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July 15, 2019

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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

ENTERED
Office of Proceedings
July 15, 2019
Part of
Public Record

Re: 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.

Dear Ms. Brown:

The City of Fishers, Indiana (“Fishers”), the City of Noblesville, Indiana (“Noblesville”), and Hamilton County, Indiana (collectively the “Owners”) hereby respond to – (1) a letter filing (the “Local Petition”) submitted in this proceeding on June 24, 2019, by a group designated by the Surface Transportation Board (the “Board”) as certain “Residents of Fishers, Ind., Noblesville, Ind., Marion County, Ind., And Hamilton County, Ind.,” and (2) a letter filing (the “Siefert Filing”) tendered on July 1, 2019, by Tina Siefert, an individual resident of Fishers. It appears that the Local Petition and the Seifert Filing are intended to encourage the Board to grant a pending motion for preliminary injunction that US Rail Holdings, LLC (“USR”) filed on March 29, 2019, seeking to enjoin the owners from arranging for the removal of sections of track along the so-called Nickel Plate Line. As explained herein, there has been, and remains, no basis for the Board to enjoin track removal or to block the Owners from negotiating interim trails use arrangements with the intended trail sponsors – Fishers, Noblesville, and the City of Indianapolis, Indiana (“Indianapolis”).

The individuals behind the Local Petition and the Seifert Filing are acting out of an apparent interest preserving the Nickel Plate Line for the possible restoration of excursion train operations. None of those behind these filings appears to be a prospective shipper of freight by rail. Moreover, the filings are of questionable procedural validity, as both appear most accurately to be replies in support of USR’s two-and-a-half-month-old injunction petition.

The Local Petition, for its part, points to allegedly new events or circumstances – specifically, the Owner’s efforts to arrange for removal of track in anticipation of trails use

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arrangements by way of a bidding process under which a track salvage contractor would be selected and put to work to remove trackage. But this is nothing new. Track removal has been foreseeable, indeed imminent, since December 21, 2019, when the Board issued notices of interim trails use (“NITU”) for portions of the line at the separate requests of Fishers, Noblesville, and Indianapolis. As of late 2018, the Owners could have commenced track removal for portions of the line subject to the NITUs at any time without further notice.

Additionally, the Local Petition mischaracterizes language in the background section of the Owners’ April 22, 2019 reply (the “Owners’ Reply”) in opposition to USR’s injunction request. The Local Petition claims, incorrectly, that in advising the Board that salvage activity – although contemplated in the “near future” – had not yet commenced, the Owners implied that the Board need not act on USR’s injunction petition. The passage in question from the Owners’ Reply was nothing more than a contemporaneous statement of fact – that track salvage had not yet commenced. If track salvage were not imminent, the Owners’ could have addressed that in discussing the merits of USR’s injunction request, but they did not. As such, recent efforts to move ahead with track removal are hardly unexpected, and, there remains no basis for the Board to intervene to block track removal in the ordinary course, as the Owners have explained in its responses to USR’s multiple injunction requests in this proceeding.

The Seifert Filing contends that the Board must act to protect against alleged abuse of the agency’s interim trails use procedures. That filing notes that Indianapolis, a prospective trail sponsor, may be considering arrangements with the Indiana Department of Transportation (“INDOT”) that could thwart future rail service reactivation. Contrary the allegations, however, the Owners and Indianapolis are not conspiring to thwart the possible future restoration of rail service. Indianapolis is considering whether it could agree to the modification or elimination of overpasses for Interstate 465 and 69 Northeast to reduce INDOT’s construction costs. But, as the Siefert Filing materials indicate, this is merely a concept, not an agreed-upon plan of action, nor one that the Owners have fully considered in the context of a trails use agreement (and, thus, not a proposal to which the Owners have consented). Furthermore, it is unclear whether the highway modification concept would render rail service reactivation impossible if implemented. And, finally, were Ms. Siefert convinced that an agreed-upon highway plan would unduly restrict or would prohibit the restoration of freight service on the corridor, then the appropriate step would be to obtain a ruling on that specific issue from the Board¹ – not to seek a sweeping, over-expansive track removal injunction.

The Owners anticipate that, because substantial portions of Nickel Plate Line trackage currently subject to NITUs may soon be removed, there may be yet more expressions of

¹ Cf. City of Woodinville, Wash. – Petition for Declaratory Order, Docket No. 35905 (STB served Oct. 7, 2015), reconsideration granted in part (served Oct. 7, 2016).

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concern/interest/support for USR's injunction request tendered to the Board by individuals interested in preserving the corridor for excursion train operations, all of which seek to obstruct track removal efforts preliminary to the completion and execution of trails use arrangements. The Owners do not intend to respond to each and every such filing, but note here that all such opposition efforts are designed for one unwarranted, legally-unsupported purpose – to force the Owners to retain unused railroad track that has no meaningful, remunerative freight shipment prospects for the hoped-for purpose of resuming passenger excursion trains at some point in the future.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "R.A. Wimbish", written in a cursive style.

Robert A. Wimbish

Counsel for the City of Fishers, Indiana; City of
Noblesville, Indiana; and Hamilton County, Indiana

cc: All parties of record