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July 1, 2024

VIA E-FILING

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

Re: CG Railway, LLC.
– Discontinuance of Service Exemption –
in New Orleans, LA
Docket No. AB-1340X

Dear Ms. Brown:

Enclosed for e-filing is a Petition for Exemption being filed in accordance with 49 CFR Part 1152 Subpart F on behalf of CG Railway, Inc.

The filing fee was paid using Pay.gov. Please let me know if there are any questions regarding this filing.

Sincerely,



Justin J. Marks
Counsel to CG Railway, LLC

Enclosure

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. AB-1340X

CG RAILWAY, LLC
- DISCONTINUANCE OF SERVICE EXEMPTION -
IN NEW ORLEANS, LA

PETITION FOR EXEMPTION

(color images included)

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Counsel for CG Railway, LLC

Dated: July 1, 2024

Before the

SURFACE TRANSPORTATION BOARD

STB Docket No. AB-1340X

**CG RAILWAY, LLC
- DISCONTINUANCE OF SERVICE EXEMPTION -
IN NEW ORLEANS, LA**

PETITION FOR EXEMPTION

Pursuant to 49 U.S.C. §10502 and 49 C.F.R. parts 1121 and 1152, CG Railway, LLC (“CGR”),¹ a Class III railroad common carrier, files this petition seeking an exemption from the provisions of 49 U.S.C. §10903 to formally discontinue service over an approximately 3.4-mile rail line consisting of the Port of New Orleans’s (“Port”) North Yard, including track numbers 1,2,3,4,5,6, and 7 and the Elaine Street Lead between milepost G1.2 and milepost G2.4, that enabled direct interchange with CSX Transportation, Inc., (the “Subject Line”) in New Orleans, Louisiana. The Subject Line traverses through United States Zip Codes 70126 and or 70127. To the best of CGR’s knowledge, no stations existed on the Subject Line. A map of the Subject Line is attached hereto as Exhibit A. In support of its request for exemption, CGR represents as follows:

I. BACKGROUND

The Subject Line is approximately 3.4 miles long in New Orleans, LA at the Port of New Orleans. It traverses through United States Postal Service ZIP Codes 70126 and or 70127. Because this proceeding would involve the discontinuance of common carrier service and not

¹CGR was originally incorporated as Central Gulf Railway, Inc. The entity’s name was subsequently changed to CG Railway, Inc. and then later was converted under from a corporation to CG Railway, LLC. In the course of reviewing CGR’s prior Board authorizations, CGR determined that discontinuance authority should have been sought to stop operating the Subject Line, as CGR no longer conducts operations in New Orleans.

abandonment of the Subject Line, CGR understands that the question of whether the Subject Line contains federally granted rights-of-way is inapplicable. Any documentation related to federally granted rights-of-way pertaining to this petition in CGR's possession will be made promptly available to those requesting it.

CG Railway, Inc. leased the Subject Line from Port of New Orleans.² Rail service on the Subject Line was commercially dependent on the use of the Mississippi River Gulf Outlet being navigable for deep draft vessels. Damage caused by Hurricane Katrina to the Mississippi River Gulf Outlet rendered the Subject Line unsuitable and uneconomic for CG Railway, Inc.'s transportation purposes. The Port of New Orleans and CG Railway, Inc. terminated the lease by mutual agreement in August 2007. Since that date, CGR has not utilized the Subject Line to provide common carrier rail service. While CGR has not performed common carrier operations in over two years, CGR does not know if common carrier rail service has been provided by any other carrier(s) over the Subject Line since 2007. Because CGR cannot certify that no local traffic has moved over the line for two years, CGR is filing a petition for exemption rather than using the class exemption process. *See Austin Area Terminal Railroad—Discontinuance of Service Exemption—In Bastrop, Burnet, Lee, Llano, Travis & Williamson Ctys., Tex.*, Docket No. AB 578X (STB served Nov. 3, 2023). CGR is seeking discontinuance authority now to clear the record and confirm that CGR does not have any residual common carrier obligations over the Subject Line.

² *CG Ry.—Lease and Operation Exemption—Port of New Orleans, La.*, Docket No. FD 34710 (STB served July 1, 2005).

II. ARGUMENT SUPPORTING THE DISCONTINUANCE OF SERVICE

The Board has jurisdiction over the proposed discontinuance pursuant to 49 U.S.C. §10903. Under 49 U.S.C. §10502, the Board must exempt a transaction from regulation when it finds that: (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 customers from the abuse of market power.

