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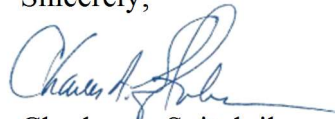
Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Re: *The Commuter Rail Division of The Regional Transportation Authority and The
Northeast Illinois Regional Commuter Transportation Authority D/B/A Metra—
Adverse Abandonment—Omnitrax/Chicago Rail Link, STB Docket No. AB 1337*

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding is Metra's Petition for Partial Waiver of Abandonment Regulations. The \$2,400 fee for this filing has been tendered electronically via Pay.gov.

Sincerely,


Charles A. Spitulnik

Enclosure

FEE RECEIVED
December 11, 2023
Surface
Transportation Board

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December 11, 2023
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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. AB 1337

**THE COMMUTER RAIL DIVISION OF THE REGIONAL TRANSPORTATION
AUTHORITY AND THE NORTHEAST ILLINOIS REGIONAL COMMUTER
TRANSPORTATION AUTHORITY D/B/A METRA—ADVERSE ABANDONMENT—
OMNITRAX/CHICAGO RAIL LINK**

**PETITION OF THE COMMUTER RAIL DIVISION OF THE REGIONAL
TRANSPORTATION AUTHORITY AND THE NORTHEAST ILLINOIS REGIONAL
COMMUTER TRANSPORTATION AUTHORITY D/B/A METRA
FOR PARTIAL WAIVERS OF ABANDONMENT REGULATIONS**

Communications with respect to this document
should be addressed to:

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*Counsel for The Commuter Rail Division of the
Regional Transportation Authority and the
Northeast Illinois Regional Commuter
Transportation Authority D/B/A Metra*

Date: December 11, 2023

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. AB 1337

**PETITION OF THE COMMUTER RAIL DIVISION OF THE REGIONAL
TRANSPORTATION AUTHORITY AND THE NORTHEAST ILLINOIS REGIONAL
COMMUTER TRANSPORTATION AUTHORITY D/B/A METRA
FOR PARTIAL WAIVER OF ABANDONMENT REGULATIONS**

Pursuant to 49 C.F.R. § 1152.24(e)(5) and 49 U.S.C. § 10502(a), the Commuter Rail Division of the Regional Transportation Authority, an Illinois municipal corporation, and Northeast Illinois Regional Commuter Railroad Corporation, an Illinois public corporation, (collectively, “Metra”) seeks partial waiver of the Surface Transportation Board (“STB” or “Board”) regulations governing railroad abandonments at 49 U.S.C. § 10903 and § 10904 and 49 C.F.R. Part 1152. Metra seeks these waivers in conjunction with a proposed adverse abandonment of OmniTRAX/Chicago Rail Link’s (“CRL”) authority to conduct rail operations and related ownership rights over a portion of a 3,246-foot-long line of railroad known as the Root Street Wye located in Chicago, Illinois. Specifically, the portion of the Root Street Wye with respect to which Metra will seek abandonment authority is located at the level of East 40th Street on Chicago’s South Side extending from S. Princeton Avenue on the west side to Metra’s Rock Island Branch at the I-90 Expressway on the east side (the “Line”). Based on a thorough review of all available documents, Metra has determined that CRL owns the Line. This request for waivers and Metra’s potential application for adverse abandonment will affect only the CRL-owned portion of the Root Street Wye.¹ Based on information and belief, including dispatching records and review of STB precedent, CRL and Norfolk Southern Railway (“NS”) are the sole

¹ Metra has also determined that NS owns the portion of the Root Street Wye from Wallace Street to S. Princeton Avenue. Metra is not seeking any relief with respect to the NS-owned portion of the Root Street Wye at this time.

freight operators with authority to operate on the Root Street Wye. However, and as will be more fully explained in Metra's application, no freight operations have occurred on the Root Street Wye for many years.

Metra intends to file its adverse abandonment application within thirty (30) days after receipt of this Board's decision on this request for waivers.

I. STATEMENT OF FACTS

Metra is a public agency created by the State of Illinois to oversee and operate or contract for the operation of commuter rail service in northeastern Illinois. In 1974, the Illinois General Assembly formed the Regional Transportation Authority ("RTA"). Then, in 1985 and in response to the bankruptcies of two rail providers, the Chicago, Rock Island & Pacific ("CRI&P") and the Chicago, Milwaukee, St. Paul & Pacific, the RTA created Metra to operate commuter trains on their lines in the Chicago area.

CRL is a Class III common carrier, owned by OmniTRAX, and is subject to 49 U.S.C. Subtitle IV, chapter 105. CRL was organized in 1980 after the CRI&P railroad abandoned its track that is the subject of this proceeding when it filed for bankruptcy. CRL was originally called the LaSalle & Bureau County Railway and it owned former CRI&P track between LaSalle and Midway, Illinois. That track was abandoned in CRL's early years. CRL merged with Chicago, West Pullman & Southern railroad on August 15, 1996. CRL currently provides switching and terminal services over 72 miles of track in Chicago, Illinois.

