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WEINER BRODSKY SIDMAN KIDER PC

1300 NINETEENTH STREET NW
FIFTH FLOOR
WASHINGTON DC 20036 1609
TEL 202 628 2000
FAX 202 628 2011

April 14, 2006

BY HAND DELIVERY

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, D.C. 20423

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Office of Proceedings

APR 14 2006

Part of
Public Record



Re: STB Ex Parte No. 647; Allegheny & Eastern Railroad, Inc., *et al.* –
Class Exemption for Expedited Abandonment Procedure for
Class II and Class III Railroads

Dear Secretary Williams:

On April 4, 2006, National Grain and Feed Association (“NGFA”) made its first substantive filing in this proceeding, which it styled Reply Statement of NGFA. Because NGFA made no initial substantive filing to which Petitioners could have filed a responsive pleading in accordance with the procedural schedule established by the Surface Transportation Board (“Board”), Petitioners seek leave to file a brief reply to one of the points raised by NGFA.

NGFA suggests in its filing that the primary justification advanced by Petitioners for the Proposed Rule is that it would “save” rail lines that otherwise would be abandoned. NGFA Reply at 4. This suggestion is a distortion of Petitioner’s position. As Petitioner’s made clear in their filings in this proceeding, the justifications for the Proposed Rule are as follows:

1. Once a small railroad determines that a rail line cannot support continued rail service, it will take a series of rational steps to cut losses (deferral of maintenance and capital spending, reduction in service and increase of rates). These steps start a “death spiral,” which ultimately results in the lines being abandoned pursuant to the two-year-out-of-service class exemption or pursuant to a petition for exemption once traffic has dwindled to a patently non-sustainable level.

2. In light of the inevitability of abandonment of lines that small railroads identify as unable to support continued rail use, the delay in obtaining abandonment authority inherent in the Board's existing regulatory procedures unnecessarily postpones redeployment of valuable rail assets, while conferring little or no benefit to shippers or communities.
3. The adoption of the expedited abandonment procedures set forth in the Proposed Rule would make rail lines eligible for offers of financial assistance before the rail infrastructure deteriorates and the traffic base evaporates, which should enhance the likelihood that an abandonment candidate would be purchased through an offer of financial assistance ("OFA").

In Petitioners' written replies to the written questions submitted by then-Chairman Nober on behalf of then-Commissioner Buttrey at the public hearing held on August 31, 2004¹, Petitioners made clear that the likelihood that an entrepreneur would purchase a small railroad's abandonment candidate for continued rail use is slim. Replies at 2. Petitioners have argued that OFAs are *more likely* to occur if that process takes place when the line still has some traffic and has not deteriorated beyond repair, but Petitioners have never suggested that adoption of the Proposed Rule will dramatically increase the number of OFAs. That is unlikely to happen because, once a small railroad gives up on a line segment, the overwhelming likelihood is that no buyer, private or public, will conclude that the line can be operated profitably. Thus, the most likely OFA buyers are those whose primary objective is not to conduct profitable rail operations (e.g., government entities seeing to preserve rail service in a region or shippers seeking to ensure continued rail service to a facility). Although OFA purchases should occur somewhat more frequently under the Proposed Rule (as a result of the better condition of lines that have not gone through the death spiral), the unfortunate truth is that there are extremely few buyers looking to get into a capital intensive business in markets where historic traffic levels have been inadequate to sustain on-going service.

Contrary to NGFA's suggestion, the principal rationale for the Proposed Rule is that an expedited procedure for small railroad abandonments will allow rapid redeployment of scarce capital from lines that do not support rail service to those that do. Such a procedure will not increase the number of lines abandoned because (i) small railroads are highly unlikely to abandon profitable lines, and (ii) once a small railroad decides a line cannot sustain service and takes the logical steps that flow from that determination, the line eventually will be abandoned, after several years of decline, under the existing rules. Neither NGFA nor any other commenters

¹ Then-Commissioner Buttrey was unable to attend the hearing. Petitioners' replies to his questions were filed in September 15, 2004.

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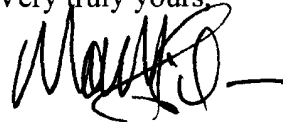
Honorable Vernon Williams

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in this proceeding has identified any public benefit that is derived from keeping a downgraded line in service for several years pending receipt of regulatory authority to abandon the line.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Mark H. Sidman', with a horizontal line extending to the right.