The legislative history of Section 10502 shows that Congress intended for the Board to use its exemption authority to free certain transactions from the administrative and financial costs associated with continued regulation. When enacting the Staggers Rail Act of 1980, Pub. L. No. 96-488, 94 Stat. 1895, Congress encouraged the Board's predecessor agency to use its exemption authority liberally:

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 the 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 as Section 10502. H.R. Rep. No. 422, 104th Cong. 1st Sess. 168-69 (1995).

Unless the requested exemption is granted, the proposed discontinuance of service would require a full application under 49 U.S.C. §10903 and the Board's regulations implementing that section at 49 C.F.R. Part 1152. This transaction should be exempted from regulatory requirements because it satisfies the standards of Section 10502: (1) regulation is not necessary to carry out the federal rail transportation policy ("RTP") of 49 U.S.C. §10101; (2) the transaction is of limited scope, and (3) the transaction will not result in an abuse of market power.

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

Detailed scrutiny of CGR's proposed discontinuance under 49 U.S.C. §10903 is not necessary to carry out the RTP. CGR has not used the Subject Line for common carrier rail service since 2007 when CGR and the Port of New Orleans terminated CGR's lease on the Subject Line. CGR believes that the Subject Line likely would be eligible for discontinuance via the Board's class exemption procedures for rail lines out of service over two years. However, because CGR is unable to confirm whether the Subject Line has been used for common carrier service by any other carrier(s), CGR cannot certify that no local traffic has moved over the line for two years and thus is filing this request for discontinuance exemption via a petition. *See Austin Area Terminal Railroad*, Docket No. AB 578X.

This transaction will not cause any interruption in CGR's service over the Subject Line because CGR has not provided common carrier rail service on the Subject Line since at least 2007. An exemption from the application process would promote a fair and expeditious regulatory decision-making process, reduce regulatory barriers to exit, and result in the efficient handling of this proceeding. 49 U.S.C. §§10101(2) and (7), (15). Additionally, granting an exemption for CGR's proposed discontinuance will foster sound economic conditions and encourage efficient

management of railroads. 49 U.S.C. §§10101 (5), and (9). Other aspects of the rail transportation policy will not be adversely affected.

B. This Transaction is Limited in Scope

This transaction is of limited scope because the Subject Line consists of what was originally yard track and the Elaine Street lead totaling 3.4 miles of track – all located in a small corner of the Port of New Orleans. Further, CGR has not provided common carrier service on the Subject Line since 2007. 49 U.S.C. § 10502(a)(2)(A).

C. This Transaction Will Not Result in an Abuse of Market Power

CGR's proposed discontinuance is of limited scope and therefore, it is not necessary for CGR to demonstrate that regulation is not needed to protect shippers from the abuse of market power. However, regulation is not needed to protect shippers from the abuse of market power because, CGR was a tenant carrier for the Port of New Orleans for a very brief period of time, the lease was mutually terminated, and there is no indication of any harm to shippers in the nearly 17 years since CGR last provided rail service.

III. ADDITIONAL INFORMATION

CGR discontinuance may not be eligible for the Board's class exemption for out of service rail lines because the interim use of the Subject Line by its owner – the Port of New Orleans – is unknown to CGR. Although not required under the Board's regulations for discontinuance petitions for exemption, CGR hereby provides the following additional information that would be required under 49 C.F.R. § 1152.50(d) if the discontinuance were sought pursuant to the Board's class exemption:

1. The exact name of Applicant is CG Railway, LLC.
2. CGR is a common carrier by railroad subject to 49 U.S.C. Subtitle IV, chapter 105.

3. CGR seeks to discontinue service over the Subject Line consisting of the Port's North Yard, including truck numbers 1,2,3,4,5,6, and 7 and the Elaine Street Lead between milepost G1.2 and milepost G2.4, that enabled direct interchange with CSX Transportation, Inc., in New Orleans, Louisiana.

4. Maps of the Subject Line are attached hereto as Exhibit A. CGR is providing the map as originally filed in CG Ry.—Lease and Operation Exemption—Port of New Orleans, La., Docket No. FD 34710 (STB served July 1, 2005) as well as a map that is updated to the best of CGR's knowledge considering time that has lapsed since the Port of New Orleans and CG Railway, Inc. terminated the lease.

