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VIA ELECTRONIC FILING

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

Re: **Docket No. AB 1107X, *West Michigan Railroad Co. –
Abandonment Exemption – in Van Buren County, Mich.***

Dear Ms. Brown:

West Michigan Railroad Co. ("WMI") requests leave to depart from the Surface Transportation Board's (the "Board") rules at 49 C.F.R. § 1104.13 to – (a) supplement its response to the request by the Michigan Department of Natural Resources ("MDNR") for an extension of the negotiation period for trails use for sections of railroad line that are the subject of a notice of interim trails use ("NITU") previously issued by the Board in the above-referenced docket; and (b) respond to the two recent filings tendered by the National Association of Reversionary Property Owners ("NARPO").

WMI reiterates its willingness to continue trails negotiations with MDNR for both line segments, and therefore consents to MDNR's request for an extension of the NITU negotiating period. WMI joins MDNR in urging an order granting that extension promptly.

Consistent with its continued willingness negotiate trails use terms, WMI disagrees with NARPO's contention that the portion of the subject rail line extending between mileposts 26.5 and 30.2 is not appropriate for trails use negotiations. Although the portion of the subject railroad line between mileposts 25.1 and 26.5 has been abandoned and the underlying right-of-way has been sold, NARPO offers no precedent to support its assertion that the Board cannot sanction, and was wrong previously to facilitate, trails use arrangements for the line segment between mileposts 26.5 and 30.2 under the circumstances present here.

The Board has in the past granted extensions of the NITU in this proceeding, acknowledging the abandonment of the intervening segment between mileposts 25.1 and 26.5. In so doing, the Board has noted, correctly, that WMI transferred the underlying right-of-way for the segment between mileposts 25.1 and 26.5, post-abandonment consummation, to adjacent

FLETCHER & SIPPEL LLC

Ms. Cynthia T. Brown

December 10, 2018

Page 2

land owners, subject to a WMI-bargained-for right to acquire a sufficient property interest to reconnect the un-abandoned segments if WMI should choose in the future to restore common service to the line segment beyond milepost 26.5. The retained rights eliminate the least-desirable of alternative paths to WMI service restoration over the abandoned segment – invocation of railroad eminent domain under Michigan law. WMI’s retained right to acquire sufficient property interests to rebuild the line continues, and it is of critical strategic importance to WMI, as is WMI’s interest in the potential future reactivation of service east of milepost 25.1, including all or a portion of the segment between mileposts 26.5 and 30.2.

WMI takes exception to NARPO’s dual accusations that – (a) the Board was “not doing due diligence” in granting the April 15, 2014 NITU negotiating period extension¹ and those issued thereafter; and (b) MDNR – and, by extension, WMI – have duped the agency. The record bespeaks no attempt to “pull a fast one,” and the Board’s orders are well-reasoned, attentive, and thorough.² WMI knows of no precedent that would mandate invalidating an NITU for the mileposts 26.5 to 30.2 line segment, particularly under the circumstances here, and, again, NARPO has offered none.

WMI is aware of NARPO’s effort to have the Board change its rules to impose limits on NITU negotiation periods by restricting extensions, such as the one MDNR seeks here. That is the subject of the pending EP 749 (Sub-No. 1) rulemaking proceeding. NARPO’s recent filings, including its impermissible surreply of November 28, 2018,³ appear to be a vehicle to re-litigate EP 749 (Sub-No. 1) issues.

WMI remains committed to negotiating trails use arrangements with MDNR, and it has taken appropriate steps to warrant the continued application of the NITU to the segment of

¹ The Director’s Orders served in this proceeding on April 15 and June 6, 2014, address the abandonment of the segment between mileposts 25.1 and 26.5, noting, in each case, the protective steps that WMI had taken to preserve its ability to re-connect with the segment between mileposts 26.5 and 30.2 if and when circumstances warrant the restoration of common carrier service beyond milepost 25.1.

² WMI understands NARPO’s motivation to question the wisdom of certain agency orders, despite vehemently disagreeing with NARPO’s arguments. But WMI is troubled by the *ad hominem* nature of elements of NARPO’s filings here.

³ NARPO has of late become more active in matters delegated by statute to the Board, particularly in connection with the Board’s largely-ministerial function of granting NITU’s and extending associated trails use arrangement negotiation periods. In light of its apparent increase in activity before the agency, WMI respectfully urges NARPO to revisit the Board’s rules of procedure and govern itself accordingly when participating in pending matters.

FLETCHER & SIPPEL LLC

Ms. Cynthia T. Brown
December 10, 2018
Page 3

the line between mileposts 26.5 and 30.2. In keeping with the Board's April 15 and June 6, 2014 Director's Orders and past precedent,⁴ WMI respectfully requests favorable action on MDNR's still-pending extension request of November 8, 2014.

If you have any questions regarding this matter, please feel free to contact me at (312) 252-1518. Thank you for your assistance on this matter.

Respectfully submitted,



Audrey L. Brodrick
Attorney for West Michigan Railroad Co.

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cc: All Parties of Record

⁴ Cf., e.g., R.J. Corman Railroad Company/Pennsylvania Lines Inc. – Construction and Operation Exemption – In Clearfield County, Pa., Docket No. FD 35116, et al. (STB served May 21, 2012).