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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36186 (Sub-No. 1)

TEXAS RAILWAY EXCHANGE LLC
– CONSTRUCTION AND OPERATION EXEMPTION –
GALVESTON COUNTY, TX – PETITION FOR ISSUANCE
OF A CROSSING ORDER PURSUANT TO 49 U.S.C. § 10901(D)

UNION PACIFIC RAILROAD COMPANY’S MOTION TO STRIKE

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March 4, 2019

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The Board’s rules are clear: “A reply to a reply is not permitted.” 49 C.F.R. § 1104.13(c). TREX’s February 28, 2019 “TREX Response to Union Pacific’s Reply to TREX’s Petition for Institution of Modified Procedural Schedule” plainly violates the Board’s rules and should be disregarded.

TREX’s impermissible submission states no surprise over anything contained in Union Pacific’s Reply, including Union Pacific’s proposed procedural schedule based on the recent, most analogous crossing case to come before the Board. TREX simply wants to have the last word in rearguing its position. While TREX claims to embrace the cause of expedited action, its unauthorized filing only serves to multiply litigation and unnecessarily tax the Board’s time and resources.

To expedite action and simplify the process, TREX could have tried to negotiate a schedule with Union Pacific. At the very least, it would have learned Union Pacific’s position.¹ Instead, TREX chose a needlessly more complicated and inefficient course: it elected to spring

¹ As TREX observes, the procedural schedule in *Holrail*, Union Pacific’s model for our proposed schedule, was itself a negotiated schedule. The negotiated nature of that schedule makes it an even more appropriate model for this proceeding.

its crossing and scheduling petitions on Union Pacific very late on a Friday afternoon,² only to use our refusal to capitulate immediately to its proposed schedule as an excuse to supplement its petition and have the final word.

Accordingly, Union Pacific moves the Board to strike TREX's "Response," as in plain violation of the Board's rules. If the Board denies our motion, Union Pacific respectfully requests the Board grant us time to file a reply, in accordance with 49 C.F.R. § 1104.13(a).

Respectfully submitted,

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March 4, 2019

² The petitions were received in the mailroom of Union Pacific's counsel at 6:17 pm on Friday, February 22, 2019.

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of March, 2019, I caused a copy of the foregoing document to be served by email on:

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/s/ Michael L. Rosenthal
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