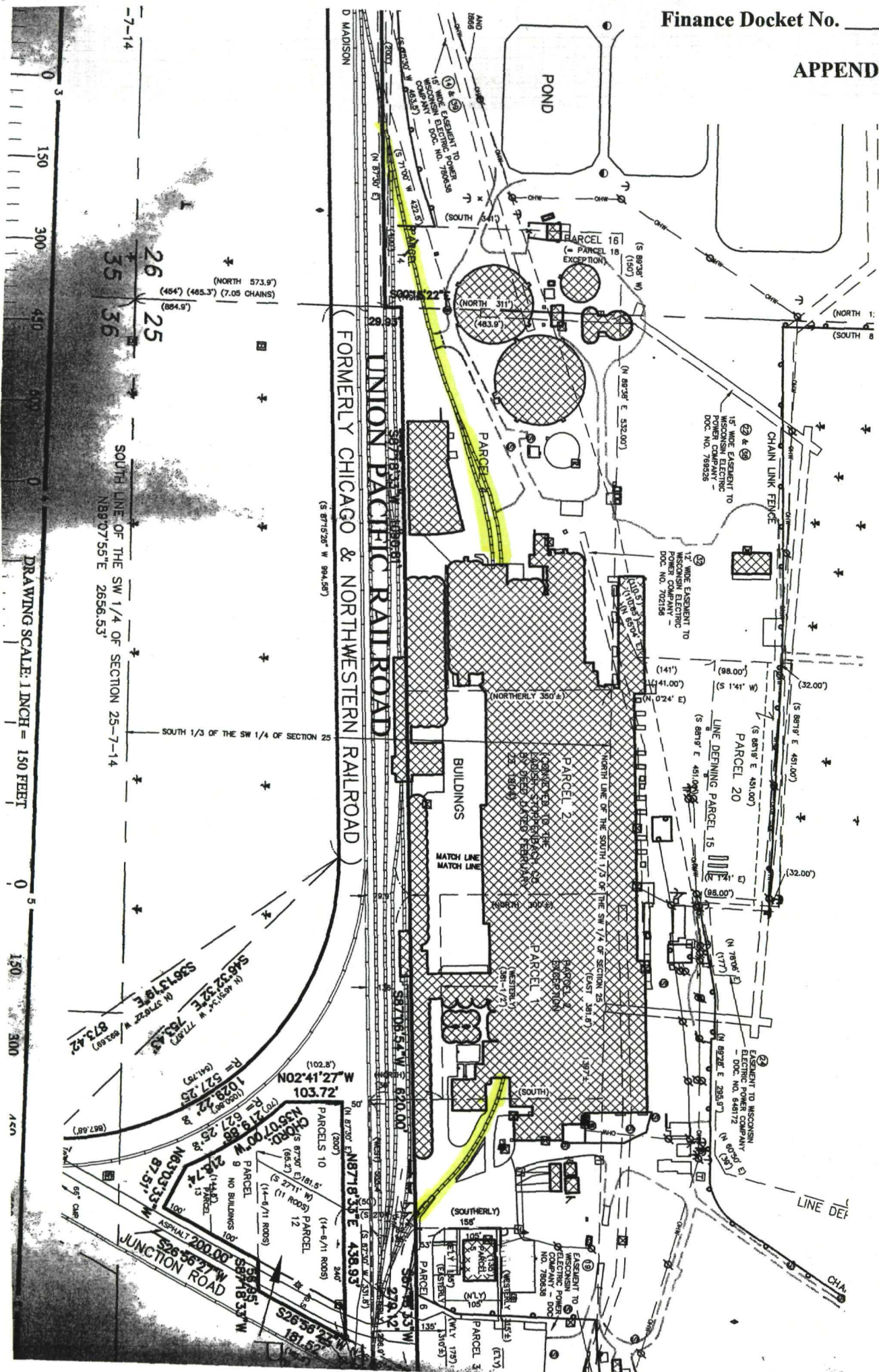


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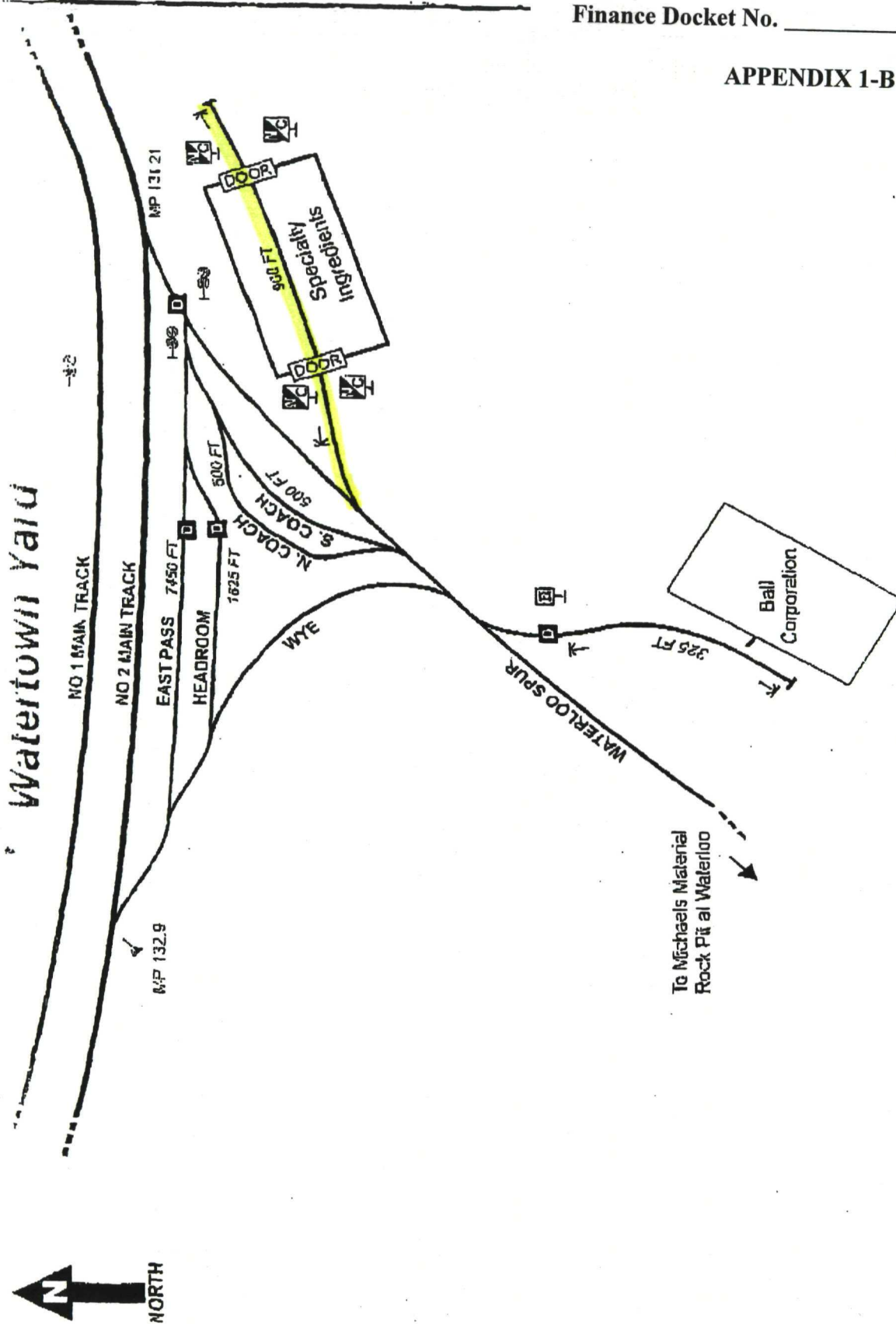
Attorney for Applicant

DATE FILED: April 6, 2007

APPENDIX 1-A



DRAWING SCALE: 1 INCH = 150 FEET



Watertown Yard

Customer Name:

Watertown, Wisconsin

2:05 PM

Watertown

**KEY**

**1. Absolute Signal**

### Derail Sign

### Detail

المجلد الثاني

MP 000 Mrs Pos:

