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July 2, 2024

308442

VIA E-FILING

Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

ENTERED
Office of Proceedings
July 2, 2024
Part of
Public Record

Re: Great Redwood Trail Agency – Adverse Abandonment – MRY in Mendocino County, California, AB-1305 (Sub-No. 1)

Dear Ms. Brown:

Enclosed is Mendocino Railway's ("MRY's") Rebuttal to the GRTA/NCRA Reply to Mendocino Railway's Motion to Quash the Discovery Requests of Great Redwood Trail Agency filed in the above-referenced proceeding. If there are any questions concerning this e-filing, please contact me by telephone at (202) 663-7823 or by e-mail at wmullins@mullinslawgroup.net. If I am unavailable, you may contact John V. Edwards at (202) 663-7853 or by e-mail at jedwards@mullinslawgroup.net.

Sincerely,

/s/ William A. Mullins

Attorney for MRY

Enclosure

cc: Parties of Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

AB-1305 (Sub-No. 1)

**GREAT REDWOOD TRAIL AGENCY
– ADVERSE ABANDONMENT –
MRY IN MENDOCINO COUNTY, CALIFORNIA**

**REBUTTAL TO THE GRТА/NCRA REPLY TO MENDOCINO RAILWAY’S MOTION TO
QUASH THE DISCOVERY REQUESTS OF GREAT REDWOOD TRAIL AGENCY**

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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INTRODUCTION

In this proceeding, the Great Redwood Trail Agency (“GRTA/NCRA”)¹ seeks adverse abandonment of a line of railroad owned and operated by Mendocino Railway (“MRY”) generally between Fort Bragg, California and Willits, California (“Mendocino Line”). At this point in the proceeding, GRTA/NCRA has filed its case in chief (“Adverse Abandonment Application”), MRY has filed its Protest and Motion to Strike (“Protest”), and other parties have filed similar protests or comments. We are now awaiting GRTA/NCRA’s reply in response to the Protests, motions to strike and comments, which reply is due August 1, 2024. Notwithstanding that Board precedent does not allow third parties who have filed an adverse abandonment application to seek discovery in response to Protests and Comments, GRTA/NCRA believes it is entitled to discovery at this stage of the proceeding. It is not. The Board should promptly issue a decision denying GRTA/NCRA’s discovery request.

¹ To the extent abbreviations are used in this pleading, but not otherwise defined, MRY adopts the abbreviation definitions previously used in this proceeding.

PROCEDURAL TIMELINE

This Rebuttal² to the GRTA/NCRA Reply to Mendocino Railway's Motion to Quash the Discovery Requests of Great Redwood Trail Agency ("MRY Rebuttal") follows upon and builds on issues that were first raised in a series of pleadings initiated by the submission, on June 18, 2024, of a GRTA/NCRA request to extend the deadline for filing its replies to protests and comments ("GRTA/NCRA Extension Request"). The GRTA/NCRA Extension Request specifically noted as one important justification for its request for additional time that GRTA/NCRA had pending discovery requests, clearly using discovery as a rationale for the Board to extend its reply time so that GRTA/NCRA could receive a response to said discovery requests and for GRTA/NCRA to integrate information received therefrom into its reply to the MRY Protest.

² Technically, MRY never filed a motion to quash discovery for which GRTA/NCRA was entitled to file a reply and for which MRY is filing this rebuttal. Indeed, this "rebuttal" is in effect a "reply" to GRTA/NCRA's request to compel MRY to respond to GRTA/NCRA's discovery request, which was filed June 25, 2024. Although GRTA/NCRA's June 25 filing was styled as a reply to what GRTA/NCRA characterized as an MRY motion to quash (MRY filed a reply to the request for an extension of time on June 21, 2024 and GRTA/NCRA has characterized that reply as containing, in part, a motion to quash discovery), GRTA/NCRA's June 25 filing was, in effect, a motion to compel discovery for which MRY should be entitled to reply. If this "rebuttal" is considered a prohibited reply to a reply, MRY respectfully requests the Board to accept it in the interest of developing a full record. See, e.g., Hartwell First United Methodist Church – Adverse Abandonment and Discontinuance – The Great Walton Railroad Company, Inc., in Hart County, GA, Docket No. AB-1242 (STB served Jan. 31, 2018), slip op. at 3, note 5 (accepting a Great Walton Railroad Company ("GWRC") reply to a reply, typically prohibited under 49 C.F.R. Section 1104.13(c), because that GWRC reply provides information necessary to develop a more complete record, but rejecting a subsequently filed additional GWRC reply as simply repeating prior arguments and otherwise not necessary to develop a more complete record). See also, Norfolk Southern Railway Company – Abandonment Exemption – in the City of Greensboro, N.C., Docket No. AB-290 (Sub-No. 404X) (STB served June 28, 2023), slip op. at 2, note 4 ("Although a reply to a reply is not permitted under 49 C.F.R. § 1104.13(c), the Board will accept the January 9 and January 30 replies in the interest of a complete record") (citing City of Alexandria, VA – Pet. For Declaratory Ord., FD 35157, slip op. at 2 (STB served Nov. 6, 2008 (allowing a reply to a reply "[i]n the interest of compiling a full record").

