

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36137

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**CITY OF FISHERS, CITY OF NOBLESVILLE, AND HAMILTON COUNTY, INDIANA
– PETITION FOR PARTIAL REVOCATION OF EXEMPTION**

STB 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.**

**REPLY IN OPPOSITON TO MOTION FOR LEAVE TO
FILE REBUTTAL, AND RESPONSE TO REBUTTAL**

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HAMILTON COUNTY, INDIANA**

Dated: July 13, 2018

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The Cities of Fishers ("Fishers") and Noblesville, Indiana, and Hamilton County, Indiana, collectively as the "Owners," and Fishers in its individual capacity as proposed trails sponsor, hereby respond in opposition to the Motion for Leave to File Rebuttal (the "Motion") of US Rail Holdings, LLC ("USR"). If the Rebuttal is accepted over the Owners' objections, then the Owners hereby offer a Response. As is discussed below, USR's Rebuttal should be stricken as unnecessary and prejudicial in that USR seeks through it to have an opportunity to advance new arguments and legal theories in support of its efforts to accomplish the forced divestiture of the Nickel Plate Line by order of the Surface Transportation Board ("Board"). But if the Board elects to accept the Rebuttal, then, in light of the additional arguments and theories advanced

therein, the Owners respectfully submit that they should be afforded to respond following discussion of the merits of USR's Motion.

BACKGROUND

The facts of this case are well-documented in the Board's May 31, 2018 decision and in the filings presented thereafter by USR and the Owners. Suffice here to add that, in response to Fishers' efforts to convert the portion of the Nickel Plate Line within the city's jurisdiction to trails use, USR has come forward insisting that, instead, the Board must order the Owners to sell the line (presumably in its entirety, or at least a portion that includes the section of the line traversing Fishers) to USR. Although USR admits that it is not sure what regulatory process accomplishes its forced divestiture objectives, it argues that the Board must articulate a path under which USR will be made to be the *owner* of the Nickel Plate Line. It is important to keep in mind that what USR wants and expects is Nickel Plate Line ownership – not just a right to assume common carrier operations over it.

USR theorizes that there are three possible paths by which the Owners could be made to sell the line: (1) via feeder line application ("FLA") pursuant to 49 U.S.C. § 10907 and corresponding regulations at 49 C.F.R. Part 1151; (2) by way of an offer of financial assistance ("OFA") under 49 U.S.C. § 10904 and corresponding regulations at 49 C.F.R. § 1152.27 (coupled with an exemption to permit an OFA roughly 27 years after the statutory deadline has passed); or (3) as an extension of dispossessing the Owners the right and prerogative to reactivate service on the line at such time as all or portions of it are placed in interim trails use status.

It is important to remember that USR has been linked to those advocating for excursion train operations, and probably still is working with them. Earlier in the FD 36137 proceeding, USR coordinated its efforts to pursue a sale of the Nickel Plate Line via the OFA

process with the Indiana Transportation Museum (“ITM”),¹ the past excursion train operator on the line, via joint comments filed on November 13, 2017. USR does not deny that its rail line acquisition aspirations involve the restoration of excursion train operations, contending, on the one hand, that it is not attempting to “turn the Line over to a passenger excursion group” (an interesting turn of phrase), and arguing, on the other, that installing “a successful passenger service group on the Line with USR [would be] a positive.”² USR’s efforts reveal an intrastate passenger excursion train focus, and very likely USR is covering for passenger train proponents, the primary impetus for the current spate of filings. Without the forced sale of the Nickel Plate Line, resumed excursion train service over the whole line would be far from assured,³ assuming that USR were to be granted a non-ownership right to restore the line to operating condition and commence freight common carrier service over it.

ARGUMENT

The central issue arising under USR’s June 11, 2018 Motion for Clarification is whether any path exists under which the Board could order the divestiture of the Nickel Plate Line. In that filing, USR argued, alternatively, that the Board could permit the immediate commencement of an FLA proceeding (under the theory that the Owners, while non-carriers,

¹ The urgency of USR’s efforts is notable, and may be explained by the extremis that ITM now finds itself in. ITM unsuccessfully had sought to enjoin the City of Noblesville, the City of Noblesville Parks and Recreation Board, and the Hoosier Heritage Port Authority from evicting it from its formerly leased premises in Noblesville. In its June 28, 2018 Order, the Hamilton County Court dismissed the ITM’s requested relief and ordered the ITM to immediately vacate the premises and remove all structures and equipment from the premises *by or before July 12, 2018*. (Hamilton Circuit Court, Cause No. 29C01-1805-PL-004434) (emphasis added).

