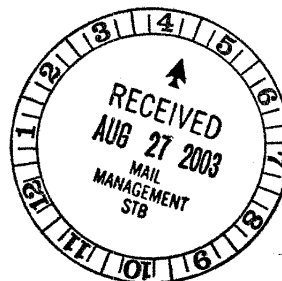


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August 27, 2003

208796

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

**Re: Central Michigan Railway Company – Abandonment Exemption –
In Saginaw County, MI
Docket AB-308 (Sub-No. 3X)**

Dear Secretary Williams:

Enclosed please find an original and 11 copies of Central Michigan Railway Company's ("CMR") Motion to Strike Plastatech Engineering, Inc.'s Reply In Opposition to Petition for Exemption filed in the above-referenced proceeding.

Please acknowledge our filing of the enclosed Motion to Strike by date stamping the 11th copy, which is enclosed for that purpose, and returning it to the courier making this filing to return to me.

If there are any questions about this matter, please contact me directly either by telephone: 202-637-9499 (Ext. 13) or e-mail: wmullins@bakerandmiller.com.

Sincerely,



William A. Mullins

Enclosures

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. AB-308 (SUB-NO. 3X)

**CENTRAL MICHIGAN RAILWAY COMPANY
- ABANDONMENT EXEMPTION -
IN SAGINAW COUNTY, MI**



**MOTION TO STRIKE
PLASTATECH ENGINEERING, INC.'S
REPLY IN OPPOSITION TO PETITION FOR EXEMPTION**

ENTERED
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Public Record

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August 27, 2003

Attorneys for Central Michigan Railway Company

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. AB-308 (SUB-NO. 3X)

**CENTRAL MICHIGAN RAILWAY COMPANY
– ABANDONMENT EXEMPTION –
IN SAGINAW COUNTY, MI**

**MOTION TO STRIKE
PLASTATECH ENGINEERING, INC.'S
REPLY IN OPPOSITION TO PETITION FOR EXEMPTION**

Pursuant to 49 C.F.R. Parts 1104, 1112 and 1114, Central Michigan Railway Company (“CMR”) files this Motion to Strike (“Motion”) the Reply In Opposition to Petition for Exemption (“Reply”) filed by Plastatech Engineering, Ltd. (“Plastatech”) on August 20, 2003. The Reply should be stricken because it attempts to enter unverified facts into the record, contrary to the requirements of Parts 1104, 1112 and 1114 and Plastatech’s own arguments about CMR’s evidence.

ARGUMENT

On July 16, 2003, CMR filed a Petition for Exemption (“Petition”) to abandon approximately 1.77 miles of track in Saginaw County, Michigan (the “Line”). In that Petition, CMR provided information to the Surface Transportation Board (“Board”) in compliance with the applicable Exemption rules and regulations, namely, 49 C.F.R. Parts 1121 and 1152. As support for the factual allegations in the Petition, CMR attached the Verified Statement of Charles A. Pinkerton, President and General Manager of CMR.

On August 20, 2003, Plastatech filed its Reply opposing the Petition. The Reply does not include a verification by any individual who has personal knowledge of any of the facts asserted

in the Reply. As discussed in more detail below, this type of factual submission does not comply with the Board's rules. *See* 49 C.F.R. Parts 1104, 1112 and 1114. Accordingly, the Board should grant CMR's Motion in its entirety.

I. STANDARD OF DECISION

The Board has authority to strike materials of an "objectionable nature," as defined by 49 C.F.R. § 1104.8. Specifically, the Board may order that redundant, irrelevant, immaterial, impertinent, or scandalous matter be stricken from any document. *Id.* In this case, CMR submits that all unsupported factual allegations in the Reply are immaterial because they were submitted without verification of anyone having personal knowledge of them. Plastatech clearly should be aware of the need for verification of factual allegations, having itself criticized the qualifications of CMR's President to assess CMR's cost of service on the line. *See* Reply at 9 and 10.

II. FACTUAL ALLEGATIONS REQUIRE VERIFICATION

Plastatech's Reply submits new and unsupported factual allegations for inclusion in the record; however, these statements lack verification by an individual with personal knowledge of those allegations, and as such, the Board should strike the Reply. As discussed below, the signature by Plastatech's counsel is not the same as a verification, and even if accepted as a verification, it remains deficient by Plastatech's own standards. Thus, the Board should strike Plastatech's Reply.

Plastatech's Reply does not meet the requirement that pleadings which contain factual allegations require a verification by an individual with personal knowledge of the fact-based allegations. This requirement was noted by the Board in SF& L Railway, Inc. – Acquisition and Operation Exemption – Toledo, Peoria and Western Railway, Corporation Between La Harpe

and Peoria, IL, STB Finance Docket No. 33996 (STB served April 13, 2003), which commented that the Board's verification rules apply to pleadings. Id. at 2. Section 1112.6 describes the contents of a verification as "the facts upon which the witness relies." 49 C.F.R. § 1112.6. In further support of this requirement is Section 1114.1, which requires any and all evidence submitted to the Board be admissible, specifically, that it be "sufficiently reliable." 49 C.F.R. § 1114.1. Thus, without verification from a party with personal knowledge of the facts contained therein, the Reply represents a string of unreliable, and in contrast to the verified statement of CMR's President, Mr. Pinkerton, inaccurate statements, which should not be admitted into evidence.

The only support that could possibly be offered for these unverified allegations is the signature of Plastatech's counsel. Under the Board's rules, an attorney signature to a document has a limited meaning: The attorney's signature only shows that a representative of the party has (1) read the document; (2) been authorized to file it; (3) believes that there is a good faith basis for filing; and (4) has not filed the document merely for purposes of delay. 49 C.F.R. § 1104.4. Simply put, an attorney's signature is only evidence of the fact that the attorney has reviewed the document and is permitted to file it -- it is not an attestation to the truth or correctness of the factual statements contained therein. Indeed, attorney testimony as to facts at issue in a proceeding where the attorney also acts in a representative capacity often presents an issue under local bar rules, leading attorneys to avoid placing themselves in a position of testifying in their clients' behalf. Accordingly, the factual statements in the Reply lack any support from an individual with personal knowledge and should be stricken.

Last, it would be only fair to hold Plastatech to the burden it proposes in its Reply, which is that an individual with personal knowledge verify the factual statements in a pleading. *See*

Reply at 10, fn. 6 (Plastatech argues that CMR's President, Charles Pinkerton, is ineligible to testify as to operating costs based on his "administrative" position as President and General Manager of the Company). In fact, the Reply goes so far as to state that "[a] person does not become qualified to testify on technical railroad operating costs . . . by virtue of holding [] administrative positions." Id. If that standard is applied to the evidence offered by Plastatech, then the Reply is likewise is immaterial and without merit because it lacks a verification by any person "qualified to testify on technical railroad operating costs." Id.

CONCLUSION

For the reasons stated above, the Plastatech's Reply should be stricken in its entirety.

Respectfully submitted,



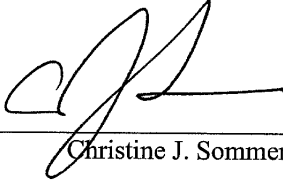
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August 27, 2003

Attorneys for Central Michigan Railway Company

CERTIFICATE OF SERVICE

I certify that I have this 27th of August, 2003, I served copies of the foregoing Motion to Strike Plastatech Engineering, Inc.'s Reply In Opposition to Petition for Exemption upon Thomas F. McFarland and Jeffrey J. Endean, counsel for Plastatech Engineering, by first class mail.



Christine J. Sommer