On June 21, 2024, MRY not only responded to the request for an extension of time, but in that same submission (the “MRY Reply”) MRY (appropriately) responded to the position of GRTA/NCRA that its referenced discovery was appropriate both as to time and nature. MRY explained that, pursuant to unambiguous precedent, GRTA/NCRA was to have filed its case in chief, and further discovery was therefore not necessary or appropriate at that stage of the proceeding and that such information was not necessary for the Board to determine whether the public convenience and necessity (“PC&N”) requires or even permits abandonment of the rail line at issue.³

In a Decision served on June 25, 2024, the Board granted GRTA/NCRA’s request for an extension of time but declined to rule with regard to the discovery dispute. On that same day, GRTA/NCRA filed a “Reply to Mendocino Railway’s Motion to Quash the Discovery Requests of Great Redwood Trail Agency” (“GRTA/NCRA Response”). As noted in footnote 2, GRTA/NCRA's June 25 reply treated MRY's reply as, in part, a motion to quash. This "rebuttal" to the reply on the motion to quash (or, alternatively, a "reply" to what is in effect a GRTA/NCRA motion to to compel discovery) responds to GRTA/NCRA's request that MRY be required to comply with GRTA/NCRA's discovery request.

At the time of the June 25, 2024 STB decision, the Board noted that the discovery issues were not yet in front of the Board. Now, whether the Board treats the MRY June 21 filing as involving, in part, a motion to quash, or treats the June 25 GRTA/NCRA filing as a motion to compel, the result is the same: the discovery issue is now ripe for decision by the Board.

ARGUMENT SUMMARY

As explained in the GRTA/NCRA Response, GRTA/NCRA has narrowed its discovery request to only one document – the joint application of Sierra Northern Railway (“SNR”) and MRY

³ MRY Reply at 7.

for a \$31.4 million federal loan (“RRIF Express Loan Application”). As explained herein, any discovery request at this time, including the now narrowed request for the RRIF Express Loan Application, is untimely and not appropriate. The document production request is made after the submission of the applicant’s case in chief. The discovery request seeks a document that was well known to the applicant prior to the submission of the applicant’s case in chief; the applicant actually referred to and addressed it several times in several documents submitted to the Board prior to filing its Adverse Abandonment Application. Thus, GRTA/NCRA could have sought discovery on that document long before it did and in a timely manner so it could have been relied upon it in filing its Adverse Abandonment Application. Indeed, not only did the applicant know about the RRIF Express Loan Application, but it also knew and discussed in detail in its Adverse Abandonment Application the fact that the FRA granted the loan. Having had knowledge of the RRIF Express Loan Application and having had significant time to request the document prior to filing its application so that it could be used in the Adverse Abandonment Application, there is no rationale for GRTA/NCRA's late-filed discovery request nor is there a basis for GRTA/NCRA to see the actual RRIF Express Loan Application itself at this stage of the proceeding.

The only justification provided by GRTA/NCRA now is that discovery of the RRIF Express Loan Application is required because MRY relied upon the RRIF application in its Protest. But GRTA/NCRA has known of the RRIF loan and its importance since the beginning of this case. It discussed the RRIF loan in its Adverse Abandonment Application. Having known about the RRIF Express Loan Application, the grant of the RRIF loan, and the amount of the RRIF loan before it filed its Adverse Abandonment Application, and not seeking the RRIF Express Loan Application previously, GRTA/NCRA does not now suddenly have need for the application itself to rebut any assertions by MRY that GRTA/NCRA has already addressed. GRTA/NCRA may make its argument, as it did before, without having the RRIF Express Loan Application itself. Furthermore,

any Board decision granting GRTA/NCRA its late-filed discovery request would fly in the face of long-standing precedent that otherwise would prevent its discovery at this late date. In light of the motion to quash in the MRY Reply filed on June 21, 2024, GRTA/NCRA's Response on June 24, 2024, and this Rebuttal, the Board should issue a decision quashing the GRTA/NCRA discovery (or, alternatively, deny GRTA/NCRA's motion to compel discovery).