 No Clearance

Subnet Trace  
Target Network: 10.10.10.0/24



CANADIAN  
PACIFIC  
RAILWAY

Rev. sed. June 3, 2004

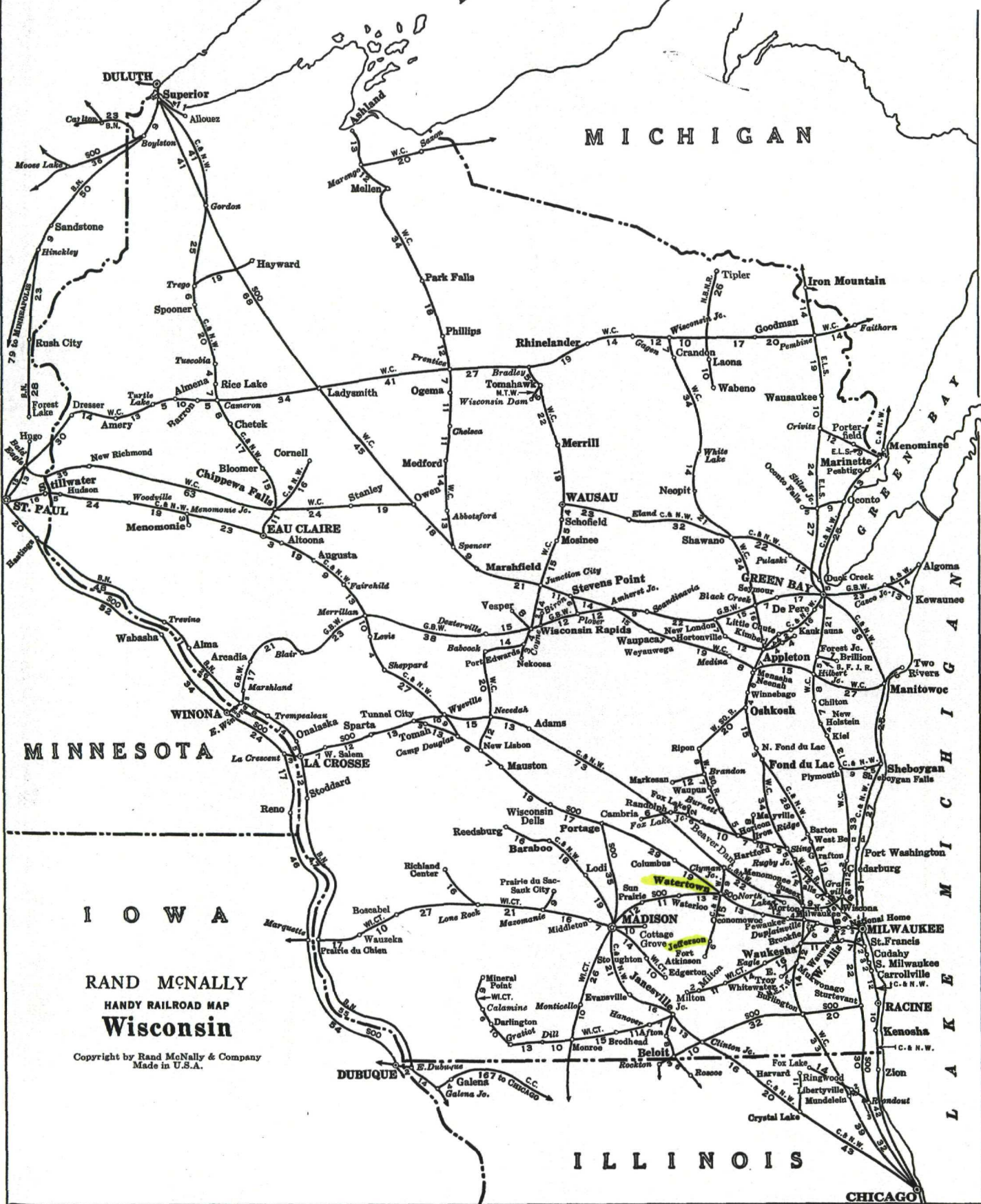
MINNESOTA

SUPERIOR

Finance Docket No. \_\_\_\_\_

APPENDIX 1-C

MICHIGAN



MINNESOTA

IOWA

RAND McNALLY  
HANDY RAILROAD MAP  
Wisconsin

Copyright by Rand McNally & Company  
Made in U.S.A.

ILLINOIS

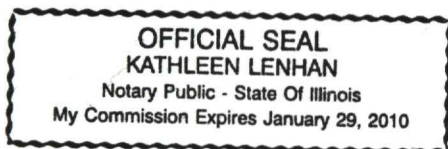
CHICAGO

APPENDIX 2

VERIFICATION

STATE OF ILLINOIS       )  
                                  ) SS:  
COUNTY OF COOK       )

THOMAS F. McFARLAND, being duly sworn on oath, deposes and states that he has read the notice in this docket, that he knows the contents thereof, and that the facts therein stated are true and correct.



*Thomas F. McFarland*

\_\_\_\_\_  
Thomas F. McFarland

SUBSCRIBED and SWORN  
to before me this 5<sup>th</sup>  
day of April, 2007.

*Kathleen Lenhan*

\_\_\_\_\_  
Notary Public

My commission expires: 1/29/2010