² Rebuttal at 2-3.

³ Evidently, excursion train advocates are not content with a passenger train operation over a portion of the Nickel Plate Line. The Owners have agreed to permit the Nickel Plate Heritage Group to operate excursion trains over a portion of the line from Noblesville northward to Atlanta, Indiana.

nevertheless are subject to regulation under section 10907), or that the Board should revoke the Owners' exemption from section 10907 to permit an immediate FLA proceeding. While USR may have hinted at an OFA process as a backup plan in its Motion for Clarification, it did not argue that such a process was available, or should be made available, until the Rebuttal.

The Owners' June 25, 2018 Reply was clear. The Owners are non-carriers, and thus are not subject to section 10907 or *any other* provision of Subtitle IV of Title 49. They also pointed out that, while Common Carrier Status⁴ would be fundamentally undercut by revocation of their exempted status, it was doubtful that a USR-initiated FLA would, or could, succeed if the Board nevertheless revoked the Owner's non-carrier status.

There is nothing in the Reply to warrant acceptance of USR's July 3 filings, but, if the Board concludes that a more complete record will aid in its decision-making, then, if anything, this second round of filings beginning with the Rebuttal reinforces the proposition that the Board should not facilitate USR's efforts to wrest the Nickel Plate Line from the public entities that have owned it for more than 20 years.

A. The Board should not entertain USR's Rebuttal.

USR asks the Board to rule that, where a public entity has acquired a railroad line following abandonment authorization (but prior to abandonment consummation), that public body is subject to Board-mandated divestiture should a private entity allege an interest in freight service. USR then asks that the Board identify the path for divestiture, theorizing that the most logical approach would be an FLA. In turn, the Owners responded that no such path exists, and that, even if one did, it is far too early to assume that USR could succeed in forcing a sale.

⁴ Common Carrier Status of States, State Agencies & Instrumentalities, & Political Subdivisions ("Common Carrier Status"), 363 I.C.C. 132 (1980), aff'd sub nom. Simmons v. ICC, 697 F.2d 326 (D.C. Cir. 1982).

Acknowledging that 49 C.F.R. § 1104.13(c) bars a reply to a reply, USR argues that it should be allowed to respond to the Owners' Reply in the interest of "some further explanation," and to allow USR to "provide additional insight" and to "clarify the public policy" behind the regulatory and legal constructs at issue.⁵ The Board needs no additional "explanation" from the parties, and it certainly does not need instruction on the public policy considerations underlying this case. The Rebuttal is largely a re-hashing and bolstering of USR's original arguments, all while articulating new approaches and legal theories to support its line purchase aspirations. For these reasons, USR's Motion should be denied.

B. The Owners should not be subject to Board-mandated divestiture.

If, however, the Board were to accept the Rebuttal, then, in light of the new arguments and legal theories advanced therein, the Owners should be permitted to respond, and, in so doing, address the various factual and legal misstatements contained in the Rebuttal.

1. USR seeks Board-mandated divestiture of the line because it is critical to its overarching excursion train objectives.

One way or another, the Nickel Plate Line must be sold to USR, or so USR's Motion for Clarification and Rebuttal presume. Why a line sale? Assuming for the sake of argument that the Owners' non-carrier status were to be revoked (it hasn't been and shouldn't be), and assuming further a legitimate and reasonable demand for rail service over the line actually were emerging (it hasn't), it does not follow that rail line divestiture must occur.

If the Board were to repudiate the de-regulatory principles of Common Carrier Status and subject the Owners to a freight service obligation, it would not necessarily follow that the Owners would breach that newfound obligation going forward to trigger feeder line considerations. Or if it were true that the principles of Common Carrier Status are offended

⁵ Motion at 1.

when a public line-owner chooses not to arrange for the reactivation of that line for freight service (USR offers no precedent whatsoever to support that proposition), then compelling the owner either to assume rail operation itself or via contract operator under the modified certificate procedures at 49 C.F.R. part 1150, subpart C, is as plausible as STB-ordered divestiture is.