ARGUMENT

The GRTA/NCRA Response specifically modified all existing discovery to the production of a single document: the joint application of SNR and MRY for a \$31.4 million federal loan pursuant to the RRIF Express loan program.⁴ The GRTA/NCRA request that MRY provide the RRIF Express Loan Application should be denied. GRTA/NCRA has known about the document for years. GRTA/NCRA has discussed in this and other related proceedings the document's purpose, general contents, and importance. It has had ample time to file discovery on the document but chose not to do so. And the application itself is not necessary for GRTA/NCRA to rebut MRY's claims that part of the proceeds of the loan will go to restore through service from Ft. Bragg to Willits.

This RRIF Express loan application is not something new that has suddenly appeared in the MRY Protest. The existence and details of the RRIF application, the fact that the application was granted, and the importance of the funding granted, were well known to GRTA/NCRA not only prior to the filing of its application for adverse abandonment, but well before this proceeding even began.

⁴ Referring to the RRIF Express Loan Application, GRTA/NCRA states that "Because GRTA's discovery request has been reduced to one document, MR's argument [against the proposed extension of time] has been rendered without any basis at this point." GRTA/NCRA Response at 4.

The MRY RRIF Express loan application was first mentioned in GRTA/NCRA’s Northern Segment abandonment proceeding. Back on September 15, 2022, GRTA/NCRA filed its Certification of Filing and Service of Information Required Pursuant to 49 C.F.R. 1152.27(a).⁵

The document GRTA/NCRA now seeks was then mentioned on October 15, 2022, in the same proceeding, in MRY’s Offer of Financial Assistance.⁶ The president of MRY, Robert Jason Pinoli, described in his verified statement, not only the RRIF Express loan application but also GRTA/NCRA attempts to obtain a copy of the application at that time.

The RRIF Express loan application was then referenced yet again in the California Coastal Commission and Friends of the Eel River’s Joint Motion to Dismiss Mendocino Railway’s Offer of Financial Assistance, filed October 19, 2022 in Docket No. AB 1305X.⁷ It was referred to as well in a letter MRY submitted on that same date in the same proceeding.⁸ Clearly, even before the initiation of the current proceeding, GRTA/NCRA and others knew of the RRIF Express loan application and the importance that MRY placed on the grant of that loan.

On March 14, 2024, GRTA/NCRA filed a notice of intent to its application for adverse abandonment in this proceeding on April 12, 2024. In that notice of intent, GRTA/NCRA represented to the Board that the application filed on that date “will include the Applicant’s *entire*

⁵ Document No. 305328, submitted September 15, 2022, in North Coast Railroad Authority – Abandonment Exemption – In Mendocino, Trinity and Humboldt Counties, CA, Docket No. 1305X (“GRTA/NCRA Northern Segment Abandonment”), at page 22 (listing specifically the RRIF loan application, and the requested loan amount, and identifying its purpose to revitalize the Mendocino Line).

⁶ Document No. 305482, submitted October 15, 2022 in the GRTA/NCRA Northern Segment Abandonment proceeding, at page 3 (page 124 of the pleading).

⁷ Document No. 305500, at page 5. That document was brought in a precursor proceeding, with GRTA/NCRA as the primary applicant. See also, *id.* at 11 (noting MRY’s reliance of the grant of the RRIF Express loan).

⁸ Document 205512, at page 3 (referring to the fact that MRY had submitted an application for an RRIF loan “to repair one of its tunnels and thereby restore freight service”).

case for abandonment.”⁹ At that time, GRTA/NCRA had known about the MRY RRIF Express loan application for at least 18 months, had known about the importance and purpose of the RRIF Express loan funding, and, significantly, the grant of that loan. Given all of that, GRTA/NCRA cannot now ask for discovery to pretend to rebut what it claims is MRY’s “heavy reliance on the acquisition of the RRIF loan in its protest to the Application.”¹⁰ If the RRIF Express Loan was not needed for GRTA/NCRA to present its "entire" case for adverse abandonment then, it is not needed now.

