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THOMAS F. MCFARLAND

September 15, 2003

By UPS overnight mail

Vernon A. Williams, Secretary
Surface Transportation Board
Case Control Unit, Suite 713
1925 K Street, N.W.
Washington, DC 20423-0001

ENTERED
Office of Proceedings
SEP 25 2003
Part of
Public Record

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

Dear Mr. Williams:

Enclosed please find an original and 10 copies of Reply In Opposition To Motion For Expedited Decision, for filing with the Board in the above referenced matter.

Kindly acknowledge receipt by date stamping the enclosed duplicate copy of this letter and return in the self-addressed stamped envelope.

Very truly yours,

Tom McFarland

Thomas F. McFarland
Attorney for Plastatech Engineering, Ltd.

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BEFORE THE
SURFACE TRANSPORTATION BOARD



CENTRAL MICHIGAN RAILWAY)
COMPANY -- ABANDONMENT) DOCKET NO. AB-308
EXEMPTION -- IN SAGINAW COUNTY,) (SUB-NO. 3X)
MI)

**REPLY IN OPPOSITION TO
MOTION FOR EXPEDITED DECISION**

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the Record

PLASTATECH ENGINEERING, LTD.
725 Morley Drive
Saginaw, MI 48601

Protestant

THOMAS F. McFARLAND
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(312) 236-0204

Attorney for Protestant

DATE FILED: September 25, 2003

BEFORE THE
SURFACE TRANSPORTATION BOARD

CENTRAL MICHIGAN RAILWAY	)	
COMPANY -- ABANDONMENT	)	DOCKET NO. AB-308
EXEMPTION -- IN SAGINAW COUNTY,	)	(SUB-NO. 3X)
MI	)	

**REPLY IN OPPOSITION TO
MOTION FOR EXPEDITED DECISION**

Pursuant to 49 C.F.R. § 1104.13(a), PLASTATECH ENGINEERING, LTD. (Plastatech) hereby replies in opposition to the Motion for Expedited Decision (Motion) filed by Central Michigan Railway Company (CMR) on September 9, 2003.

The Motion is a very poorly-veiled attempt by CMR to use motion procedure as a means to circumvent the rule against submission of rebuttal in rail exemption proceedings.^{1/} The Motion seeks issuance of a decision on or before October 31, 2003 (Motion at 3). The decision is already scheduled to be issued on or before November 3, 2003, three days later. (Notice issued by Office of Proceedings Director Konschnik on August 5, 2003 at 2 — “A final decision will be issued by November 3”). Could CMR’s real motivation in filing the Motion be any more transparent?

^{1/} It is provided at 49 C.F.R. § 1121.3(a) that a party filing a petition for exemption is required to provide its entire case-in-chief, along with all supporting evidence, workpapers and related documents, at the time that it files its petition. Consequently, any rebuttal evidence or argument filed by a petitioner will be stricken. *Paducah & L. Ry., Inc. -- Aban. Exempt. -- in McCracken County, KY*, 2003 STB LEXIS 344 at *2 (STB Docket No. AB-468 [Sub-No. 5X], decision served June 20, 2003); *Central Kansas Ry. LLC -- Aband. Exempt. -- in Sedgwick County, KS*, 2001 STB LEXIS 356 at *3 (STB Docket No. AB-406 [Sub-No. 14X], decision served April 10, 2001); *Central R.R. of Ind. -- Aband. Exempt. -- in Dearborn, Decatur, Franklin, Ripley and Shelby Counties, IN*, 1998 STB LEXIS 121 at *26 (STB Docket No. AB-459 [Sub-No. 2X], decision served May 4, 1998).

Moreover, this is the third motion filed by CMR since Plastatech filed its Reply in Opposition to the Petition for Exemption.^{2/} In light of this patent abuse of the Board's processes, the Board should:

- (1) summarily deny the Motion;
- (2) admonish CMR and its counsel to abide by Board rules and procedures; and
- (3) disregard the purported evidence and argument improperly submitted by CMR.^{3/}

Even if the Motion had been filed in good faith, it is utterly without merit. The alleged need for expedition is to enable removal of the railroad bridge over Highway I-75 by the end of 2003 in accordance with a bridge-removal bid accepted by the State of Michigan. (Motion at 3, 4). However, the State of Michigan's request that CMR take steps to abandon the bridge and trackage had been made on February 4, 2003 (see CMR Petition for Exemption at 16, [Attachment B, p. 1]). According to the Environmental and Historic Reports attached to the Petition for Exemption, CMR did not even begin to develop information for those Reports until June 24, 2003. (Petition for Exemption at 36, 46). Thus, CMR delayed over four months after the State's request before commencing abandonment activity. That significant delay hardly supports the present request for expedition.

When CMR finally filed for abandonment authority on July 16, 2003, it did so by means of a Petition for Exemption rather than an abandonment application, notwithstanding that

^{2/} On August 20, 2003, CMR filed a Motion for Protective Order. On August 27, 2003, CMR filed a Motion to Strike. Plastatech replied to those Motions on September 16, 2003.

^{3/} All of CMR's Motion constitutes impermissible rebuttal argument. New purported evidence that should be stricken and disregarded appears in the first two sentences in the third full paragraph on page 4 of the Motion.

Plastatech, a significant user of the rail line, had not indicated its agreement to the proposed abandonment. That was a major procedural mistake inasmuch as exemption procedure is not appropriate for complex abandonment proceedings such as the present.

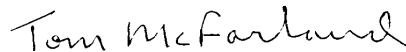
It would be unfortunate if the State of Michigan had to rebid this bridge removal project, but if that occurs it will be because CMR unduly delayed commencement of abandonment proceedings and then filed for abandonment under inappropriate procedure, not because the Board did not issue a decision three days earlier than scheduled.

WHEREFORE, for the foregoing reasons, the Motion should be denied.

Respectfully submitted,

PLASTATECH ENGINEERING, LTD.
725 Morley Drive
Saginaw, MI 48601

Protestant



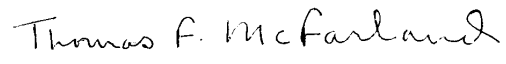
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Attorney for Protestant

DATE FILED: September 25, 2003

CERTIFICATE OF SERVICE

I hereby certify that on September 24, 2003, I served the foregoing document, Reply In Opposition To Motion For Expedited Decision, on William A. Mullins, David C. Reeves and Christine J. Sommer, Baker & Miller, PLLC, 915 Fifteenth Street, N.W., Suite 1000, Washington, DC 20005, by UPS overnight mail.



Thomas F. McFarland