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Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

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**Re: STB Docket No. EP 749 (Sub-No. 1), Limiting Extensions of Trail Use
Negotiating Periods**

Dear Ms. Brown:

The Board recently issued a Notice of Proposed Rulemaking (“NPRM”) in the above-captioned docket, requesting comments on a proposal to limit the number of extensions of a trail use negotiating period to six 180-day extensions “unless the requesting party can demonstrate that extraordinary circumstances justify the grant of a further extension.” If adopted, the proposal would result in a revision to 49 C.F.R. 1152.29 that would create a presumption against renewal of the Notice of Interim Trail Use (“NITU”). The Board has also proposed to make this new rule, if adopted, applicable to not just new trail use requests, but also those currently being negotiated. See NPRM at 8.

The Missouri Central Railroad Company (“MCRR”) is currently in the midst of trail negotiations for a rail corridor of over 144 miles in STB Docket No. AB-1068 (Sub-No. 3X). MCRR is opposed to the proposed rule for a number of reasons, and believes that the proposal would run counter to the “national policy to preserve established railroad rights-of-way for future reactivation of rail service,” as described in 16 U.S.C. 1247(d) and court decisions such as Preseault v. ICC, 494 U.S. 1, 17-18 (1990). While MCRR agrees that the underlying reasons given by the Board¹ for the proposal – namely administrative finality, efficiency, and clarity – are laudable, these goals can and are being achieved under the current regulations, rendering the NPRM proposal unnecessary.

The proposed rule is a chilling one-size-fits-all approach to rail-banking, by requiring a showing of “extraordinary circumstances” to the Board when seeking a NITU extension request beyond the prescribed number. Such an approach ignores the great diversity of rail corridors that may be subject to rail-banking negotiations. As the Board knows, some corridors are extremely short, less than a mile in length, with limited complexity in terms of history, infrastructure, local government coordination, or other issues. In contrast, other corridors are dozens or even hundreds of miles in length, implicating numerous local governments and raising substantial planning, logistical, and funding concerns. No reason is

¹ See NPRM at 5.

November 1, 2018

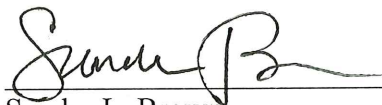
Page – 2 –

apparent in the NPRM that would explain why the same maximum negotiating period is appropriate for both a one-half mile corridor through an unpopulated area and a one hundred mile corridor through numerous cities, towns, and suburbs. A rule that limits the NITU renewal for all such possible rail-banked corridors cannot sufficiently capture the diversity of corridors while also complying with the Congressional policy of preserving such corridors. As the population of this country continues to grow, thus causing increased land development pressures, the need to preserve rail corridors for potential future re-use is greater every day, yet the proposed rule would do just the opposite.

The proposed rule is also unnecessary. The Board already can and does evaluate the merits of each individual extension request,² and takes case-specific action when appropriate. For example, even though virtually all extensions are for 180 days, the Board has also granted extensions of one-year when appropriate.³ At the same time, the Board has also directed rail-banking proponents to provide specific, detailed information in a negotiation extension request when warranted.⁴ If, as the Board says, parties “have no vested right to a newly requested extension,”⁵ then the proposed rule in the NPRM is unneeded because the Board can already deny any requested extension. In any event, the concept of “extraordinary” circumstances is contrary to the national policy regarding the value of rail-banking.

MCRR appreciates the opportunity to submit these comments in response to the NPRM on the important issue of rail-banking. Please do not hesitate to contact me if you have any questions.

Best regards,



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² See, e.g., NPRM at 8 (n. 7) (“Each extension request is considered on its own merits.”).

³ See, e.g., New York Central Lines, LLC – Abandonment Exemption in Middlesex County, MA, STB Docket No. AB-565 (Sub-No. 1X) (served Oct. 14, 2014); CSX Transportation, Inc. – Abandonment Exemption – In Jefferson County, AL, STB Docket No. AB-55 (Sub-No. 613X) (served March 5, 2015).

⁴ Union Pacific Railroad Company – Abandonment Exemption – In Kane County, Illinois, STB Docket No. AB-33 (Sub-No. 284X) (served Sept. 28, 2018).

⁵ NPRM at 8 (n. 7). MCRR does not concede this statement is accurate in light of legal precedent and Congressional policy favoring rail-banking.
