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STB E-FILING

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POINT PLEASANT, WV 25550

1399 Scenic River Road Prociuous, WV



Ms. Cynthia T. Brown,

Chief Section of Administration Office of Proceedings Surface
Transportation Board 395 E Street, S.W. Washington, D.C.
20423

Re: Docket No. AB 1314X, The Elk River Railroad, Inc. –
Abandonment Exemption – In Kanawha & Clay Counties, WV

Exhibit F

Dear Ms. Cynthia Brown,

I am writing today in reference to the original filing of AB 1314 X and more specifically **EXHIBIT D CERTIFICATE OF PUBLICATION PURSUANT TO 49 C.F.R. § 1105.7(c)**. It is my contention that this filing and notice of publication was misleading and provided false information which led to a delay in replying and presenting comments by the public. Going forward this may affect the overall decision process set forth by the STB board in making thoughtful and informative decisions. The entire process requires commenting periods and timing which most generally are followed when considering matters of utmost importance as the board has before them. Making a decision may result in costly appeals for all involved going forward based alone on the improper filing of a public notice.

A simple search of the STB website should have been done. Prior to filing, to notice that almost a year and a half ago mailings were no longer the mode of filing comments. **“Starting Tuesday, March 17, 2020, all filings and other submissions should be made electronically. All Board decisions will continue to be available on the Board’s website during this time; however, the Board’s mailroom will not be accepting paper filings or providing paper copies of decisions or other materials until further notice.”** See Exhibit D in the railroads initial filing or easily readable copy of notice below.

The Elk River Railroad erroneously stated that comments must be mailed to the STB **“Original along with 10 copies”**. Time consuming to say the least. The only thing to date that I can say I am thankful for about COVID is the e-filing system that replaced such laborious tasks.

“Knowledge” means, (a) with respect to an individual, the actual knowledge of such individual and what such individual should have known after a reasonable investigation; and (b) with respect to a Person other than an individual”

Exhibit F

Public Notices are your 'Right To Know'

An important premise found in federal, state, and local governments is that information about government activities must be publicized in order for people to make well-informed decisions. Public notices provide this sort of transparency and accessibility to citizens who want to know more about government actions. Providing public notice provides the opportunity for the public to influence governing bodies and allows the public to be an active participant in a democratic society.

Many of these notices are intended to satisfy the requirement of “due process of law”, found in both federal and state constitutions. The concept of Due Process is based on notions of fairness and requires governments or corporations to notify citizens against whom they plan to take action in order to allow citizens the opportunity to be heard.

Public notices play a vital role in both substantive and procedural due process because they provide a window into government actions and also afford notice to citizens of actions about to take place, so they may exercise their constitutional right to be heard. Importantly, notification not only informs the individual or entity most directly affected, but also the general public which has an interest in knowing how public powers are being used.

Further, through public notices, citizens are given the opportunity to make their voices heard in public hearings and meetings. Citizens across the nation have used public notices and public hearings to object to changes in their community that could depress property values or alter the fabric of the area. Similarly, citizens have been able to participate in changes that enhance their communities, such as the construction of parks and other improvements. Allowing the public to influence the governing bodies of their local communities is crucial to the functioning of democratic society.

Title 18 USC § 1001, often simply referred to as false and misleading statements, makes it a felony to knowingly and willfully:

- Falsify or conceal a material fact in any entry or document; or
- Make oral statements to government officials which are materially false and misleading,
- To an official of the federal government in an investigation or official proceeding.

Making false statements to the federal government or any government official is a crime. That’s the black-and-white law under Title 18 of the U.S. Code § 1001.

With all the above taken into consideration I ask that AB1314 X be denied based on improper and misleading public notification.

Exhibit F

Public Notices are your 'Right To Know'! It is my belief that our rights have been violated in this respect.

Thank for your consideration,

J David Morgan

Concerned property owner (SOAR)

CC: “ All Parties of Record”

Exhibit F

NOTICE OF INTENT TO ABANDON RAIL LINE

The Elk River Railroad, Inc. ("TERRI") gives notice that on or after June 25, 2021, it intends to file with the Surface Transportation Board ("Board"), Washington, DC, a notice of exemption under 49 CFR 1152 Subpart F - Exempt Abandonments permitting the abandonment of an approximate 53.4-mile line of railroad between railroad Milepost 96.0, near Clendenin station, and railroad Milepost 43.6, near North Line station (south of Duck), including 0.8-mile of railroad extending south from railroad Milepost 67.2, near Hartland station, known as the Middle Creek Spur, and which traverses through United States Postal Service ZIP Codes 25045, 25164, 25043, 25133, 25019, and 25113 in Kanawha and Clay Counties, WV. The proceeding will be docketed as No. AB 1314X.

The Board's Office of Environmental Analysis (OEA) will generally prepare an Environmental Assessment (EA), which will normally be available 25 days after the filing of the notice of exemption. Comments on environmental and energy matters should be filed no later than 15 days after the EA becomes available to the public and will be addressed in a Board decision. Interested persons may obtain a copy of the EA or make inquiries regarding environmental matters by writing to the Office of Environmental Analysis (OEA), Surface Transportation Board, Washington, DC or by calling that office at (202) 245-0245.

Appropriate offers of financial assistance to continue rail service can be filed with the Board. Requests for environmental conditions, public use conditions, or rail banking/trails use also can be filed with the Board. An original and 10 copies of any pleading that raises matters other than environmental issues (such as trail use, public use, and offers of financial assistance) must be filed directly with the Board's Office of Proceedings, Washington, DC [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, public use or trails use may be directed to the Board'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 the applicant's representative: Slover & Loftus LLP, Attn: A. Rebecca Williams, 1224 Seventeenth street, N.W., Washington, DC 20036, (202) 347-7170.