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November 14, 2017

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

Re: **Docket No. FD 36137**
City of Fishers, City of Noblesville, and Hamilton County, Indiana –
Petition for Partial Revocation of Exemption
Opposition to the Joint Petition of Indiana Transportation Museum
and US Rail Corporation to Late File Supplemental Comments

Dear Ms. Brown:

In what has become a too-common theme, the Cities of Fishers and Noblesville, Indiana, and Hamilton County, Indiana (collectively, the “Owners”) again urge the Surface Transportation Board (the “Board”) to uphold the integrity of its procedures. The Owners hereby oppose the November 13, 2017 “Joint Petition for Leave to File Supplemental Comments and Tendered Supplemental Comments” (the “Supplement”) of US Rail Corporation and the Indiana Transportation Museum (the “Joint Petitioners”), and they hereby oppose any future late filings by parties seeking to comment or to add to their previously-tendered comments.

There is no justification for the Joint Petitioners’ late-filing, and the Supplement must be rejected. Indiana Transportation Museum (“ITM”) had filed comments via different counsel prior to the October 12, 2017 comments deadline. Moreover, it had requested an extension of the comments schedule that was less generous than the one the Board granted on September 22, 2017 (the “September 22 Order”). If ITM had believed that the October 12 deadline was insufficient, it could have requested an additional extension well before now. ITM didn’t, and its attempt here to file comments a month after the deadline is beyond inexcusable.

The September 22 Order provided for an orderly disposition of the case, allowing adequate time for interested parties to submit comments and for the Owners to respond in turn. The Joint Petitioners claim that its month-late Supplement would not prejudice the Owners. That could not be more false. The late filing is deliberately prejudicial to the Owners, who were to be afforded the opportunity to respond to all comments at one time, rather than have to reply serially to trails use opponents who act as if they are free to ignore Board-prescribed deadlines.

FLETCHER & SIPPEL LLC

Ms. Cynthia T. Brown

November 14, 2017

Page 2

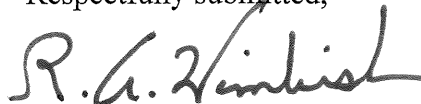
ITM claims to have lacked “sophisticated” railroad counsel until two weeks ago, although it was assisted by an attorney when it filed its comments in September. ITM does not explain why it waited to retain an attorney with agency experience until roughly 40 days after the Board’s September 22 Order. Again, if ITM needed time to secure regulatory counsel, why did it not request a further extension of comments deadline *before* it had passed? The Supplement must be rejected – it is grossly out-of-time, patently prejudicial, and offered in bad faith.

In keeping with the purpose and function of the September 22 Order, the Owners will not respond to the substance of the Supplement at this time. It would be unfair to expect the Owners to respond in serial fashion to late-filed comments, particularly to ones filed three weeks after the Owners themselves were to respond. Instead, the Board should enforce the September 22 Order, and reject the Supplement and other late filings so that the agency may reach a decision promptly on the merits of the Owners’ petition. In fact, a substantive response from the Owners would unduly legitimize late-filed comments such as the Supplement. Accordingly, the Owners request the right to respond substantively to the Supplement if, and only if, the Board were to grant the Joint Petitioners’ leave to late file.

There is a pattern here of blatant disregard for the Board’s orders reflected in the repeated attempts of trail use opponents to have the last word. Sadly, we probably have not seen the last of this. The Joint Petitioners and their ilk make a mockery of the September 22 Order. The Owners cannot be expected to respond substantively each time an interested party flouts the Board’s procedural order anew. Accordingly, the Owners hereby object in advance to any filing tendered hereafter that is intended to address the merits of the Owners’ petition for partial revocation or related relief. Finally, the Owners respectfully request that, *if the Board were to accept and consider any future late-tendered filings*, the Board – (1) advise the Owners that it is waving its October 12 comments deadline in whole or in part (over the Owners’ objection to such a waiver); and (2) permit the Owners to respond substantively to those collective late filings by a future date certain, at which time the record once again would “close.”

Should any questions arise regarding this filing, please feel free to contact me. Thank you for your assistance on this matter. Kind regards.

Respectfully submitted,



Robert A. Wimbish

Attorney for City of Fishers, Indiana, City of

Noblesville, Indiana, and Hamilton County, Indiana

RAW:dg

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CERTIFICATE OF SERVICE

I hereby certify that, on this 14th day of November, 2017, a copy of the foregoing **Opposition to the Joint Petition of Indiana Transportation Museum and US Rail Corporation to Late File Supplemental Comments** was served by U.S. Mail, first class postage prepaid, or by more expeditious means of delivery, upon all parties of record.

A handwritten signature in black ink, appearing to read "R. A. Wimbish", is written over a horizontal line.

Robert A. Wimbish