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Office of Proceedings
June 14, 2018
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Public Record

THOMAS F. MCFARLAND

June 13, 2018

By UPS overnight mail

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



Re: Ex Parte No. 749, *National Association of Reversionary Property Owners --
Petition for Rulemaking*

Dear Ms. Brown:

Hereby transmitted is an original and 15 copies of a Petition for Rulemaking for filing with the Board in the above referenced matter.

Very truly yours,

Tom McFarland

Thomas F. McFarland
*Attorney for National Association of
Reversionary Property Owners*

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FILED
June 14, 2018
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

NATIONAL ASSOCIATION OF)
REVERSIONARY PROPERTY OWNERS) EX PARTE
-- PETITION FOR RULEMAKING) NO. 749
)

PETITION FOR RULEMAKING



NATIONAL ASSOCIATION OF
REVERSIONARY PROPERTY OWNERS
Richard Welsh, Executive Director
227 Belleville Way NE PMB 719
Belleville, WA 98004

Petitioner

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Attorney for Petitioner

DATED: June 13, 2018

BEFORE THE
SURFACE TRANSPORTATION BOARD

NATIONAL ASSOCIATION OF	)	
REVERSIONARY PROPERTY OWNERS	)	EX PARTE
-- PETITION FOR RULEMAKING	)	NO. 749
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PETITION FOR RULEMAKING

Pursuant to 49 C.F.R. § 1110.2(b), NATIONAL ASSOCIATION OF REVERSIONARY PROPERTY OWNERS (NARPO) hereby respectfully petitions the Board to open a proceeding to issue rules identified below.

IDENTITY AND INTEREST OF NARPO

NARPO is a non-profit foundation dedicated to the preservation of private property rights. NARPO is well known to the Board by virtue of having participated in a number of prior proceedings in which private property rights would be affected. NARPO has a legitimate interest when railbanking and interim recreational trail use would unduly infringe upon private property rights.

RULES SOUGHT TO BE ISSUED

RULE 1

“The Board shall not grant more than six extensions of a trail use negotiating period, of no more than 180 days for each such extension.”

Argument in Support of Rule 1

The most recent impetus for NARPO’s request for issuance of Rule 1 is the Board’s decision in *Union Pacific Railroad Company -- Abandonment Exemption -- in Fulton and Peoria*

Counties, IL, 2018 WL 1965551 (STB Docket No. AB-33 [Sub-No. 262X], decision served April 25, 2018). In that proceeding, the trail use proponent sought an extension of the trail use negotiating period for the 20th time, spanning almost 10 years! In comments in that proceeding dated October 3, 2017, NARPO requested that the Board consider opening a rulemaking decision that would set a definite time frame for completing the trail use negotiating period in view of the blatantly excessive negotiating period involved in that case and in others. Instead, the Board gave the trail use proponent only the softest of taps on the knuckles, viz. 2018 WL 1965551 at *2:

However, in light of NARPO's concerns, and given that almost 10 years have elapsed since abandonment was authorized, IDNR will be directed to provide more detailed information in the event it seeks to extend the NITU negotiating period further. Specifically, in any future extension request, IDNR will be required to describe in detail (1) the progress of its negotiations with UP since the last extension was granted, (2) the specific actions still needed to be taken before an agreement can be reached (including when those actions are expected to be completed), and (3) when (assuming the parties' further negotiations are successful) it expects an agreement with UP to be finalized.

That Board inaction is wholly inappropriate. Unless industry-wide meaningful action is taken in the form of the requested Rule, trail use proponents will continue to receive these seemingly never-ending extensions of the trail use negotiating period that clearly constitute an abuse of orderly trail use procedure.

By no means is the foregoing case the only example of excessive extensions of the trail use negotiating period. In *CSX Transportation, Inc. -- Abandonment Exemption -- in McMinn County, TN*, (STB Docket No. AB-55 [Sub-No. 694X], decision served February 8, 2018), the Board extended the trail use negotiating period for the 18th time over a 9-year period!

