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August 31, 2018

246298

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
August 31, 2018
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.

EXPEDITED CONSIDERATION REQUESTED

Dear Ms. Brown:

The City of Fishers, Indiana (“Fishers”), the City of Noblesville, Indiana (“Noblesville”), and Hamilton County, Indiana (“Hamilton County”) – collectively, as the “Owners” – hereby respond to separate filings recently tendered in the above-referenced proceeding by Indiana State Senator Michael Crider, Indianapolis City-County Councillor Jared Evans, and the National Association of Reversionary Property Owners (“NARPO”). Where specifically indicated, the City of Indianapolis, Indiana (“Indianapolis”) joins with the Owners – collectively as the “Municipalities” – in this reply. The filings responded to hereby are meritless for reasons discussed below. They are new attempts by excursion train advocates to delay agency action on three pending notice of interim trails use (“NITU”) petitions – a tactic that palpable Board inaction might suggest, in the Owners’ view, is working.

The filings from Senator Crider and Councillor Evans clearly derive from the same instigator – Logan Day, acting on behalf of excursion train proponent Save the Nickel Plate, Inc. (“STNKP”). STNKP theorizes that Indianapolis is a member of the Hoosier Heritage Port Authority (“HHPA”), which was created and entrusted to oversee the Nickel Plate Line, and that the City is thus part owner of that railroad line. STNKP has persuaded Senator Crider to recommend Mr. Day to serve as one of the City’s HHPA representatives, assuming, of course, that Indianapolis is an HHPA member (and it isn’t). See Senator Crider’s August 21, 2018 letter to the Indianapolis City-County Council, attached.

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Senator Crider's letter filing is a procedurally untimely endorsement of US Rail Holdings, LLC ("USRH"), favoring "restored freight service . . . while also remaining friendly towards other passenger uses," and it is a critique of the Municipalities' decisions to pursue trails use rather than seek to preserve the track. While Senator Crider's filing should be stricken, the Board has shown considerable – arguably, excessive – latitude toward such procedurally-defective filings. The Municipalities do not move to have that filing stricken from the AB-290 (Sub-No. 117X) proceeding, however, provided that the Board acts promptly on the pending NITU petitions. Senator Crider's letter offers nothing new to the arguments that USRH has presented at the undisputed bidding of excursion train proponents, and to which the Owners already have responded thoroughly.

Councillor Evans' letter filing, on the other hand, seeks to perpetuate Board inaction, calling for unnecessary procedural delay. Councillor Evans, one of 25 members of the Indianapolis City-County Council, has endorsed STNKP's latest theory that Indianapolis is a member of the HHPA as part owner of the Nickel Plate Line. In fact, although Indianapolis at one time many years ago took preliminary steps toward line ownership and HHPA membership, it ultimately decided against both. There is no "confusion" as to Nickel Plate Line ownership, and thus no basis for this proceeding to be suspended.

Indianapolis is committed to its NITU petition, which was duly authorized by City leadership through the office of the Mayor of the City of Indianapolis. Indianapolis remains interested in pursuing a trails use arrangement with the Owners, and hereby reiterates its request for prompt action on its pending NITU petition.

NARPO's recent email filing, likely also prompted by STNKP, appears to challenge the jurisdictional status of the Nickel Plate Line as addressed by the Board in its May 31, 2018 decision in the FD 36137 proceeding.¹ NARPO asks the Board to reconsider key elements of its decision in that proceeding, paying no attention to the many procedural irregularities of its request. Substantively, however, while it may be that Norfolk Southern Railway Company ("NSR") cancelled its tariffs in 1995 contemporaneous with its sale of the Nickel Plate Line as NARPO states, such a factor is not, as a matter of governing precedent, determinative of abandonment consummation, as the Board well knows. Such action is merely consistent with NSR's divestiture of the assets and its exercise of authority to discontinue

¹ The FD 36137 record closed as of January, and the proceeding since has been ended by virtue of the Board's May 31 decision. The Municipalities object to acceptance of the subject filings and correspondence in that completed proceeding as untimely. For these reasons, the present filing is offered in Docket No. AB-290 (Sub-No. 117X) only.

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common carrier service as an element of abandonment authorization.² In short, NARPO's email comments do not warrant the Board "revisit[ing] the issue of abandonment consummation," particularly since this issue was thoroughly addressed by the Owners and the Board in FD 36137, and NARPO has not given any justification for its late appearance. Accordingly, NARPO's request for the Board to "revisit" issues addressed and ruled upon in the FD 36137 proceeding (or in the present abandonment proceeding) must be denied.

The Owners have warned that undue Board delay on the pending NITU petitions would invite mischief by excursion train proponents. Now, the Municipalities (joined by Indianapolis), urge the Board to facilitate trails use plans for which the Board opened the door in May of this year, and to undertake the (long overdue, in the opinion of the Municipalities) ministerial act of issuing the requested NITUs.

Respectfully submitted,



Robert A. Wimbish
Counsel for City of Indianapolis, Indiana; City of Fishers, Indiana; City of Noblesville, Indiana; and Hamilton County, Indiana

Enclosure (Senator Crider letter)

cc: All parties of record

² See The Alabama Great Southern Railroad Company – Discontinuance Exemption – In St. Bernard Parish, La., Docket No. AB-290 (Sub-No. 323X) (STB served Dec. 17, 2013).

State of Indiana

Senate

Senator Michael Crider
200 W. Washington Street
Indianapolis, Indiana 46204-2785
State House (800) 382-9467

Homeland Security & Transportation, Chairman
Veterans Affairs & the Military, Ranking Member
Appropriations Committee
Rules & Legislative Procedure Committee
Health & Provider Services Committee

August 21, 2018

Indianapolis City-County Council
241 City-County Building
200 East Washington Street
Indianapolis, Indiana 46204

Dear Councilors,

I write you today regarding the Nickel Plate Railroad, which consist of 37 miles of track that run from Tipton to downtown Indianapolis. I have fielded inquiries from the public on this topic and would like to request your support in protecting the City of Indianapolis' interests in relation to the Nickel Plate Railroad.

Further, a constituent has notified me of the possibility that in the late 1990's, the City of Indianapolis joined the Hoosier Heritage Port Authority (Authority), which provides oversight and maintenance of the Nickel Plate Railroad, thereby obtaining the right to appoint two members to the Authority. My understanding is that the City of Indianapolis has never appointed members to the Authority. The future of the railroad is currently up in the air and awaiting a decision from the federal Surface Transportation Board, so this is a time-sensitive issue.

The City of Indianapolis needs to investigate its status as a member of the Authority, and if indeed a member, assert its right to representation within this body. Logan Day would serve well as the City Council appointed member to the Authority and, in my opinion, would represent Indianapolis well.

Sincerely,



Michael Crider
Indiana State Senator
Senate District 28