The RRIF Express loan application was also discussed in several locations of the Environmental and Historic Report, also submitted by GRTA/NCRA on March 14, 2024, beginning on page 5 where GRTA/NCRA notes not only that the loan was sought by MRY, but also discussing the importance of that loan to rehabilitation of the Mendocino Line and the repairs to Tunnel No. 1.¹¹ GRTA/NCRA noted as well that the loan was approved.

The RRIF Express loan application was discussed in detail at least 4 times in the Adverse Abandonment Application when it was finally filed by GRTA/NCRA on April 12, 2024.¹² Referring only to the public version of the Adverse Application, the RRIF Express loan application, and the approval thereof, was discussed at length on page 20 through page 22, and, as mentioned above, in the attached Environmental and Historic Report at page 5.

⁹ GRTA/NCRA Notice of Intent to File an Application for Adverse Abandonment, submitted on March 14, 2024, at 2 (emphasis added).

¹⁰ GRTA/NCRA Response at 3.

¹¹ Document 308088, submitted on March 14, 2024, in STB Docket No. AB-1305 (Sub-No. 1). See also, “Railroad Rehabilitation Assessment – Mendocino Railway Fort Bragg to Willits,” November 30, 2023, D&E Enterprises, attached as Exhibit G to the Environmental and Historic Report, as Exhibit G, at 4, and “Feasibility & Marketing Analysis of Rail Freight Service in the Fort Bragg, Willits & Cloverdale Corridor,” Marie Jones Consulting, March 6, 2023, attached as Exhibit H to the Environmental and Historic Report as Exhibit H, at several pages (which analysis was performed to determine the potential feasibility of operations “if the loan is awarded”).

¹² Document 308189, submitted on April 12, 2024, in STB Docket No. AB-1305 (Sub-No. 1) (“Adverse Abandonment Application”).

In the GRTA/NCRA case in chief set forth in its Adverse Abandonment Application, GRTA/NCRA acknowledges the heavy reliance that MRY was placing on that funding when it stated that the purpose of the loan was, “among other things, repair Tunnel No. 1” and that “at this time, MR cannot operate the full length of the MR Line or properly rehabilitate it due to the Tunnel No. 1 collapse.”¹³

The RRIF Express application also plays a significant role in evidence already submitted by GRTA/NCRA in its case in chief. One of GRTA/NCRA’s consultants discusses details of the RRIF Express application.¹⁴ Another of GRTA/NCRA’s consultant performs a “Feasibility & Marketing” analysis based on the grant of the RRIF Express loan.¹⁵

Notwithstanding GRTA/NCRA's own extensive reliance on the RRIF loan and its arguments with respect on the loan (all done without ever asking for the application), it now says that it should be permitted to see the actual RRIF Express Loan Application, even though it failed to ask for it in the past and even though it has previously known for almost two years how much MRY would rely on the grant of the RRIF Express loan in its opposition to the Adverse Abandonment Application. The rationale that only now GRTA/NCRA needs to see the actual RRIF Express Loan Application because it was shocked by MRY's heavy reliance on the RRIF loan does not square with the facts or GRTA/NCRA's own heavy prior use and knowledge of the RRIF Express loan. The fact that the RRIF Express loan would be relied upon by MRY in its Protest and Response to the Adverse Abandonment Application was well known by GRTA/NCRA way before the filing of the Adverse

¹³ Id. at 20.

¹⁴ “Railroad Rehabilitation Assessment – Mendocino Railway Fort Bragg to Willits,” November 30, 2023, D&E Enterprises, attached as Exhibit G to the Adverse Abandonment Application as Exhibit G, at 4.

¹⁵ “Feasibility & Marketing Analysis of Rail Freight Service in the Fort Bragg, Willits & Cloverdale Corridor,” Marie Jones Consulting, March 6, 2023, attached as Exhibit H to the Adverse Abandonment Application as Exhibit H, at several pages (which analysis was performed to determine the potential feasibility of operations “if the loan is awarded”).