Freight traffic has not operated over the Root Street Wye since 2012. The Root Street Wye, including the Line, was taken out of service completely in 2021. Given the lack of need for freight rail service on the Line, Metra will seek an adverse abandonment in this proceeding. Metra will provide further support for the proposed adverse abandonment of the Line in its Application for Adverse Abandonment.

II. WAIVERS REQUESTED

“In appropriate circumstances . . . the Board may waive inapplicable and unneeded regulations and grant exemptions from statutory provisions.” *Port of Benton, Wash.—Adverse Discontinuance of Rail Service—Tri-City R.R. Co.*, LLC, STB Docket No. AB 1270, slip op. at 2 (Service Date October 31, 2018); *see also Boston and Maine Corp. and Springfield Terminal Ry. Co.—Adverse Discontinuance—New England Southern R.R. Co. Inc.*, STB Docket No. 32 (Sub-No. 100), slip op. at 2 (Service Date Feb. 12, 2008). Accordingly, Metra requests waivers from the following provisions:

a. System Diagram Map (49 C.F.R. § 1152.10 to § 1152.14 and § 1152.24(e)(1):

Metra seeks a waiver of all requirements in 49 C.F.R. § 1152.10 through §1152.14.

These regulations require the carrier to maintain, file and publish a System Diagram Map as well as require a line to appear on the system diagram map for at least 60 days before an abandonment application is filed. Metra seeks a waiver of this requirement because Metra is not a freight railroad owner or operator and as such, does not publish or retain a System Diagram Map. Waiver of the system diagram map requirement is consistent with the Board’s precedent in adverse proceedings because the applicant generally does not have access to the System Diagram Map. *See Hartwell First United Methodist Church—Adverse Aban. & Discontinuance—Hartwell R.R., in Hart Cnty., Ga.*, AB 1242, slip op. at 3 (STB served Aug. 30, 2016).

b. Notice of Intent (49 C.F.R. § 1152.20): Metra intends to file and publish a Notice of Intent for the proposed Adverse Abandonment as required by 49 C.F.R. § 1152.20 in the form of notice set forth in Appendix A. Metra requests a waiver of several of the service and posting requirements for the Notice of Intent that are not applicable.

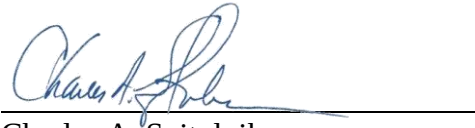
- i. **Significant Users of the Line:** Metra requests a wavier for 49 C.F.R. § 1152.20(a)(2)(i), which requires service of the notice on all significant users of the Line. As there are no users of the Line, this provision is inapplicable.
 - ii. **Labor Organizations:** Metra requests a waiver from the requirements of 49 C.F.R. § 1152.20(a)(2)(xii), which requires notice to duly certified labor organizations that represent employees on the affected rail line. As there is currently no service provided over the Line, there are no railroad employees that would be affected by the adverse discontinuance.
 - iii. **Stations and Terminals:** Metra requests a waiver of 49 C.F.R. § 1152.20(a)(3), which requires Notice to be posted at each station and terminal along the lines. As there is currently no service provided on the Line and no stations or terminals, there is no need to post a notice at each station on the Line.
- c. **Form of Notice of Intent (49 C.F.R. § 1152.21):** Metra requests a waiver from the form of the Notice of Intent set forth in 49 C.F.R. § 1152.21 and proposes use of the Alternate Form of Notice of Intent submitted as Appendix A. The Board has approved form changes to the notice of intent requirement in adverse proceedings when the substitute notice is in substantial compliance with the requirements of 49 C.F.R. § 1152.21. *State of South Dakota Acting By and Through its Dep't of Transp.—Adverse Discontinuance of Operating Auth.—Napa-Platte Regional R.R. Auth.*, STB Docket No. AB 1253, slip op. at 3-4 (Service Date May 31, 2017).
- d. **Physical Condition of Line (49 C.F.R. § 1152.22(b)):** While the physical condition of the Line is generally poor, Metra seeks a waiver of the requirements for a description of the present physical condition of the Line. The Board has waived the

requirement for a physical description of the line in cases when such information is not “particularly relevant.” *Id.*