USR's repeated and urgent calls for an order for the *immediate sale* of the Nickel Plate Line reveal that USR is after more than an opportunity to assume freight operations. USR is attempting to conceal that its divestiture plans are essential to its non-common carrier objectives. USR is most likely the proxy for excursion train proponents with whom it has aligned itself since at least last November. Even if USR could find a way to persuade the Board to hold the Owners to a currently non-existent common carrier obligation, the Owners, as USR well knows, could fulfill that obligation by entrusting the line to a third party operator, such as USR, as a modified certificate operator. Of course, such an arrangement would not ensure that excursion trains would run over the entire line again

In defense of supplementing hoped-for freight revenues with passenger train receipts as an acceptable model justifying a force sale of the line, USR offers two cases under which the Board arguably endorsed excursion train operations (and revenues) as a factor in determining an OFA offeror's *bona fides* – Denver & Rio Grande Railway Historical Foundation – Adverse Abandonment – In Mineral County, Co., Docket No. AB-1014 (STB served May 23, 2008) (“Denver & Rio Grande”);⁶ and Trinidad Railway, Inc. – Abandonment Exemption – in Las Animas County, CO., AB-573X, et al. (STB served Aug. 13, 2001) (“Trinidad”). Of course,

⁶ The Owners are sure that USR's reliance upon Denver & Rio Grande is in error. That case involved the City of Creede's successful efforts to abandon a portion of a line previously acquired by a museum operation via a disputed OFA process. Perhaps USR meant to point to an earlier phase in the life of the subject historical foundation, which, in another proceeding, acquired the so-called Creede Branch through an OFA despite substantial local opposition.

in this case, USR did not argue for a forced taking under the OFA statute until its Rebuttal filing, and it acknowledges that it would require an after-the-fact, 27-year extension of the statutory OFA deadline (by way of an exemption) to pursue an OFA in the first place (assuming the Board also were to agree that the Owners could be made subject to the OFA process in the first place). USR nowhere explains how these OFA cases would be controlling in the context of an FLA, the preferred route for USR. And both cases serve as cautionary tales, the excursion train-motivated Trinidad OFA ultimately failed, and the OFA acquirer involved in Denver & Rio Grande appears to have undertaken little, if any, common carrier service in the years since.

USR's efforts are excursion train-driven, and, with the exception of the aforementioned Noblesville-Atlanta excursion train operation that the Owners already have agreed to, they will fail absent divestiture. USR's laser focus on a line sale has little, if anything, to do with common carrier service, but everything to do with accomplishing the goals of excursion train advocates. And that is why the Board must recognize USR's efforts for what they are and put an end to this charade.

2. USR's Motion for Clarification and Rebuttal are not a feeder line application or an offer of financial assistance.

USR's filings confuse the hoped-for path with the destination. That is, USR argues that the Board should "endorse" a procedure by which USR may purchase of the Nickel Plate Line, but then it mistakenly treats its Motion for Clarification and Rebuttal as if they constitute the sum and substance of an FLA. For example, USR ends its Motion for Clarification by requesting that the Board "permit USR to purchase and operate the Line,"⁷ rather than requesting a Board determination as to whether any path to that end. USR later on contends that

⁷ Motion for Clarification at 13.

a Board-ordered sale of the line (to USR, of course) is “inevitable.”⁸ USR also asks the Board to explain to it “how it should purchase this rail line,”⁹ again as if a sale to USR is an inevitability, adding, in conclusory fashion, that “it is clear that USR satisfies the public convenience and necessity requirement under section 10907(b)(1)(A)(i).”¹⁰

USR has not filed an FLA or an OFA (the only two processes of which the Owners are aware that could potentially result in a forced sale), and its alternative option of pursuing divestiture of the line out of interim trails use is not yet ripe for consideration. Nevertheless, rather impertinently, USR insists that some of the merits elements of a prospective FLA or OFA are now settled, claiming that, because the Owners did not dispute USR’s financial *bona fides*, USR “has established as undisputed facts that it is ready to purchase and operate the line and has the financial wherewithal to do so.”¹¹ That is decidedly untrue. The Owners did not respond to USR’s claims of financial responsibility because such considerations are irrelevant in the absence of a threshold Board ruling as to whether or not the Owners could be made subject to either an FLA or OFA. Should the Owners be found to be subject to either regulatory process despite their non-carrier status, the Owners will respond to USR’s alleged financial responsibility once a proper notice of intent to file an OFA is tendered or an FLA is filed, but not now.

3. The Owners do not “deserve” to have the line taken from them, and *Common Carrier Status* neither provides for the forced sales of publicly-owned lines nor does it contemplate such extreme agency intervention.