Abandonment Application. Indeed, given the extensive treatment the loan was given in the Adverse Abandonment Application itself and in other places, as discussed above, GRTA/NCRA knew full well the importance of the RRIF loan to MRY and the fact that MRY would rely upon that loan. If the RRIF Express Loan Application was so important and so relevant to GRTA/NCRA's case, why didn't it request it earlier so that it could use it in its Adverse Abandonment Application? If it did not need it for its Adverse Abandonment Application, it does not need it now.¹⁶

GRTA/NCRA asserts that it is not seeking new information to support its Adverse Abandonment Application, but instead is seeking information to rebut the MRY Protest, because it could not have “accurately anticipated MR’s reliance on the RRIF loan.”¹⁷ As noted, that statement is simply belied by the facts. But even if accurate, that does not demonstrate why the application itself is relevant at this stage of the proceeding. It is important to note that the MRY Protest discussed the RRIF Express Loan Application only in general terms and did not quote from or rely upon anything that was specifically in the RRIF Express Loan Application.¹⁸ Nothing in the Protest

¹⁶ As MRY has said all along, the sudden need for the discovery of the RRIF Loan Application is not because it is actually needed it for GRTA/NCRA to make its case, but rather was sought the day before MRY's Protest was due precisely so that GRTA/NCRA could use its discovery request as a delaying tactic and specific excuse for an extension of time. Now that the Board has granted GRTA/NCRA an extension, GRTA/NCRA's gamble paid off. But GRTA/NCRA does not need the actual loan application itself to rebut the claims made by MRY in its Protest. The application is not relevant at this point. What is relevant is the fact that the loan was granted and will be relied upon by MRY to restore through service. That is the relevant fact and GRTA/NCRA can rebut those assertions and the value of the loan itself without the need for obtaining a copy of a RRIF Express Loan Application itself.

¹⁷ “Feasibility & Marketing Analysis of Rail Freight Service in the Fort Bragg, Willits & Cloverdale Corridor,” Marie Jones Consulting, March 6, 2023, attached as Exhibit H to the Adverse Abandonment Application as Exhibit H, at several pages (which analysis was performed to determine the potential feasibility of operations “if the loan is awarded”).

¹⁸ See, MRY Protest at page 5, note 3 (referring to the FRA RRIF Express Environmental Review Letter at 1 (referring to MRY as a Class III rail carrier and noting that the letter was included in the Protest)), page 15 and page 15 note 37 (noting that MRY had been pursuing the RRIF Express loan for years so as to improve and rehabilitate the line), page 30 and page 30 note 79 (referring to the FRA press release discussing the grant of the loan and noting that the referenced press release was

involving the RRIF Express loan states anything more than what GRTA/NCRA itself set forth in its own filings – (1) MRY filed for the RRIF Express loan in order to finance the rehabilitation of the Mendocino Line and Tunnel No. 1; (2) this loan is very important to MRY; and (3) the FRA granted the loan. All of this was known by GRTA/NCRA for an extended period of time when it was able to serve discovery to support its case in chief. GRTA/NCRA chose not to file a request for the production of the RRIF Express loan application at that time.

Indeed, granting GRTA/NCRA the right to discovery at this stage is directly contrary to previous Board precedent and GRTA/NCRA has offered nothing of substance to distinguish its requested discovery from the plain language of the Board’s precedent:¹⁹

We will grant UP’s motion for a protective order that discovery not be had because discovery would serve no useful purpose. The City has already filed its application, which, according to our regulations, must contain its entire case in support of abandonment of the rail line. At this stage of the proceeding, any further filing by the City may only be in response to UP’s protest; it may not contain any new or additional evidence in support of the application. Moreover, discovery is not necessary for the City to respond to the protest. The City is fully capable of addressing, and the Board is fully capable of deciding, the relevant issue in this proceeding – whether the public convenience and necessity (PC&N) require or permit the abandonment of the rail line – without the City conducting the sought discovery, particularly given the breadth and timing of its discovery request. In view of this action, the City’s motion to compel will be denied.

As is evident from the discussion above, GRTA/NCRA’s attempts to distinguish its late request for the RRIF Express Loan Application simply does not hold water. It states that “GRTA’s requested discovery is distinguishable from that discussion in *Salt Lake*” because “GRTA seeks

attached to the Protest), page 32 (quoting the verified statement of MRY president Robert Jason Pinoli about the importance of the RRIF Express loan to restoring freight service), page 42 (noting that the costs to rehabilitate the Mendocino Line will be covered by the loan, something already discussed by GRTA/NCRA numerous times in this and other proceedings), page 43 (same), page 44 (discussing that revenues would be used to pay back the loan), page 53 (noting again that the loan would contribute to rehabilitation of the Mendocino Line), and page 67 (noting that the FRA had already approved the loan, a fact discussed in the Adverse Abandonment Application).

