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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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August 31, 2017
Part of
Public Record

STB Docket No. FD 36137

**CITY OF FISHERS, CITY OF NOBLESVILLE, AND HAMILTON COUNTY, INDIANA
-- PETITION FOR PARTIAL REVOCATION OF EXEMPTION**

MOTION FOR LEAVE TO FILE REBUTTAL

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**ATTORNEY FOR CITY OF FISHERS, CITY
OF NOBLESVILLE, AND HAMILTON
COUNTY, INDIANA**

Dated: August 31, 2017

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SURFACE TRANSPORTATION BOARD**

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On August 1, 2017, the City of Fishers, Indiana, the City of Noblesville, Indiana, and Hamilton County, Indiana (collectively, the “Owners”) jointly filed a petition (the “Petition”) with the Surface Transportation Board (the “Board”) seeking partial revocation of the exemption they enjoy collectively as state subdivisions and joint owners of a railroad line between Indianapolis and Tipton, Indiana (the “Line”) previously authorized for abandonment but not fully abandoned. Several interested parties have since come forward, both before and after the applicable 20-day deadline prescribed by 49 C.F.R. § 1104.13(a), to oppose the Petition. In at least two instances, in addition to opposing the Petition, an opponent has requested an extension of the reply deadline.

Because the Board’s rules do not specifically provide for the filing of rebuttal evidence and argument in a proceeding of this sort, the Owners hereby request leave to file a rebuttal in support of the Petition, and specifically request leave to do so in connection with exercising their right to respond in a timely fashion to the aforementioned extension requests. The replies to the Petition, most of which are presented by individuals who the owners presume have no prior experience before this agency, reflect misunderstandings of STB procedure, policy, and precedent, and the opponents appear to presume, incorrectly, that the Board has jurisdiction

over, and is entrusted to protect, intrastate passenger excursion train operations. The Owners submit that, under the circumstances, a rebuttal is warranted and should be accepted. For good cause shown, the Board has in the past been willing to allow a party seeking relief under an individual petition to file a rebuttal.¹ In light of the various, unintentional missteps of those who have filed comments opposing the Petition, and to address some of the unfair accusations made against the Owners' decision-making process leading to the filing of the decision, the Owners submit that clarification of the facts and guiding legal principles as offered in the Owners' simultaneously-filed rebuttal would provide for a more fully-developed record, ensure a just determination of the issues presented, and facilitate a just assessment of the merits.²

WHEREFORE, the Owners respectfully requests leave to file the accompanying Rebuttal.

¹ See, e.g., Wisconsin Central Ltd. – Abandonment Exemption – In Winnebago County, WI, Docket No. AB-303 (Sub-No. 2X) (ICC served Feb. 22, 1990) slip op. at 1, n. 1; cf. Grand Trunk Western Railroad Company – Acquisition of Operating Easement – CSX Transportation, Inc., Docket No. FD 35661 (STB served Sep. 12, 2012) (procedural schedule in an individual petition for exemption proceeding permitted rebuttal, upon the filing of which the record would close); Mid-Michigan Railroad, Inc. – Abandonment Exemption – In Kent, Ionia, and Montcalm Counties, MI, Docket No. AB-364 (Sub-No. 14X) (STB served Mar. 11, 2008) (instead of scheduling rebuttal up front, the Board would await any responses to the petition, and, if any responses were lodged, the agency would entertain petitioner's request for leave to file a rebuttal).

² See Holrail, LLC – Construction and Operation Exemption – In Orangeburg and Dorchester Counties, SC, Docket No. FD 34421, et al. (STB served Feb. 9, 2007) slip op. at 3-4.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of August, 2017, a copy of the foregoing **Motion for Leave to File Rebuttal** was served by U.S. Mail, first class postage prepaid, or by more expeditious means of delivery upon all parties of record:



Robert A. Wimbish