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November 16, 2005

Via fax 202-565-9002
and original and ten copies via Federal Express

Honorable Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20006

ENTERED
Office of Proceedings

NOV 17 2005

Part of
Public Record

Re: STB Docket No. AB-290 (Sub-No. 236X), The Cincinnati, New Orleans
and Texas Pacific Railway Company - Abandonment - Petition for
Exemption - at Rockwood, Tennessee, in Roane County, Tennessee

Dear Mr. Williams:

Please accept the original and ten copies of this letter via Federal Express for filing as the response of The Cincinnati, New Orleans and Texas Pacific Railway Company to the Petition for Leave to Intervene and File Reply Out of Time and Verified Reply of Horsehead Corporation In Conditional Opposition to Abandonment and Waiver, filed with the Board on October 28, 2005 in the subject proceeding. CNOTP also submits the letter via fax to present the response a day earlier.

CNOTP does not oppose the intervention of Horsehead Corporation or the filing of its reply. CNOTP in fact agrees with the main point made by Horsehead at page 3 of its reply. Horsehead states that it would not oppose the abandonment and waiver of the OFA process "provided the parties can reach agreement on suitable contractual provisions to replace the statutory protections that would be lost with the approval of the abandonment." CNOTP believes that Horsehead's filing was needed not because of the absence of such an agreement among the parties, at least with respect to its key terms, but mainly because of incomplete communication among the interested parties and the lack of formality of the agreements reached to this point. CNOTP believes the parties can reach satisfactory, final formal agreements that will permit Horsehead to withdraw its conditional opposition to the relief requested in the petition for exemption and that the parties are near completion of this process.

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CNOTP's petition was predicated on its agreement with Horsehead and Franklin Industries on terms that would protect the interests of Horsehead, as well as Franklin. CNOTP thought that Horsehead, Franklin and CNOTP had reached agreement on terms to implement the key protections that Horsehead states in its filing are required here. As it has turned out, however, the discussions, correspondence and agreements among Horsehead, Franklin and CNOTP representatives at the local level had not been co-ordinated with Horsehead headquarters personnel, as Footnote 1 of Horsehead's filing indicates. CNOTP was not aware of the need for such co-ordination. However, CNOTP agrees with Horsehead that the agreements and arrangements lacked desirable formality and perhaps some detail. We are now aware they were incompletely communicated, as well. Thus, the completion and execution of more detailed and formal agreements to protect the interests of Horsehead in receiving continued rail service following the formal abandonment of the subject 1.1-mile line are appropriate before CNOTP consummates the abandonment.

CNOTP believes that Horsehead, Franklin Industries and CNOTP agree on the key terms that these more detailed or formal documents should contain. Drafts have been exchanged, commented upon and revised. Horsehead and CNOTP appear to be in basic agreement and we think Franklin Industries also agrees upon the terms required to protect Horsehead's interests. We believe only a few minor clarifications or edits remain to be made in these drafts for the parties to be in complete agreement. When the agreements are finished and executed, Horsehead should be able to withdraw its conditional opposition to the relief requested in the petition.

We had hoped to have the final, formal agreements among the parties finished by the time it was necessary for CNOTP to file a response to Horsehead's filing. However, the press of other business and the time needed for three parties to agree on final language for the documents to the extent they are affected by their terms has not allowed us to finish the task by today. We do expect to reach these agreements soon, although with Thanksgiving week intervening, we are not entirely sure whether the agreements will be completed and executed in time for the Board to take them into account by the deadline date of December 2, 2005 for the Board's issuance of a decision in this matter. If the parties can not finish the agreements by that date, however, we believe it would be wasteful for the Board to dismiss the petition simply because some minor editing and exchange of signatures might remain to be completed.

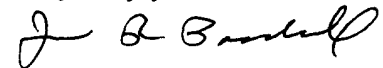
Therefore, CNOTP requests that if the parties are unable to finish the drafting and to secure the execution of the final, formal agreements required by Horsehead and Horsehead is able to withdraw its conditional opposition before the Board can take these into account by the December 2, 2005 due date for the Board's decision, the

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Board grant CNOTP's petition for exemption conditioned upon CNOTP not being permitted to consummate the abandonment and transfer the line to Franklin Industries until Horsehead, Franklin and CNOTP have reached and executed the suggested agreements needed to protect Horsehead's interests and to permit Horsehead to withdraw its conditional opposition to the relief requested by CNOTP in the petition.

We believe that Horsehead concurs in this disposition of the matter, but to prevent any further misunderstanding, by copy of this letter, CNOTP requests that Horsehead confirm its concurrence of the suggested handling to the Board.

Very truly yours,



James R. Paschall

via e-mail and mail confirmation
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