5. The representative of CGR to whom correspondence should be sent is:

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

6. The Subject Line to be discontinued traverses through United States ZIP Codes 70126 and or 70127.

7. The petition for exemption presented herein pertains to CGR's proposal to discontinue (and not abandon) common carrier freight operations for the purpose of formally discontinuing CGR's common carrier obligation over the Subject Line that it has not exercised since the termination of the lease in 2007. Accordingly, trail use / rail banking and other public use conditions are not appropriate.³

³ See *Norfolk Southern Railway Company – Discontinuance of Service Exemption – In St. Joseph and LaPorte Counties, IN*, STB Docket No. AB-290 (Sub-No. 307X) (served June 18, 2008);

8. CGR proposes to consummate the discontinuance on or after August 20, 2024.

9. CGR certifies that:

a) CGR has not handled any local or overhead traffic over the Subject Line since 2007.

b) 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 user, regarding CGR's cessation of service over the Subject Line, either is pending with the Board or any U.S. District Court or has been decided in favor of the complainant within the last two years (nor were there any within two years of when CGR's lease of the Subject Line was terminated)..

10. Although no employees of CGR will be affected by the proposed discontinuance, CGR recognizes that its discontinuance 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).

11. Because CGR seeks only discontinuance and not abandonment authority, and because CGR no longer has any lease rights to the Subject Line, no structures that are over 50 years old or older will be disposed of or altered. An environmental and historic report is not required for a discontinuance proceeding.⁴

12. CGR published a notice of the proposed discontinuance on June 29, 2024, in *The Times Picayune* in compliance with the legal (newspaper) notice requirements of 49 C.F.R. §§ 1105.7(c)

Everett Railroad Company – Discontinuance of Service Exemption – In Blair County, PA, STB Docket No. AB-721X (served November 16, 2007); *Columbus and Greenville Railway Company – Discontinuance of Service Exemption – In Greenwood, MS*, STB Docket No. AB-297 (Sub-No. 103X) (served July 2, 2007).

⁴ See *supra* note 3 and 49 C.F.R. §1105.6(c) and §1105.8(b).

and 1105.12. A copy of the form of notice and certification of publication are attached as Exhibit B.

13. CGR certifies that it has complied with the notice requirements of 49 C.F.R. §1152.50(d)(1). A notice dated June 20, 2024, was sent to the required governmental agencies, and a copy is attached hereto as Exhibit C.

Based on the foregoing, CGR respectfully requests that the Board, under 49 U.S.C. §10502, exempt CGR's discontinuance of service over the Subject Line from regulation under 49 U.S.C. §10903 because CGR has not utilized the Subject Line since 2007 and no longer has leasehold rights to occupy the Subject Line, and (1) regulation of the discontinuance is not necessary to carry out the RTP; (2) the proposed discontinuance is of limited scope, and (3) the proposed discontinuance will not result in an abuse of market power.

Respectfully submitted,



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Two Commerce Square
2001 Market St. Suite 2620
Philadelphia, PA 19103
(215) 640-8523
ehocky@clarkhill.com

Dated: July 1, 2024

Counsel for CG Railway, LLC

VERIFICATION

I hereby verify on behalf of CG Railway, LLC, under penalty of perjury, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verification.

