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June 7, 2019

247906

VIA E-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

ENTERED
Office of Proceedings
June 7, 2019
Part of
Public Record

Re: Docket No. AB-290 (Sub-No. 117X)
Norfolk and Western Railway Company – Abandonment Exemption –
Between Indianapolis and Tipton in Marion, Hamilton, and Tipton Counties, Ind.

Dear Ms. Brown:

On May 30, 2019, Gary Davis, an individual and heretofore non-party in the above referenced proceeding, submitted to the Surface Transportation Board (the “Board”) a filing (the “Davis Filing”) evidently in support of revived efforts by US Rail Holdings, LLC (“USR”) to force the transfer of the Owners’¹ presumed reactivation rights pending completion of trails use arrangements currently under negotiation. Mr. Davis did not seek leave of the Board to intervene in this proceeding. His filing appears to be offered mainly to as support for the undisputed proposition that the Board may vacate (and, indeed, has vacated) an NITU when either the trails sponsor or the abandoning rail carrier, or both, voluntarily have so requested, even during the NITU trails use agreement negotiations process.²

Mr. Davis’ filing may have been intended as a reply in support of USR’s Motion to Vacate (filed on March 29, 2019) or as a rebuttal in response to the Owners’ Reply in Opposition to the Motion to Vacate (filed on April 22, 2019). His filing, in either case, is untimely, prejudicial, and, therefore, impermissible under the Board’s rules of procedure. As

¹ The City of Fishers, Indiana, the City of Noblesville, Indiana, and Hamilton County, Indiana – collectively, the “Owners.”

² The issue here, rather, is whether STB precedent supports an *involuntary* vacation of an NITU at the request of a third party *over the mutual objection of the would-be trails sponsor and abandoning carrier* while a trails use arrangement is in the process of being negotiated, and, if so, under what circumstances.

FLETCHER & SIPPEL LLC

Ms. Cynthia T. Brown

June 7, 2018

Page 2

such, the Owners will not give the Davis Filing sanction by responding to it substantively at this time, and they expect that the Board will properly disregard it in upholding its rules, also.

However, if the Board intends to set aside its rules of procedure and accept and consider the substance of the Davis Filing, then the Owners hereby request that, as a matter of due process and fairness, the Owners promptly be so notified, so that they may fashion a substantive response to Mr. Davis' otherwise very untimely and unnecessary submission.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. A. Wimbish". The signature is fluid and cursive, with a large initial "R" and a stylized "W".

Robert A. Wimbish

Counsel for City of Fishers, Indiana; City of
Noblesville, Indiana; and Hamilton County, Indiana

cc: All parties of record