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March 2, 2018

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

Re: **Docket No. AB-1258**
Alloy Property Company, LLC -- Adverse Abandonment --
Chicago Terminal Railroad In Chicago, Illinois

Dear Ms. Brown:

Burgoyne, LLC ("Burgoyne") hereby files these comments on the request for a certificate of interim trail use ("CITU") of the City of Chicago (the "City") and the response thereto of Chicago Terminal Railroad Company ("CTM"), both filed on February 14, 2018 in the above-captioned adverse abandonment proceeding. Burgoyne owns a portion of the former railroad right-of-way involved in this proceeding located toward the south end of the line being abandoned, and is engaged in ongoing state court litigation with CTM over the prior termination of CTM's easement rights on Burgoyne's property.

CTM possessed easement rights on Burgoyne's property pursuant to a November 20, 1987 Corrective Deed between CMC Real Estate Corporation ("CMC," Burgoyne's predecessor) and Soo Line Railroad Company (CTM's predecessor). The Corrective Deed was confirmed by the federal court overseeing the reorganization of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, CMC's predecessor. *In re: Chicago, Milwaukee, St. Paul and Pacific Railroad Company*, No. 77 B 8999, Order No. 948 (October 13, 1987).

The Corrective Deed specifically provided that the easement terminated if it was not used in the "active operation of the Railroad" for twelve months. It also specifically provided that the storage of railcars would not constitute use of the easement for railroad purposes. It is a matter of record in this proceeding that CTM has not handled rail traffic on the track over Burgoyne's property since at least May 14, 2015. CTM Reply to Alloy Property Company, LLC's Application for Adverse Abandonment, January 16, 2018, at 1. CTM was served proper notice under the Corrective Deed that the easement had terminated.

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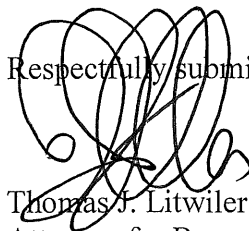
The Corrective Deed also obligates CTM to execute any documentation needed to evidence termination of the easement. CTM's written consent to the City's CITU request -- and any subsequent trail use agreement that CTM purports to negotiate and execute with the City -- are clear breaches of CTM's obligations to Burgoyne under the Corrective Deed.

Because CTM no longer has any rights to Burgoyne's property due to the termination of the easement, issuance of a CITU which includes Burgoyne's property is inappropriate. Exclusion of Burgoyne's property from a CITU would not interfere with trail use further north as agreed to by the City, CTM and Alloy Property Company, LLC and would not sever any such northern trail segment from the national rail network.

If the Board does issue a CITU that includes Burgoyne's property, that purely ministerial act cannot insulate CTM from its contractual obligations under the Corrective Deed, and would not preclude enforcement of those obligations against CTM in the pending state court proceeding. See *PCS Phosphate Co., Inc. v. Norfolk Southern Corp.*, 559 F.3d 212 (4th Cir. 2009) (state law claims for breach of contract and breach of easement covenant with respect to voluntary agreements related to railroad right-of-way not preempted). CTM controls entirely whether the Trails Act, 16 U.S.C. § 1247(d), applies here. E.g., *Rail Abandonments -- Use of Rights-of-Way as Trails -- Supplemental Trails Act Procedures*, Ex Parte No. 274 (Sub-No. 13) (ICC served May 26, 1989) at 4 ("[S]ection 1247(d) is a voluntary program that applies only if the abandoning railroad agrees to it.") CTM cannot ignore its contractual obligations in reliance on a CITU entirely of its own making.

I certify that a copy of this filing has been served by electronic or U.S. mail on all parties of record in this proceeding.

Respectfully submitted,



Thomas J. Litwiler
Attorney for Burgoyne, LLC

TJL:tl

cc: John D. Heffner, Esq.
Charles A. Spitulnik, Esq.
Matthew J. Warren, Esq.
Hon. Walter Burnett, Jr.
Hon. Brian K. Hopkins
Mr. Zachary Cupkovic