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February 28, 2013

VIA E-MAIL

Phillis Johnson-Ball
 Office of Environmental Analysis
 Surface Transportation Board
 395 E Street, SW
 Washington, DC 20423-0001

RE: *Alabama Railroad Co. – Abandonment Exemption – In Monroe County, AL*, STB
 Docket No. AB-463 (Sub-No. 1X)

Dear Ms. Johnson-Ball:

Thank you for contacting me to discuss recent correspondence addressed to the Board's Office of Environmental Analysis ("OEA") by the Alabama Department of Transportation ("ALDOT") concerning the above-referenced abandonment proceeding. It is my understanding that ALDOT contacted OEA by letter dated February 20, 2013, in response to the recently-circulated consolidated environmental and historic report ("E&HR") which was sent to various "consulting agencies" in anticipation of a soon-to-be-filed abandonment notice of exemption in the above docket. I write now on behalf of the Alabama Railroad Co. ("ALAB") in response to the aforementioned ALDOT letter.¹

As I read it, ALDOT takes issue with two items discussed in the E&HR. First, ALDOT indicates that ALAB has provided "erroneous information" concerning the number of public at-grade crossings along the rail line slated for abandonment. Second, ALDOT's letter includes a remark concerning the allocation of financial responsibility for both the removal of the public grade crossings along the line segment, and the restoration of the public roadways once crossing material is removed. Both of ALDOT's discussion points warrant a response as you have invited us to do.

In the E&HR, ALAB stated that the abandonment would result in the elimination of 12 at-grade rail-highway crossings, including 5 private crossings and 7 public crossings.² ALDOT has pointed out that ALAB is incorrect about the number of public at-grade crossings, although, as it turns out, ALDOT's comment is itself misleading. ALDOT states that there are "9 public crossings" along the

¹ ALAB was not aware of ALDOT's letter until you brought it to our attention, which we appreciate.

² E&HR at 2.

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line ALAB proposes to abandon, and that appears to be correct when one accounts for both at-grade and grade-separated public crossings. But because ALDOT purported to respond to ALAB's statement concerning at-grade crossings only, the 9 crossing figure suggests that ALAB was off by two, which is incorrect. ALAB erred by one in its list of public at-grade crossings along the subject line. There are 8 such at-grade crossings (not 9), and one grade-separated public crossing at State Route 21, at which location ALAB's rail line passes beneath the public road. This is consistent with the listing appended to ALDOT's letter. ALAB apologizes for the error, but submits that the error should have no material impact on OEA's handling of the E&HR, particularly in light of the instant clarification.

The more troubling item in ALDOT's letter, however, is ALDOT's "objection" to the E&HR passage concerning grade crossing impacts. ALAB is not sure what ALDOT is objecting to precisely, or how the objection would be accounted for in the Environmental Assessment ("EA"). There is no doubt that the proposed abandonment will facilitate the closure of at-grade crossings that are no longer needed, something that could not legally occur without abandonment. It appears, however, that ALDOT is looking to the Board – and particularly to OEA – to recommend that the costs associated with grade crossing removal and associated roadway mitigation be borne by ALAB, and not ALDOT or some other road authority. As discussed below, there is no basis in law, nor would it be good policy, for OEA to adopt ALAB's proposed condition.

ALDOT presupposes that grade crossing removal and related roadway mitigation are ALAB's responsibility. That is nowhere proven in ALDOT's letter, and there is no federal or Alabama state law governing the removal of the crossing materials and the allocation of the costs for such removal. Instead, the grade crossing maintenance and removal costs are almost always accounted for in the crossing agreements negotiated (in most cases several decades ago) between the railroad (ALAB's predecessors) and the appropriate road authority (frequently ALDOT or a predecessor state agency). Indeed, in most instances, the railroad was there first, and the road authority that had to obtain permission or condemnation authority to cross the railroad, and in either case the parties would enter into an agreement governing the responsibility for maintenance and removal upon abandonment.

ALAB does not yet have in its possession all of the various crossing agreements that govern here, as most predate ALAB's ownership of the subject line, but ALAB is attempting to get copies. It seems that ALDOT does not have copies of the various agreements either, or has not yet been able to account for them. Rather than undertaking the effort to work with ALAB to find the various agreements and abide by the agreements' terms, ALDOT seems to be trying to impose upon ALAB, through OEA intervention, an obligation that ALAB may or may not have, depending upon what the agreements say. ALAB strongly believes that, because in most cases the railroad was present before the road, and in light of the fact that the railroad receives no benefit from a public road crossing (such benefits accrue to the taxpayers of Alabama and all other road users), most of those agreements will provide that the road authority accepted the costs of installation, maintenance, and (at the appropriate time) removal of the crossing, not the railroad. For this reason, and due to the significant cumulative costs of removal/mitigation, ALAB is not simply going to agree to bear such costs nor should OEA impose such costs on ALAB when doing so could be a direct violation of the terms of the private agreements.

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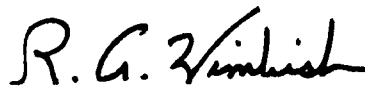
To resolve the matter ALAB is seeking out copies of the relevant crossing agreements as mentioned above. ALAB is also very willing to confer with ALDOT to explore an amicable and fair apportionment of crossing removal/mitigation costs in accordance with those agreements, as ALDOT is doing in connection with an abandonment proceeding involving a railroad affiliate of ALAB also located in Alabama. If ALAB confirms that it is responsible for crossing removal/mitigation as a result of the crossing agreements negotiated by its predecessor(s), then ALAB will accept that responsibility. If, on the other hand, the evidence indicates that ALDOT or some other road authority is responsible for such actions and costs, then ALAB expects the responsible party to adhere to its original bargain.

Accordingly, ALAB objects to any categorical OEA recommendation that ALAB will be responsible for the removal of tracks, crossing materials and signals and for the provision of a safe and smooth roadway surface at public grade crossings along the subject rail line. Inclusion of such a provision in the EA would raise serious questions of whether the Board's action would strip ALAB of valuable contractual protections without due compensation. ALAB would suggest that the prudent course would be for OEA to avoid entangling itself in what ALAB regards as a contractual matter that ALAB and ALDOT need to resolve through consultation and negotiation.

Again, ALAB is more than willing to consult with ALDOT to resolve issues concerning the appropriate apportionment of grade crossing removal responsibilities and related roadway mitigation. Beyond that, ALAB submits that it would be advisable for the Board not to intervene in a matter that ALAB and ALDOT can and should address and resolve in accordance with the applicable contractual provisions as informed by state law and basic constitutional principles.

If you have any further questions concerning this matter or any other that arises in connection with OEA's review of the proposed abandonment, please contact me at (202) 663-78__.

Sincerely,



Robert A. Wimbish

Attorney for Alabama Railroad Co.

Cc: Robert J. Jilla
J. Michael Carr
Daniel A. LaKemper