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November 13, 2020

301278

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

ENTERED
Office of Proceedings
November 13, 2020
Part of
Public Record

Re: **Docket No. NOR 42170,**
Kingsbury Elevator, Inc. v. Grand Trunk Western Railroad Company

Dear Ms. Brown:

In keeping with the requirements of 49 C.F.R. § 1111.11(a), Grand Trunk Western Railroad Company ("GTW") respectfully proposes the schedule set forth below to govern the proceeding in the above-referenced docket, and in so doing requests Board-sponsored mediation pursuant to 49 C.F.R. § 1109.1. GTW's proposed schedule differs from the one advanced by Kingsbury Elevator ("KE") in that GTW's accounts for a mediation period, where KE – who did not agree to seek Board-sponsored mediation – has offered a procedural schedule predicated upon no mediation. Because GTW and KE were unable to reach an agreement, GTW has understood that each party would offer its proposed schedule to the Board separately.¹

Representatives of the parties met by telephone on Thursday, November 5, 2020, to discuss procedural matters. Although the parties agreed on the basic framework of a procedural schedule, KE did not agree to Board-sponsored mediation and to hold the proceeding in abeyance during mediation as GTW had proposed. GTW explained to KE during their call last week that GTW nevertheless would seek Board-sponsored mediation.

In view of GTW's request for Board-sponsored mediation, GTW proposes the following procedural schedule, which it had discussed with KE:

¹ KE filed its proposed procedural schedule on November 5, 2020, immediately after its discussion with GTW. GTW was unaware of the content of KE's filing before it was tendered to the Board and served. Suffice to say that GTW and KE do not agree on a procedural schedule, and, accordingly, GTW does not join in KE's November 5 filing.

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Day 0	Board serves decision on procedural schedule and mediation
Day 120	Discovery ends
Day 180	KE opening statement due
Day 240	GTW reply statement due
Day 270	KE rebuttal statement due (record closes)

GTW understands that, if the Board were to order mediation, this proceeding may not be held in abeyance because KE has not agreed to mediate. For this reason, GTW urges a longer discovery period by 30 days than KE has proposed, providing additional time at the outset so that the parties may focus their respective energies on Board-facilitated alternative dispute resolution immediately upon issuance of a procedural order, rather than upon discovery.²

GTW is confident that mediation would benefit all involved, considering the generality of, and number of topics in, KE's Complaint. Indeed, since this case began, KE's petition for partial revocation has been resolved through a formal, but cooperative, dialogue. Based upon recent experience, GTW's counsel believes that mediation could resolve this dispute, saving the parties and the Board considerable time and resources. Even if it were not fully successful, mediation may yet reduce the number of issues in dispute, and, in turn, reduce the scope and burden of discovery, and, at its close, could also enable the parties to revisit the procedural schedule.

For these reasons, GTW respectfully requests Board-sponsored mediation and, as necessary to facilitate mediation, adoption of its proposed procedural schedule.

Respectfully submitted,

/s/ *R. A. Wimbish*

Robert A. Wimbish
Counsel for Grand Trunk Western
Railroad Company

cc: All parties of record

² Alternatively, the Board may consider postponing action on a procedural schedule, pending the outcome of mediation.