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March 20, 2023

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

Re: Victor Insulators, Inc. v. Finger Lakes Railway Corp.
Docket No. NOR 42176

Dear Ms. Brown:

Finger Lakes Railway Corp. ("FGLK") and Ontario Central Railroad Corp. ("ONCT") request that the Board accept this short response to new issues raised by Victor Insulators, Inc. ("VI") in its Reply in Opposition (the "VI Reply") filed March 1, 2023 to the Motion of FGLK and ONCT to Dismiss ("Motion to Dismiss"), and to agree to certain arguments raised by VI in order to limit the issues to be determined by the Board.¹ The Motion to Dismiss responded to the to the VI Complaint for failure to provide common carrier service, and fully advised the Board and VI the nature of the defenses, including that FGLK was not a proper defendant because it never had any common carrier authority to serve VI.

Although disputing whether FGLK is a proper respondent, VI requested that the Board grant VI leave to amend the Complaint to the extent necessary to add ONCT as a respondent. VI Reply at 2. FGLK and ONCT do not oppose the request for VI to file an amended complaint, subject to FGLK and ONCT reserving the right to answer to the amended complaint and the new issues raised in the VI Reply and to reasserting the defenses and grounds for dismissal raised in the Motion to Dismiss as appropriate based on the allegations of the amended complaint. See 49 C.F.R. §§1115.3, 1115.5. Based on discussions with counsel for VI, we understand that VI will in fact file an amended complaint this week.

The VI Reply, pp. 7-8, also asserts that the shipments to VI are not an exempt commodity. Upon further review of the sole commodity shipped by rail to VI, and of 49 C.F.R. §1039.11, FGLK

¹ To the extent this letter is considered as a "reply to reply," FGLK and ONCT request that the Board accept the letter in order to have a more complete record. See *American Rocky Mountaineer, LLC – Petition for exemption from 49 U.S.C. Subtitle IV*, STB Finance Docket No. 36468, slip op. at 3 n.3 (served May 28, 2021).

and ONCT agree with VI that the commodity in question is an exception to the exempt commodity list, i.e., is not an exempt commodity.

In the VI Reply, pp. 11-12, VI objects to the designation of repair costs as confidential. VI also filed a separate motion objecting to the confidentiality designations in the Motion to Dismiss. FGLK and ONCT previously responded to VI's separate motion agreeing to re-designate the repair costs as "public," but continues to believe that their revenue data is properly designated as "highly confidential."

I hereby certify that a copy of this letter has been served on all parties of record.

If you have any questions about this filing, please contact me.

Respectfully,



Justin J. Marks
*Counsel to Finger Lakes Railway Corp. and
Ontario Central Railroad Corp.*

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