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Eric M. Hocky
T (215) 640-8523
F (215) 640-8501
Email: ehocky@clarkhill.com

Clark Hill
Two Commerce Square
2001 Market Street, Suite 2620
Philadelphia, PA 19103
T (215) 640-8500
F (215) 640-8501

October 26, 2022

VIA E-FILING

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

Re: STB Docket No. AB-870X
Butler County, Kansas - Abandonment Exemption -
In Butler County, Kansas
Reply to City of Augusta Supplement

Dear Ms. Brown:

On October 11, 2022, the City of Augusta (Augusta) filed a "supplement" to the Joint Petition for Substitution of Trail Manager originally filed with the Board on February 22, 2022. HMA Properties, LLC (HMA) filed a Reply to the Joint Petition on March 14, 2022. The supplement relies to certain issues raised by HMA in its Reply. Not being sure whether the Board will treat the Augusta supplement as an independent pleading or as an impermissible "reply to a reply." HMA is filing this reply to supplement in accordance with the Board's regulations, 49 C.F.R. §1104.13(a).¹

The Augusta supplement is significant as much for what it doesn't say or address as it is for what it does. The Augusta supplement acknowledges that it addresses only two of the deficiencies noted in the HMA Reply – the defective Statement of Willingness to Assume Financial Responsibility, and the removal of the railroad bridge over US Highway 54/400 which severed the right of way at the western end of the subject right of way.

Statement of Willingness. Augusta essentially acknowledges that the initial Statement of Willingness submitted with the Joint Petition was defective. HMA agrees that the new Statement of Willingness substantially complies with the Board's regulations. If the

¹ To the extent the Board were to accept the Augusta supplement despite it being a impermissible reply to reply under 49 C.F.R. §1104.13(c), then the Board should also accept this letter in the interest of having a full and complete record. See, e.g., *Grafton and Upton Railroad Company – Petition for Declaratory Order*, FD 36518, slip op at 2 (served November 3, 2021) (accepting reply to reply and sur-reply); *City of Alexandria – Petition for Declaratory Order*, FD 35157, slip op. at 2 (served November 6, 2008).

Board elects to accept the new Statement of Willingness, the Joint Petition should be considered to have been filed on October 11, 2022, the date on which the Joint Petition became complete through the filing of the new Statement of Willingness.

Bridge Funding. The bridge funding materials submitted by Augusta do not clearly address the deficiency of the railroad bridge having been removed over US 5/400. Initially, it appears that Augusta has applied for the funding prematurely as the Board has not yet ruled on the Joint Petition for Augusta to become the trail sponsor, and Augusta does not currently own or control the right of way.² Second there is no evidence that Augusta has on hand, or has appropriated, sufficient funds to cover its local share and the preliminary engineering and design for which it will be responsible (according to the award letter, Exhibit B). Finally, it is not clear that the project contemplates a replacement “railroad bridge” that would allow for reactivation of rail service.³

Other deficiencies. Significantly, the Augusta supplement does not address the other deficiencies raised in the HMA Reply. These include the severance of the right of way at the eastern end of the segment where a levee has been constructed, and the misrepresentations in the Joint Petition and the prior interim trail use filings regarding the existence of an “interim trail use/banking agreement” between BCED and the Butler County, and the supposed assignment of the non-existent agreement to subsequent trail sponsors. See HMA Reply at 5-6. The unchallenged allegations of misrepresentation continue to call into question whether interim trail use was ever properly established (or sponsorship properly substituted) with respect to the abandoned rail line.

Additionally, in addition to the severance at the western end of the line segment discussed in the Augusta supplement and above, there remains other examples of severance raised in the HMA Reply, pp. 6-8, including the removal of the railroad bridge over the Whitewater River, and the construction of a flood control levee, which sever the segment from the national rail network at the eastern end of segment. Additionally, there are locations along the line segment where large boulders, barricades fences and bollards have been placed across the right of way, further severing the line segment from the national rail network. These severances continue to prevent reactivation of rail service, and further would justify the board revoking interim trail use on those segments of the right of way that are no longer connected to the national rail network.

For all these reasons and those set forth in the HMA Reply, HMA respectfully requests that the Board deny the proposed substitution of trail manager, and further that the Board revoke the NITUs issued for the subject line segment and for other segments of the original abandoned line as the Board deems appropriate.

² The award letter attached as Exhibit B to the Augusta supplement notes that Augusta will among other items be responsible for 100% of the right-of-way.

³ HMA presumes that only a pedestrian “trail bridge” is contemplated. Such a bridge presumably would not support reactivated rail service.

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I certify that a copy of this letter has been sent to all parties of record listed below by email and by US first class mail, postage prepaid.

For clarity, all parties should note that I agree to accept service by email, and request that future service of all documents be made by email.

Respectfully submitted,

CLARK HILL PLC

/s/ Eric M. Hocky

Eric M. Hocky
Counsel for HMA Properties, LLC

EMH:e

cc: HMA Properties, LLC
The following parties of record:

Terrence L. Huelskamp
Huelskamp Law, P.A.
550 N 159th St E
Ste 104
Wichita, KS 67230-7521
terrence@huelskamplaw.com

Andrew Marino
Gibson Watson Marino LLC
301 N. Main, Suite 1300
Wichita, KS 67202
andrew@gwmks.com

Derek S. Casey
Triplett Woolf Garretson, LLC
2959 North Rock Road, Suite 300
Wichita, KS 67226
dscasey@twgfirm.com

Mike Wheeler
205 West Central
El Dorado, KS 67042
mike@southwind.net