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Ms. Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20024

Re: National Association of Reversionary Property Owners – Pet. for Rulemaking,
STB Ex parte 749

Dear Ms. Brown:

Madison County Mass Transit District (MCT) is a municipal corporation organized pursuant to the Local Mass Transit District Act (70 ILCS 3610) of the Illinois State statutes. MCT is dedicated to providing public mass transportation within Madison County, Illinois. To this end, MCT among other things has developed a series of interconnected rail trails, sometimes through use of the federal railbanking statute (16 USC 1247(d)), to provide bicycle connector routes to its bus lines, and also to preserve otherwise-to-be abandoned rail lines for possible future mass transit (including passenger rail) uses. MCT recently became aware of the petition for rulemaking filed by the National Association of Reversionary Property Owners (NARPO) in STB Ex Parte 749. In the interest of fullness of the record and in light of lack of prejudice to NARPO (which has recently itself filed additional comments in EP 749), MCT requests that this letter manifesting our opposition to the relief sought by NARPO be accepted and considered by the Board in addressing NARPO's petition.

NARPO first requests a rule limiting NITU extensions to six. NARPO on the face of its petition bases this request on three cases in which the Board has granted multiple extensions. NARPO fails to explain how it is prejudiced by the multiple extensions, other than to suggest later in the petition (i.e., bottom of p. 5) that processing fee waiver requests (which NARPO says are associated with 90% of extension requests for NITU's) imposes a burden on the Board. If processing fee waiver requests is burdensome as claimed by NARPO, then the Board can simply omit the requirement to pay a fee for an extension of the NITU. Then it would not have to process fee waiver requests, and the burden NARPO claims exists would be totally removed. In any event, NARPO does not show how the extensions burden NARPO.

There are many reasons for NITU extensions: requirements for completion of salvage (e.g., wildlife conditions), requirements for completion of historic reviews (section 106) before property can be transferred, litigation, and so on. It would encourage abuse by trail opponents of the railbanking process to place an arbitrary limit on the number of extensions that may be sought.

NARPO next asks the Board to require the railroad or trail proponent of railbanking to notify "each landowner who owns land adjacent to the rail line right-of-way" when a NITU is issued. The Board nowhere imposes such a requirement when it takes a licensing action (e.g., transfer of a rail corridor, abandonment of a rail corridor, change in operators on a rail corridor) and has repeatedly rejected such a requirement in the context of railbanking. The Board requires railroads seeking abandonment authority to provide newspaper notice, and any party interested in the proceeding (i.e., a situation where railbanking may be the outcome) may then ask to be a party (and receive pleadings and decisions). In any event, pleadings and decisions are available in the agency's e-library on its public website. This level of notice to our knowledge has consistently been viewed as sufficient to put all entities and individuals on notice of agency proceedings and actions.

In the end, the only basis offered by NARPO to STB to require more notice is (a) many jurisdictions have allegedly computerized their land records, and (b) the Board granted a CITU in a case that had been under its jurisdiction (due to historic preservation conditions) allegedly for 20 years. The fact that land records are generally computerized, if it is a fact and not an unsubstantiated NARPO assertion,

does not render the burden of identifying landowners insubstantial. And the fact that the Board granted a CITU in a matter within its jurisdiction is not prejudicial.

NARPO finally seeks a rule requiring payment of filing fees for railbanking requests “by public entities and non-public entities alike.” NARPO claims that the filing fee is waived 90% of the time for railbanking extensions when a fee waiver is sought. NARPO claims this is burdensome to the agency, and also imposes a higher cost on parties seeking an extension who are not eligible for the waiver. If granting fee waivers for public entities is burdensome, then the way to remove the burden is to make the fee exemption automatic, as the Board’s long-standing regulation (49 CFR 1002.2(e)(1)) seems to provide already. If the waiver is not automatic already, then NARPO’s argument makes a strong case for making it automatic. In addition, NARPO fails to show that the Board inflates costs to entities who do not qualify for fee waiver. NARPO is simply trying unreasonably to burden preservation of rail corridors for future rail use and interim use as trails. This is contrary to the public interest. Rail corridors are difficult to assemble; otherwise-to-be abandoned rail corridors can and do serve important public needs; and the preservation of such rail corridors should be facilitated, not taxed.

NARPO’s petition for rulemaking should be denied.

Very truly,

Madison County Mass Transit District

By: 

Jerry Kane, Managing Director