Executed on July 2, 2024



Hoffman Lijeron, President

EXHIBIT A

MAP

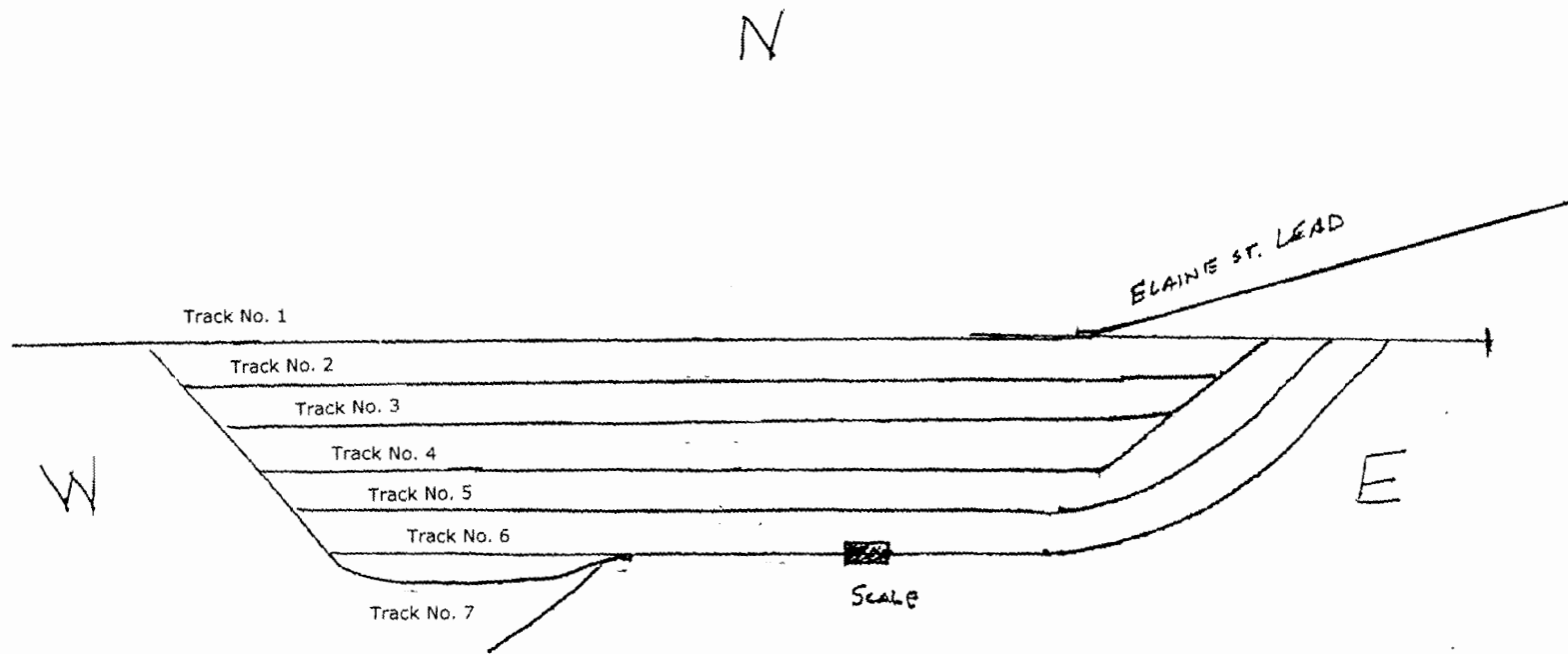


CSXT, Inc.

Elaine St.
Lead

Yard Track to be
Discontinued

CGR Railway, LLC - Discontinuance of Service Exemption - in New Orleans, LA, STB Docket No. AB-1340X



Submitted in CG Ry.—Lease and Operation
 n—Port of New Orleans, La., Docket No. FD
 TB served July 1, 2005).

EXHIBIT A

EXHIBIT B

DRAFT FEDERAL REGISTER NOTICE

STB No. AB-1340X

Notice of Petition for Exemption to Discontinue Rail Service

On July 1, 2024, CG Railway, LLC filed with the Surface Transportation Board, Washington, D.C. 20423, a petition for exemption for the discontinuance of service over a line of railroad consisting of the Port of New Orleans's ("Port") North Yard, including track numbers 1,2,3,4,5,6, and 7 and the Elaine Street Lead between milepost G1.2 and milepost G2.4, that enabled direct interchange with CSX Transportation, Inc., (the "Subject Line") in New Orleans, Louisiana, a distance of approximately 3.4 miles. To the best of CGR's knowledge, no stations exist on the Subject Line.

Because this proceeding involves confirmation of the discontinuance of common carrier service and not abandonment of the Subject Line, CG Railway, LLC understands that the question of whether the Subject Line contains federally granted rights-of-way is inapplicable. Any documentation related to title and pertaining to the question of federally granted rights-of-way in CG Railway, LLC's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by *Oregon Short Line Railroad Co. - Abandonment -- Goshen*, 360 I.C.C. 91 (1979).

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

Because the petition for exemption presented herein pertains to CGR's proposal to discontinue (and not abandon) common carrier freight operations over the Subject Line that is owned by the Port of New Orleans, trail use / rail banking and other public use conditions are not appropriate

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

Because CG Railway, LLC seeks only discontinuance and not abandonment, and because it does not own the Subject Line, it will not be disposing of or altering the Subject Line or any structures that are 50 years old or older. An environmental and historic report is not required for a discontinuance proceeding.

