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January 28, 2019

247017

VIA ELECTRONIC 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
January 28, 2019
Part of
Public Record

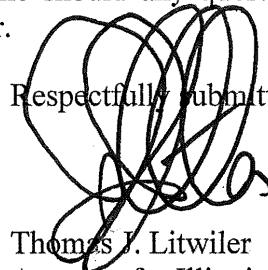
Re: **Docket No. NOR 42161**
Ameropan Oil Corporation v.
Canadian National Railway Company

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding is the **Motion of Illinois Central Railroad Company to Extend Time to Answer**, dated January 28, 2019.

Please feel free to contact me should any questions arise regarding this filing.
Thank you for your assistance on this matter.

Respectfully submitted,



Thomas J. Litwiler
Attorney for Illinois Central Railroad Company

TJL:tl

Attachment

cc: Thomas F. McFarland, Esq.

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. NOR 42161

AMEROPAN OIL CORPORATION

v.

CANADIAN NATIONAL RAILWAY COMPANY

**MOTION OF ILLINOIS CENTRAL RAILROAD COMPANY
TO EXTEND TIME TO ANSWER**

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**ATTORNEYS FOR ILLINOIS CENTRAL
RAILROAD COMPANY**

Dated: January 28, 2019

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. NOR 42161

AMEROPAN OIL CORPORATION
v.
CANADIAN NATIONAL RAILWAY COMPANY

**MOTION OF ILLINOIS CENTRAL RAILROAD COMPANY
TO EXTEND TIME TO ANSWER**

Illinois Central Railroad Company ("IC") requests that the Board toll the period for filing an answer to the Complaint of Ameropan Oil Corporation ("Ameropan") in this proceeding pending consideration and disposition of IC's concurrently-filed motion to dismiss the Complaint. As the motion to dismiss explains, Ameropan's Complaint addresses rail service that is provided pursuant to a rail transportation contract between the parties, and thus 49 U.S.C. § 10709(c)(1) deprives the Board of any jurisdiction to hear the matter.¹ In those circumstances, proceeding now with an answer and other substantive pleadings would serve no purpose and needlessly consume the resources of the agency and the parties.

49 C.F.R. § 1111.4(c) provides that an answer to a complaint should be filed within 20 days "or within such additional time as the Board may provide."² In similar

¹ Ameropan also incorrectly names Canadian National Railway Company ("CNR"), IC's ultimate corporate parent, rather than IC as the defendant in its Complaint. Rail service to Ameropan's facility in Chicago, Illinois is provided by IC; CNR is a Canadian corporation that does not own or operate rail lines in Illinois. Even if the Board possessed jurisdiction to entertain the matters in Ameropan's Complaint, there would be no basis to proceed with CNR as the putative defendant in a case involving rail service at an IC-served facility in Chicago. CNR has joined the concurrently-filed motion to dismiss herein and seeks to be dismissed as a party to this proceeding.

² Ameropan's Complaint was filed on December 17, 2018, and responsive pleadings were due January 7, 2019. 49 C.F.R. § 1104.7(b) provides that requests for extension of time generally should be filed (footnote continued . . .)

circumstances, the Board has provided that a party should submit an answer to a complaint within 20 days of a decision denying that party's motion to dismiss the complaint. *See Ocean Logistics Management, Inc. v. NPR, Inc. and Hold Cargo Systems, Inc.*, Docket No. WCC-102 (STB served Jul. 27, 1999), slip op. at 4. While the Board has on other occasions issued procedural orders indicating that answers and motions to dismiss should be filed at the same time, those cases did not involve a defendant's request for an extension and a pending motion to dismiss for lack of jurisdiction. Where – as here – the Board has no authority to hear the substance of the matter presented, it is appropriate to resolve the underlying jurisdictional issue without consuming resources of the parties and the Board on an answer and other substantive pleadings. This is also consistent with the customary practice in federal courts, where a defendant which has filed a motion to dismiss for lack of jurisdiction is not required to file an answer unless and until the motion is denied. Fed. R. Civ. P. 12(a)(4), (b)(1); *see, e.g., Platnick Bros., Inc. v. Norfolk & Western Ry. Co.*, 367 I.C.C. 782, 785 n.1 (1983) (noting that agency procedural determination is "consistent with procedure in the Federal courts as well.").

For the same reason, the requirements of 49 C.F.R. § 1111.10(a) for a meeting and report by the parties on discovery and procedural matters should be tolled until IC's motion to dismiss is decided. *Ocean Logistics*, slip op. at 3-4.

IC thus respectfully requests that the period for filing an answer to Ameropan's Complaint be tolled until 20 days after a Board decision disposing of IC's motion to dismiss filed

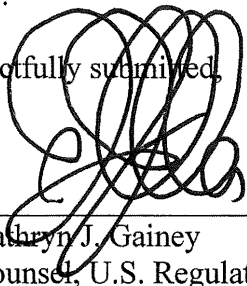
(continued . . .)

ten days before the relevant due date. IC is filing this motion as well as its motion to dismiss immediately upon the Board's resumption of operations after the partial federal government shutdown that began December 22, 2018.

concurrently herewith, and that the meeting and report dates contemplated by 49 C.F.R. § 1111.10(a) be tolled in a corresponding manner.

Respectfully submitted,

By:



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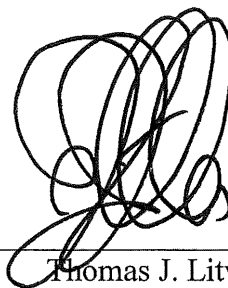
**ATTORNEYS FOR ILLINOIS CENTRAL
RAILROAD COMPANY**

Dated: January 28, 2019

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of January, 2019, a copy of the foregoing **Motion of Illinois Central Railroad Company to Extend Time to Answer** was served by electronic delivery and U.S. first class mail, postage prepaid, upon:

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mcfarland@aol.com

A handwritten signature in black ink, appearing to read 'Thomas J. Litwiler', is written over a horizontal line.

Thomas J. Litwiler