¹⁹ Salt Lake City Corporation – Adverse Abandonment – in Salt Lake City, UT, Docket No. AB-33 (Sub-No. 183) (STB served Jan. 11, 2002) (“Salt Lake”), slip op. at 1-2.

information to rebut MR's heavy reliance on the acquisition of the RRIF loan in its protest to the Application, not the 'new information' to support an adverse abandonment application sought by the applicant in *Salt Lake*....²⁰ But GRTA/NCRA already knew about the loan, relied upon the loan, analyzed and discussed the loan, and knew of MRY's "heavy reliance" on the loan. In such circumstances, GRTA/NCRA had all of the information it needed with respect to the RRIF Express Loan Application prior to filing its "entire case" in its Adverse Abandonment Application. Having chosen not to seek the RRIF loan application prior to filing its "entire case" it should not now be permitted discovery of the very same application that it never chose to seek and review in the first place. The only point of such discovery at this stage would be to provide GRTA/NCRA with a chance to offer new argument and new analysis that it failed to offer in its "entire case." This is not proper discovery at this stage of the proceeding.

In this proceeding, of course the Protest was going to mention the RRIF Express loan and MRY's intent to use the loan proceeds to fund rehabilitation of the Mendocino Line including Tunnel No. 1. *That was presented clearly by GRTA/NCRA in its case in chief.* There is nothing new in MRY's Protest that GRTA/NCRA did not know about, and could not have presented, in its Adverse Abandonment Application. Had GRTA/NCRA wanted discovery of that document it could have sought it. Having not done so, it should not be given a second bite at the apple.

Finally, even if discovery of the document were permitted at this stage, which it is not, it is not entirely clear that MRY would be permitted to share the RRIF Express Loan Application in this proceeding. That application was filed with the Build America Bureau at the U.S. Department of Transportation ("USDOT"). It was filed as a confidential document and was, and still is, subject to USDOT's confidentiality rules and is withing the purview of USDOT at this time. The RRIF Express Loan Application is currently the subject of a Freedom of Information Request, presumably

²⁰ GRTA/NCRA Reply at 3.

by someone affiliated with GRTA/NCRA or the California Coastal Commission. MRY understands that USDOT is evaluating the request and is currently determining whether it is required to produce it under FOIA, and if so, how much information can be redacted. To the extent it is produced under FOIA, presumably GRTA/NCRA will have access to it at that time.

CONCLUSION

GRTA/NCRA seeks production of the RRIF Express Loan. Regardless of whether the procedural posture is one of a rebuttal to a motion to quash or a reply to a motion to compel discovery, both parties agree that the dispute is now ripe for the Board to decide. As to the merits of the request, the Board should deny the discovery request.

The requested discovery is of a document that has been known to GRTA/NCRA for years. Its importance to the issues in this proceeding was so well known that GRTA/NCRA addressed it, and the relevance of it, in its case in chief and in several documents and filings leading up to and including its Adverse Abandonment Application. At no time in the past two years did GRTA/NCRA file discovery seeking a copy of the RRIF Express Loan Application. It presented its "entire case" in its Adverse Abandonment Application without reviewing the application. There is nothing new or remarkable in MRY's Protest with regard to the RRIF Express Loan Application that somehow requires GRTA/NCRA to now, finally after two years, review the RRIF Express Loan Application. Simply because GRTA/NCRA was somehow shocked by MRY's "heavy reliance" on the RRIF application does not provide sufficient grounds for granting the discovery. Permitting discovery of the document now would essentially overturn established precedent of the Board.

In fact, granting the request would establish new bad precedent that an adverse abandonment applicant can wait for discovery until after it files its "entire case" in chief. Under the framework that GRTA/NCRA asks the Board to adopt, the adverse abandonment applicant can review any and

all Protests, and then seek discovery of documents that the adverse abandonment applicant has known all along was an important element of its "case in chief" but chose not to seek or review. Under this new discovery framework, the adverse abandonment applicant would consistently use the new discovery request also to seek additional time to file a reply to the Protest and to bolster its case with new arguments and new information only after reviewing the document and the Protest. This is bad policy and bad precedent.

Here, the RRIF Express Loan Application itself was apparently not deemed relevant enough in the past two years to warrant a discovery request and it is not relevant now. GRTA/NCAR is "fully capable of addressing, and the Board is fully capable of deciding, the relevant issue in this proceeding – whether the public convenience and necessity (PC&N) require or permit the abandonment of the rail line – without [GRTA/NCRA] conducting the sought discovery."²¹ GRTA/NCRA's discovery request should be denied.

Respectfully Submitted

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²¹ Salt Lake, slip op. at 2.