The Nickel Plate Line was authorized for abandonment in 1991, and has been devoid of all freight traffic for roughly 15 years. The Owners could have at any time effectuated

⁸ Motion for Leave to File Rebuttal at 2.

⁹ Rebuttal at 1.

¹⁰ Id. at 9.

¹¹ Id. at 2.

full legal abandonment of the line and removed the track, *and still can*, all without requiring the advance approval of the Board, but they have not. Moreover, at no time during the course of the line's freight service inactivity do the Owners recall any shipper or railroad (including USR) approaching them with a plan to reactivate the line for common carrier service, and no one in the FD 36137 has alleged otherwise. But that has not stopped USR from accusing the Owners of wrongdoing, and claiming that the Owners deserve to have their property taken.

USR suggests that the Owners have acted improperly in response to a recently-feigned interest in freight service. For its part, USR has not shared its rail service plans with the Owners, and it has withheld the "market evidence" of its "financial case for freight service."¹² Nevertheless, USR would like the Board to believe that, even though the Owners are non-carriers, they have breached an alleged public trust vested in them under Common Carrier Status. In fact, the Owners have violated no public policy in the course of line ownership or in their decision to pursue interim trails use arrangements after years of inactivity.

USR irresponsibly and falsely accuses the Owners of bad faith and bad actions, insisting, that they "never really fulfilled the purpose of Common Carrier Status, which was to continue service on this endangered line,"¹³ all while providing no legal citations to support that proposition. In this same irresponsible vein, USR accuses the Owners of "all but abandoning"

¹² Id. at 3.

¹³ Id. at 5. Among the more outrageous and unsupported legal assertions in the Rebuttal is this: "Permitting application of section 10907 here squarely fits within the purpose behind Common Carrier Status." Id. at 7. In reality, Common Carrier Status is fundamentally deregulatory in nature, promising public entities freedom from Board regulation to encourage the purchase of lines authorized for abandonment. Yet USR argues that, to the contrary, public entities that might have thought they would be free from Board regulation are, in fact, subject to the most extreme form of regulation – the forced taking of their assets via an FLA process to which non-carriers are, by definition, not subject.

the long-inactive Nickel Plate Line,¹⁴ suggesting line inactivity (a product of insufficient and non-existent interest in freight service) reflects the Owners' malfeasance. Contending that the future disposition of the line is not the Owners' prerogative – despite the clear indication in Common Carrier Status that it is – but the Board's, USR insists, without a single supporting legal citation, that Common Carrier Status actually contemplates forced line sales away from public owners that do not restore service.¹⁵ USR's wild, unsubstantiated, and irresponsible accusations culminate in USR suggesting that the Owners are either "bad actors" or financially incapable, and thus deserving of Board intervention and dispossession under section 10907.¹⁶

In truth, the Owners are neither bad actors nor financially incapable, and Common Carrier Status does not contemplate the forced taking of publicly-owned lines for reasons set forth in the Owners' June 25 Reply; if anything, that case stands for the proposition that the public owner of a rail line acquired after it has been authorized for abandonment is entrusted with the discretion to reactivate the line (or not) and to salvage the track (or not), all free from Board regulation. The Owners are legitimately exercising their discretion, after due deliberation, about how best to deploy a long-unused rail asset to the benefit of the public interest, which happens to include a Noblesville-Atlanta passenger train operation.

4. USR's new, alternative argument for a forced sale under the OFA procedures is absurd.

USR believes its best hope for accomplishing the forced sale of the Nickel Plate Line is by way of an FLA. But, for the first time on Rebuttal, USR argues that, if it is not

¹⁴ Id at 7.

¹⁵ Id.

¹⁶ Id at 10.

permitted to proceed with an FLA, the Board should sanction its efforts under the OFA process.¹⁷ As USR recognizes, however, OFAs are subject to a strict 120-day statutory deadline at 49 U.S.C. § 10904(c).¹⁸ In an attempt to overcome this statutory restriction, USR argues that the Board should grant it a 27-year deadline extension. The idea of a *nunc pro tunc* exemption to cover an OFA filing made 27 years too late offends basic concepts of administrative finality,¹⁹ to say nothing of the offense to unmistakable Congressional intent to wind up OFA processes swiftly in the course of an active abandonment proceeding.²⁰ And while the Board has in exceptional circumstances granted an exemption to extend OFA deadlines in certain active abandonment cases, such extensions have been modest, amounting to a number of days, not years.²¹ Thus, while a 27-day extension of the applicable deadline might be permissible under

¹⁷ Rebuttal at 10. USR argued in its Motion for Clarification that it met the financial responsibility standards applicable to an OFA, but did not argue that it should be permitted to pursue purchase of the line under section 10904.