EXHIBIT C

NEWSPAPER NOTICE

Certificate of Newspaper Publication

49 C.F.R. § 1105.7(c) – Newspaper Notice

I certify that a “Notice of Intent to Discontinue Rail Service” was published in the form prescribed by the Board for petitions for discontinuance at 49 C.F.R. § 1105.12. The notice was published on June 29, 2024, in The Time Picayune, a newspaper of general circulation in New Orleans, LA.

July 1, 2024



Justin J. Marks
Attorney for CG Railway, LLC.

NOTICE OF INTENT TO DISCONTINUE RAIL SERVICE

CG Railway, LLC (CGR) issues this notice that on or about July 1, 2024, it intends to file with the Surface Transportation Board (STB), Washington, DC 20423, a petition for exemption pursuant to the provisions of 49 CFR Part 1152 Subpart F – *Exempt Abandonments and Discontinuances of Service and Trackage Rights* to permit CGR to formally discontinue service over approximately 3.4 miles of the line of railroad at the Port of New Orleans in New Orleans, LA consisting of the Port of New Orleans’s North Yard, including track numbers 1,2,3,4,5,6, and 7 and the Elaine Street Lead between milepost G1.2 and milepost G2.4, that enabled direct interchange with CSX Transportation, Inc., (the Line). The Subject Line has not been used by CGR for common carrier service since 2007 following damage caused by Hurricane Katrina and the mutual termination of CGR’s lease with the Port. The Line traverses through United States ZIP Codes 70126 and or 70127. The CGR proceeding will be docketed as STB Docket No. AB – 1340X.

Because the proposed action entails the discontinuance of service over the Line, rather than abandonment, no environmental or historic documentation is required under 49 CFR 1105.6 and 1105.8. Appropriate offers of financial assistance to subsidize rail service can be filed with the STB. Trail use / rail banking and public use condition requests are not appropriate in discontinuance proceedings.

An original and 10 copies of any pleading that raises matters other than environmental issues (such as offers of financial assistance to subsidize rail service) must be filed directly with the STB’s Section of Administration, Office of Proceedings, 395 E Street, S.W., Washington, DC 20423-0001 [see 49 CFR 1104.1(a) and 1104.3(a)], and one copy must be served on applicant’s representative [see 49 CFR 1104.12(a)]. Questions regarding offers of financial assistance may be directed to the STB’s Office of Public Assistance, Governmental Affairs and Compliance at 202-245-0238. Copies of any comments or requests for conditions should be served on CGR, LLC’s representative: Justin J. Marks, Clark Hill PLC, 1001 Pennsylvania Ave. N.W. Suite 1300 South, Washington, DC 20004; 202-772-0916.

EXHIBIT D

10-DAY NOTICES

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June 20, 2024

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

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

Louisiana Dept. of Transportation and
Development
Office of Multimodal Commerce
Dean Goodell, Freight and Passenger Rail
Director
Dean.goodell@la.gov

Re: CG Railway, LLC.
– Discontinuance of Service Exemption –
in New Orleans, LA
Docket No. AB-1340X

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 CG Railway, LLC ("CGR") plans to seek authorization from the Surface Transportation Board ("STB") for authority to discontinue service over the line of railroad described below, by filing a petition for exemption pursuant to the provisions of 49 C.F.R. Part 1152 Subpart F in the above-referenced STB docket. CGR expects to file the petition for exemption with the STB on or about July 1, 2024.

CGR will file the petition for exemption to formally discontinue its service over the line of railroad extending approximately 3.4-miles consisting of the Port of New Orleans's ("Port") North Yard, including track numbers 1,2,3,4,5,6, and 7 and the Elaine Street Lead between milepost G1.2 and milepost G2.4, that enabled direct interchange with CSX Transportation, Inc., (the "Subject Line") in New Orleans, Louisiana. The Subject Line has not been used by CGR for common carrier service since 2007 following damage caused by Hurricane Katrina and the mutual termination of CGR's lease with the Port.

The Line traverses through United States Zip Code 70126 and or 70127. Maps of the line are enclosed with this letter.

Because this proceeding would involve the discontinuance of common carrier service and not abandonment of the Subject Line which is owned by the Port and not CGR, CGR

June 20, 2024
Page 2

understands that the question of whether the Line contains federally granted rights-of-way is inapplicable, and that the Subject Line will not be suitable at this time for alternative public use. Any pertinent documentation in the railroad's possession related to the issue of federally granted rights of way for the Subject Line will be made available to those requesting it.

