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May 30, 2018

## 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

Re: FD 36178  
Metropolitan Council - Petition for Declaratory Order

Dear Ms. Brown,

In a letter filed May 29, Metropolitan Council ("Met Council"), with the consent of Hennepin County Regional Railroad Authority ("HCRRA"), expressed Met Council's and HCRRA's willingness to engage in Board sponsored mediation. The letter also made certain representations regarding Twin Cities & Western Railroad Company's ("TCW") support of certain premises regarding the timing and scope of that mediation. Although the letter is generally accurate regarding TCW's position, the letter was filed without the benefit of TCW's review and prior approval of its contents. As such, TCW is writing to clarify the record.

TCW strongly supports the use of separate rooms via a "shuttle diplomacy" approach; however, TCW does not support the notion of having "no joint session, or only a short introductory one." The Board mediators should be free to structure the mediation as they best see fit, including joint sessions if the mediators believe there is value in such joint sessions.

With respect to the June 21<sup>st</sup> deadline, TCW agreed to Met Council's request to conduct the mediation on or before June 21, 2018. It is not clear to TCW what Met Council means when it suggests that the parties should have the right to terminate the mediation by June 21, 2018.

TCW agreed to mediation on all issues, including the breach of contract claims and the preemption claims in the U.S. District Court proceeding; however, such an agreement should not

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be viewed as requiring agreement on all issues in order to settle the matters at issue in the STB proceeding. If the parties can reach agreement on the STB issues, such an agreement should be sufficient to allow the withdrawal of TCW's opposition even though the court case may continue.

Finally, TCW does not support Met Council and HCRRA placing demands on when the Board should and should not act. The Board's decision making process should not be driven by unsubstantiated claims of calamities caused by Met Council's and HCRRA's own actions. They are the parties that did not respond to TCW's effort last September to complete a construction agreement and an operations agreement. Instead, without notice to TCW, Met Council and HCRRA decided to change the entire structure of the project and then took over six months to file new agreements and request STB authority. Any timing problem was of their own making. If more time was needed for Board consideration of these very complicated issues, then Met Council and HCRRA should have filed their requests earlier. These matters are very significant and will have long term effects on the shippers TCW serves in western Minnesota and eastern South Dakota. Thorough and careful consideration by the Board is imperative.

Sincerely,



William A. Mullins

cc: Parties of Record