¹⁸ OFAs are now also subject to more rigorous Board examination to better ensure that the offerors are financially responsible and to prevent against abuse of the Board's regulatory processes. See Offers of Financial Assistance, Docket No. EP 729 (STB served Jun. 29, 2017) (revising the Board's OFA regulations to prevent against abuse).

¹⁹ See, e.g., Union Pacific Railroad Company – Abandonment Exemption – In Bonne Terre, Mo., Docket No. AB-33 (Sub-No. 164X) (STB served Oct. 19, 2015) slip op. at 4-5; Grenada Railway, LLC – Acquisition and Operation Exemption – Illinois Central Railroad Company and Waterloo Railway Company, Docket No. FD 35247 (STB served Nov. 13, 2013) slip op. at 2 (citing to Fla. Inst. of Tech. v. FCC, 952 F.2d 549, 554 (D.C. Cir. 1992) in support of the proposition that the public has an interest in administrative finality).

²⁰ See, e.g., Offers of Financial Assistance, Docket No. EP 729 (STB served Sep. 30, 2016) (in proposing to modify its OFA rules, the Board observed Congressional intent that the OFA “process should move quickly so that carriers can know where things stand”); Union Pacific Railroad Company – Abandonment – Wallace Branch, 9 I.C.C.2d 496, 512 (1993) (Commissioner Phillips commenting) (“Clearly, it is unfair . . . and contrary to Congressional intent to hold the [abandonment and corresponding OFA] process open indefinitely”).

²¹ In support of an exemption, USR relies on two past cases. In the first – Indiana Southwestern Railway Co. – Abandonment Exemption – In Posey and Vanderburgh Counties, Ind., Docket No. AB-1065X (STB served Apr. 8, 2011) – the Board granted a 45-day extension of an abandonment's effective date, given the “novelty” of the Board's decision finding the offeror,

exceptional circumstances, a 27-year extension is beyond the pale²² and the Board should put an end to USR's nonsensical OFA aspirations.

5. USR's asserted last-ditch plan to take the Nickel Plate Line via forced transfer of the Owners' reactivation right once trails use commences is not ripe for consideration here, and is a dubious proposition in any case.

USR contends that it should be permitted to purchase the line via FLA or OFA process, because USR will acquire line ultimately, even if in the course of trails use. According to USR, if all else fails, then, in USR's eyes, it must be able to purchase the line by wresting the Owners' reactivation right from them. It notes, however, that to succeed in its efforts, the Board must prohibit the Owners from undertaking track salvage in the interim.²³

The first problem with USR's argument is that there is no NITU as yet in place, though a request for issuance of an NITU is pending. As such, the issue of reactivation rights is unripe for Board consideration. Second, USR has not presented, and would be unable to present, a case for economically viable freight service to support a forced taking of the Owners' reactivation right. And third, if the Board agrees that the Owners are, and will remain, exempt from the agency's FLA provisions, and that USR's efforts at an OFA are over a quarter-century

a municipality, not to be financially responsible (although it does not appear that this discussion is located at page 5 of that decision, as USR suggests). The second – Norfolk Southern Railway Company – Abandonment Exemption – Between Red Bay & Haleyville, AL in Franklin, Marion & Winston Counties, AL – in the Matter of a Request to Set Terms and Conditions, Docket No. AB-290 (Sub-No. 123X) (ICC served Sep. 23, 1993) – involved a 60-day extension of time in the course of a timely-filed OFA to permit the parties to better develop rail line valuation evidence needed for the Interstate Commerce Commission to reach a decision on compensation terms.

²² USR's grasping drives it to the starkest of illogic, suggesting that Board-authorized trails use is invalid should anyone, at any time (apparently), seek to acquire the line via OFA. Rebuttal at 5 (asserting a "predicament" where an offeror seeks to disrupt a trails use arrangement 27 years after an OFA could have been accepted).

²³ Rebuttal at 11.

too late, it is unlikely that the Board would sanction a taking as an outgrowth of interim trails use, given the non-carrier status of the Owners who would hold the reactivation right.