CGR will not salvage any track along the Subject Line as a result of this discontinuance.

Sincerely,

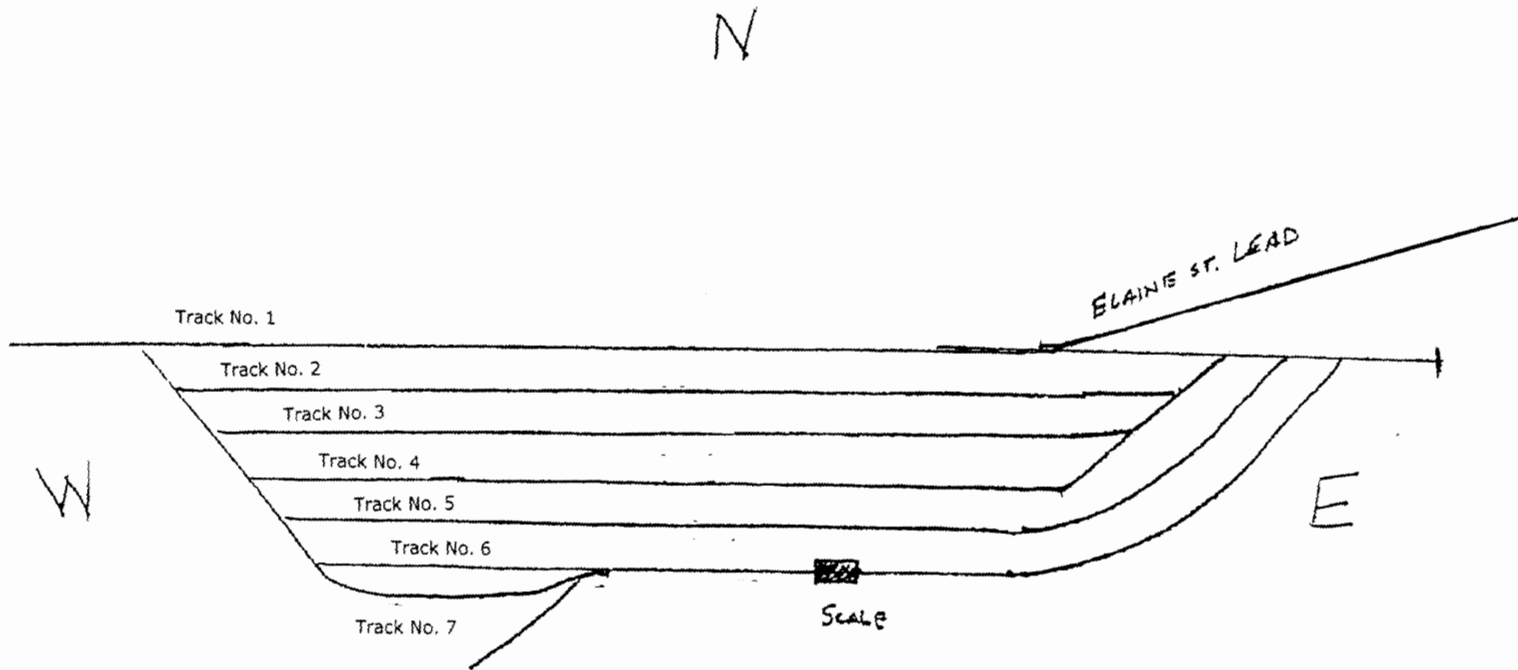


Justin J. Marks
Counsel to CG Railway, LLC

Enclosure



CGR Railway, LLC - Discontinuance of Service Exemption - in New Orleans, LA, STB Docket No. AB-1340X



submitted in CG Ry.—Lease and Operation
 ion—Port of New Orleans, La., Docket No. FD
 (STB served July 1, 2005).

EXHIBIT A

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing Petition for Exempt Discontinuance was served on the persons shown on the list below by email and/or first-class mail, postage prepaid.

For the Port of New Orleans
Robert A. Wimbish
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 800
Chicago, IL 60606-3208

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

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

Louisiana Dept. of Transportation and
Development
Office of Multimodal Commerce
Dean Goodell, Freight and Passenger Rail
Director
Dean.goodell@la.gov



Justin J. Marks

Dated: July 1, 2024