In Soo Line Railroad -- Abandonment Exemption -- in Racine County, WI, 2018 WL 2724058 (STB Docket No. AB-57 [Sub-No. 61X], decision served June 5, 2018), the Board recently granted a 9th extension for the Wisconsin Department of Natural Resources to negotiate a trail use agreement! During a recent review over a recent 4-month period, NARPO discovered as many as 12 extensions of the trail use negotiating period!

In Union Pacific Railroad Company -- Abandonment Exemption -- in Franklin County, IA, (STB Docket No. AB-33 [Sub-No. 316X], decision served January 9, 2018), the Board granted a 10th extension of the trail use negotiating period. That procedural injustice was compounded because in all ten instances of extension, the Board waived the filing fee even though the trail proponent is not a public entity.

As is evident from the above discussion, the time has come to impose a reasonable limit on the number of extensions of the trail use negotiating period that will be granted by the Board. The Rule sought by NARPO strikes a reasonable balance between the time legitimately required for negotiation of a trail use agreement and abuse of trail use procedure that results from repeated extensions over a lengthy period.

RULE 2

“When the Board issues a Notice of Interim Trail Use or Abandonment (NITU), the rail carrier or trail use proponent who are parties to the NITU shall promptly send notice of issuance of the NITU to each landowner who owns land adjacent to the rail line right-of-way covered by the NITU.”

Argument in Support of Rule 2

Effective notice of an NITU is essential for property owners to adequately protect their interests. It is no longer unduly burdensome for trail use proponents or rail carriers who are parties to an NITU to send notice to all adjoining landowners. Practically every County in the United States now has their property records on computer. A trail use proponent can now easily search the county records, or have a title company do so, to obtain the names and addresses of all adjoining landowners. That being the case, *Federal Register*, or local newspaper notice of an NITU is no longer sufficient.

The need of property owners for adequate notice is illustrated in *CSX Transportation, Inc. -- Abandonment -- between Delphi and Frankfort, IN*, 2012 WL 4354809 (STB Docket No. AB-55 [Sub-No. 401], decision served September 24, 2012). In that case, the Board's predecessor, the Interstate Commerce Commission, approved abandonment of the involved rail line in 1991. *Id.*, 1991 WL 278351, decided December 31, 1991. More than 20 years later, the involved rail carrier agreed to convey a segment of the involved rail line and a bridge to a qualified trails group. *Id.* 2012 WL 4354809 at *1. The property owners adjacent to that rail line segment did not receive notice of that action even though it adversely affected them.

RULE 3

"Filing fees for filing and extensions of NITU's are payable by public entities and non-public entities alike."

Argument to Support Rule 3

Non-payment of filing fees for NITU extensions by public entities is burdening the Board and non-public entities. The \$481 filing fee for requests for extensions of an NITU is being

waived by the Board in over 90 percent of all such requests. In a recent 4-month study, there were 26 waivers of filing fees for public entities. In *Union Pacific Railroad Company -- Abandonment Exemption -- in Fulton and Peoria Counties, IL, supra*, 2018 WL 1965551, the applicable filing fee was waived for all 20 excessive requests for extension of the trail use negotiating period.

Those extensive waivers of filing fees unduly burden the Board because its staff incurs the same labor cost for an extension request by a public entity as it does for a non-public entity, but filing fees are not collected for the requests filed by public entities which, as noted, constitute the great majority of such requests.

The extensive waivers also burden non-public entities who request such extensions because their filing fees are higher than they otherwise would be to account for the numerous waivers for public entities.

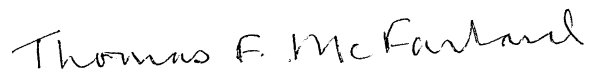
CONCLUSION AND REQUESTED RELIEF

WHEREFORE, for the reasons stated, the Board should open a proceeding to consider issuance of the Rules proposed herein.

Respectfully submitted,

NATIONAL ASSOCIATION OF
REVERSIONARY PROPERTY OWNERS
Richard Welsh, Executive Director
227 Belleville Way NE PMB 719
Belleville, WA 98004

Petitioner

A handwritten signature in black ink that reads "Thomas F. McFarland". The script is cursive and fluid.

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