Mark H. Sidman

cc: Service List

CERTIFICATE OF SERVICE

I hereby certify that on April 14, 2006, a copy of the Reply of Allegheny & Eastern Railroad, Inc., *et al.* to National Grain and Feed Association Comments, filed with the Surface Transportation Board in STB Ex Parte No. 647, were sent by first-class mail, postage prepaid, to the parties listed below:

Keith T. Borman
American Short Line and Regional Railroad Association
Suite 7020
50 F Street, NW
Washington, D.C. 20001-1564

Gordon P. MacDougall
1025 Connecticut Avenue, NW
Washington, D.C. 20036

Mitchell M. Kraus
Transportation Communications International Union
3 Research Place
Rockville, MD 20850-3279

Donald F. Griffin
Director of Strategic Coordination and Research
Brotherhood of Maintenance of Way Employees
Division
10 G Street, NE, Suite 460
Washington, D.C. 20002

Sidney Strickland
Sidney Strickland and Associates, PLLC
3050 K Street, NW
Suite 101
Washington, D.C. 20007-5108

Chris W. Sumner, LS
American Congress on Surveying and Mapping
6 Montgomery Village Avenue
Suite 403
Gaithersburg, MD 20879

John D. Heffner
John D. Heffner, PLLC
1920 N Street, NW
Suite 800
Washington, D.C. 20036

Mark S. Lyon
WSBA #12169
Attorney General of Washington
Transportation & Public Construction Division
P.O. Box 4-0113
Olympia, WA 98504-0113

Louis E. Gitomer
Ball Janik LLP
1455 F Street, NW
Suite 225
Washington, D.C. 20005

Kelly C. Taylor
Oregon Department of Transportation
Rail Division
555 13th Street, NE
Suite 3
Salem, OR 97301-4179

Thomas F. McFarland
Thomas F. McFarland, PC
208 South LaSalle Street
Suite 1890
Chicago, IL 606094-1112

Nicholas J. DiMichael
Thompson Hine
1920 N Street, NW
Suite 800
Washington, DC 20036-1600

William Merrigan
Department of the Army
Military Surface Deployment and Distribution Command
HQ SDDC Attn: MTJA
200 Stovall Street
Alexandria, VA 22332-5000

Charles W. Hill
West Virginia Department of Transportation State Rail Authority
120 Water Plant Drive
Moorefield, West Virginia 26836

Robert T. Opal
Union Pacific Railroad
1400 Douglas Street
Stop 1580
Omaha, NE 68179

John Hey
Modal Division
Iowa Department of Transportation
800 Lincoln Way
Ames, Iowa 50010

Andrew P. Goldstein
McCarthy, Sweeney & Harkaway, P.C.
2175 K Street, NW
Suite 600
Washington, D.C. 20037

William M. Tuttle
Canadian Pacific Railway
501 Marquette Avenue S
Suite 800
Minneapolis, MN 55402

Louis P. Warchot
Association of American Railroads
50 F Street, NW
Washington, D.C. 20001

Transportation Trades Department AFL-CIO
888 16th Street, NW
Suite 650
Washington, D.C. 20006

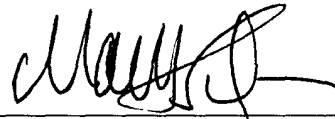
Daniel R. Elliott, III
United Transportation Union
14600 Detroit Avenue
Cleveland, OH 44107-4250

Chris Rose
Washington State Utilities and Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250

Thomas C. Brennan
Brotherhood of Locomotive Engineers and Trainmen
1370 Ontario Street, Mezzanine
Cleveland, OH 44113-1702

Charles M. Delacruz
Counsel for Public Affairs
National Grain and Feed Association
1250 Eye Street, NW
Washington, D.C. 20005

Robert S. Korpanty, P.E.
Senior Civil Engineer
Office of the Special Assistant
for Transportation Engineering
SDDCTEA, ATTN: MTTE-SA
720 Thimble Shoals Boulevard, Suite 130
Newport News, Virginia 23606-2574

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Mark H. Sidman