Should USR be denied its line purchase aspirations via FLA and OFA, and should USR nevertheless press for a line sale via interim trails use processes later on, the Owners state in advance of any such development that they will object to USR's continuing efforts at a taking. And if the Owners find that the Board may be amenable to sanctioning the forced sale of the line under interim trails use, then the Owners would have to consider whether to simply effectuate abandonment of the line now, as they are entitled to do, and then go about preserving the corridor through applicable state law processes instead. In short, should USR press the issue in the course of interim trails use, its self-assuredness that Board processes ultimately will result in the sale of the line to it is misplaced – such effort could instead result in outright abandonment.

USR's envisions a forced sale, and not merely the transfer of a reactivation right – a USR legal leap of faith. USR seems unable to grasp the crucial distinction between transfer of the reactivation right and transfer of ownership. Under USR's trails use idea, the Board first would have to agree as a threshold matter that the Owners could be subject to a forced transfer of its reactivation rights, and, if so, then determine whether circumstances support a forced transfer that reactivation right. But it is not clear, if USR were to be awarded a reactivation right, that the Owners would be forced to sell the line. Instead, the Owners may be entitled to retain ownership, holding the right to negotiate terms and conditions for the restoration of rail service under a USR operating regime. Applicable precedent concerning reactivation rights does not establish what form a third-party reactivation would take, and whether it could entail railroad asset divestiture as

USR has conceived of it or something less than that. The only such efforts at an adverse taking of reactivation rights have failed.²⁴

Once again, it is becomes apparent that a line sale is essential to USR's concealed objective of delivering a last-second win for rail excursion proponents. If USR were to be awarded a right to operate the line (short of ownership, which would continue to reside in the Owners), then USR and its passenger excursion allies know that the Owners are unlikely to permit passenger train operations. As such, the focus of USR's efforts belie the fact that it seeks the Nickel Plate Line not for common carrier service purposes, which it arguably might be able to accomplish short of the extreme relief of a forced sale, but rather to accomplish for excursion train proponents what they have been after from the outset.

CONCLUSION

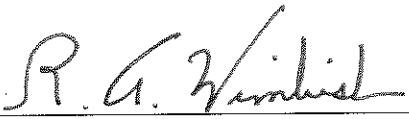
USR's Rebuttal is unwarranted, introduces new arguments and legal theories, and, accordingly, should be rejected. If it is not rejected, then the Board must "clarify" that there is no path for the forced taking of the Owner's railroad line. To begin with, the owners are non-carriers who are not subject to any of the forced divestiture maneuvers that USR is advocating, and, even assuming for the sake of argument that the Board were to revoke the Owners' non-carrier status and subject the Owners to regulation despite the unmistakable de-regulatory assurances of Common Carrier Status, USR would not be guaranteed the sale of the line. It is rather apparent, despite USR's efforts to conceal it, that USR's forced line sale proposal is not driven by valid interstate commerce considerations, but is instead motivated by excursion train interests with which it has been allied. For all of these reasons, the Board must make clear that,

²⁴ Ballard Terminal Railroad Company, L.L.C. – Acquisition and Operation Exemption – Woodinville Subdivision, Docket No. FD 35731, et al. (STB served Dec. 30, 2014); GNP Railway, Inc. – Acquisition and Operation Exemption – Redmond Spur and Woodinville Subdivision, Docket No. FD 35407, et al. (STB served Jun. 15, 2011).

under the facts here, there is no path under Board-administered law and regulation by which the Owners can be forced to sell the Nickel Plate Line to USR.

The Board should also deny USR's stay request for the reasons set forth herein and in the Owners' June 25 Reply and promptly issue the notice of interim trails use that Fishers has requested (and that the Owners have endorsed).

Respectfully submitted,

By: 

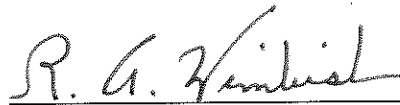
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**ATTORNEY FOR CITY OF FISHERS, CITY
OF NOBLESVILLE, AND HAMILTON
COUNTY, INDIANA**

Dated: July 13, 2018

CERTIFICATE OF SERVICE

I hereby certify that, on this 13th day of July, 2018, a copy of the foregoing **Reply in Opposition to Motion for Leave to File Rebuttal and Response to Rebuttal** 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 dark ink, appearing to read "R. A. Wimbish", is written over a horizontal line.

Robert A. Wimbish