

FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208

Phone: (312) 252-1500
Fax: (312) 252-2400
www.fletcher-sippel.com

ROBERT A. WIMBISH
(312) 252-1504
rwimbish@fletcher-sippel.com

November 13, 2019

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VIA ELECTRONIC FILING

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

ENTERED
Office of Proceedings
November 13, 2019
Part of
Public Record

Re: **Docket No. AB 1107X, *West Michigan Railroad Co. –
Abandonment Exemption – in Van Buren County, Mich.***

REQUEST FOR LEAVE TO FILE SURREPLY AND SURREPLY

Dear Ms. Brown:

On November 1, 2019, West Michigan Railroad Co. (“WMI”) and the Michigan Department of Natural Resources (“MDNR”) jointly requested an extension of the interim trails use negotiation period for certain sections of railroad line owned by WMI. As in earlier phases of this proceeding, the National Association of Reversionary Property Owners (“NARPO”) has, on November 4, 2019, responded in opposition to the WMI/MDNR extension request.¹ Although it generally rehashes arguments it has raised before, NARPO’s latest reply filing also resorts to inaccurate and self-serving characterizations of the nature of arrangements that WMI has in place to preserve its option to restore service over the so-called “Cora Segment” between mileposts 25.1 and 26.5. Although the Board’s rules at 49 C.F.R. § 1104.13 bar a reply to a reply, WMI respectfully requests leave to submit the following surreply in order to address NARPO’s latest allegations regarding WMI’s legitimate efforts to better ensure its future opportunity to restore service over the Cora Segment (and beyond).

¹ Having consulted the Board’s filings web page this morning, WMI discovered that NARPO tendered two documents to the Board on November 4, 2019 – an original reply filing served on WMI via email on November 1, 2019 (as reflected in NARPO’s certificate of service), and what NARPO misleadingly identifies as a “corrected copy” that NARPO did not serve upon WMI. The falsely-labeled “corrected copy” is substantively different from the document served upon WMI – it includes an entire paragraph on page two not found in the version served upon WMI. NARPO has falsely certified that it had served its alleged “corrected copy” upon WMI, and likely it has failed to serve any other parties to this proceeding. The so-called “corrected copy” therefore must be stricken.

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WMI takes exception to NARPO's baseless allegation that landowners along the Cora Segment were "coerced" into paying "exorbitant money" to WMI in exchange for WMI's commitment to forego trails use arrangements.² WMI engaged in no coercion. The deal struck with adjacent landowners was neither unfair nor exorbitant, and NARPO has provided no first-hand statements to support its second-hand opinion. For that matter, it is not at all clear to what extent NARPO's reply reflects the sentiment of Cora Segment landowners.³

If Cora Segment landowners all feel as NARPO does about the deal struck to avoid an interim trail (specifically, that it was unfair), then WMI is willing to negotiate a reversal of its agreements with all of the Cora Segment landowners (including a reversal of actions taken on each side pursuant thereto), retake a property interest in a right-of-way along the entire Cora Segment, and restore the Board's jurisdiction over the subject right-of-way for purposes of a future reactivation of common carrier service. Such a reversal would be appropriate to permit the Board to restore its jurisdiction over the Cora Segment, and, in turn, allow WMI to be able to implement an interim trails use arrangement over it or reactivate it at WMI's discretion.

Respectfully submitted,



Robert A. Wimbish

Attorney for West Michigan Railroad Co.

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cc: All Parties of Record

² NARPO Reply at 1.

³ NARPO claims that it has among its members one or more Cora Segment landowners, but NARPO never indicates how many Cora Segment landowners share NARPO's views, nor has NARPO identified which landowners support NARPO's involvement in this proceeding. If NARPO would make clear what Cora Segment landowners are members and/or support NARPO's position here, then WMI could better determine how to respond.