- e. **Service Provided (49 C.F.R. § 1152.22(c)):** As there is no service provided over the Line at this time, Metra requests a waiver of the requirement to submit information pertaining to the service provided on the Line.
- f. **Revenue and Cost Data (49 C.F.R. § 1152.22(d)):** Metra requests a waiver of the requirement for revenue and cost data for the Line. As there is currently no service operated on the Line, there is no relevant revenue or cost data applicable.
- g. **Rural and Community Impact (49 C.F.R. § 1152.22(e)):** Metra requests a waiver of the requirement for rural and community impact-related information. As there is currently no service provided on the Line, there will be no rural or community impacts resulting from the proposed abandonment.
- h. **Draft Federal Register Notice (49 C.F.R. § 1152.22(i)):** Metra requests a waiver from the form of the Draft Federal Register Notice set forth in 49 C.F.R. § 1152.22(i) and proposes use of the Alternate Form of Draft Federal Register Notice submitted as Appendix B. The Board has approved form changes in the form of notice requirements in adverse proceedings when the substitute notice is in substantial compliance with the requirements of 49 C.F.R. § 1152.21. *State of South Dakota Acting By and Through Its Dep’t of Transp.—Adverse Discontinuance of Operating Auth.—Napa-Platte Regional R.R. Auth.*, STB Docket No. AB 1253, slip op. at 3-4 (Service Date May 31, 2017).
- i. **Offers of Financial Assistance (49 C.F.R. § 1152.27):** Metra seeks an exemption from the requirements of 49 U.S.C. § 10904 and a related waiver for the provisions for offers of financial assistances (“OFA”). The Board has found that the application

of 49 U.S.C. § 10904 is not consistent with adverse abandonment proceedings. *See The City of Chicago, Il. – Adverse Abandonment – Chicago Terminal Railroad in Chicago, Il.*, STB Docket No. AB 1036, slip op. at 16-17 (Service Date Jul. 8, 2009).

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Charles A. Spitulnik", is positioned above a horizontal line.

Charles A. Spitulnik
Ayelet Hirschhorn
Kaplan Kirsch and Rockwell LLP
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Washington, DC 20006
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cspitulnik@kaplankirsch.com
ahirschhorn@kaplankirsch.com

Dated: December 11, 2023

APPENDIX A
DRAFT NOTICE OF INTENT
BEFORE THE
SURFACE TRANSPORTATION BOARD
STB Docket No. AB 1337

**THE COMMUTER RAIL DIVISION OF THE REGIONAL TRANSPORTATION
AUTHORITY AND THE NORTHEAST ILLINOIS REGIONAL COMMUTER
RAILROAD CORPORATION D/B/A METRA—ADVERSE ABANDONMENT—
OMNITRAX/CHICAGO RAIL LINK**

The Commuter Rail Division of the Regional Transportation Authority and the Northeast Illinois Regional Commuter Railroad Corporation (collectively, “Metra” or “Applicant”) gives notice that on or after *[DATE THAT IS 30 DAYS AFTER STB DECISION ON PETITION FOR WAIVERS]*, it intends to file with the Surface Transportation Board (“Board”), Washington, DC 20423, an application seeking adverse abandonment of a portion of a 3,246-foot-long line of railroad known as the Root Street Wye located in Chicago, Illinois. Specifically, the portion of the Root Street Wye that Metra wishes to adversely abandon is located at the level of East 40th Street on Chicago’s South Side extending from S. Princeton Avenue on the west side to Metra’s Rock Island Branch at the I-90 Expressway on the east side (the “Line”).

The reason for the proposed adverse abandonment is the lack of need for rail service on the Line and the potential other use of the property. There are no documents in Metra’s possession that indicate that the Line contains federally granted rights-of-way. If Metra becomes aware of the existence of such documentation, it will be made available to those requesting it.

The application for adverse abandonment can be viewed following its filing on the Board’s website at www.stb.gov, or a copy can be obtained from Metra’s counsel whose name

and address appear below. The application will include Metra's entire case for abandonment. Any interested person, after the application is filed on or after *[DATE THAT IS 30 DAYS AFTER STB DECISION ON PETITION FOR WAIVERS]*, may file with the Surface Transportation Board its protest of, or written comments concerning, the proposed abandonment identifying it by the proceeding's docket number. These filings are due 45 days from the date of filing of the application. All interested persons should be aware that following any abandonment of the Line, the Line may be suitable for other public use, including interim trail use. Persons who may oppose the abandonment, but who do not wish to participate fully in the process by appearing at oral hearings or by submitting verified statements of witnesses containing detailed evidence, should file comments.

Persons opposing the proposed abandonment that do wish to participate actively and fully in the process should file a protest. Protests must contain that party's entire case in opposition including the following: (1) the protestant's name, address and business; (2) the protestant's interest in the proceeding, including their use of the Line or the public interest represented, if the protestant's interest is limited to the retention of service over a portion of the Line, a description of the portion of the Line subject to the protestant's interest (with milepost designations if available) and evidence showing that the applicant can operate the portion of the Line profitably, including an appropriate return on its investment for those operations; (3) specific reasons why protestant opposes the application including information regarding protestant's reliance on the involved service [this information must be supported by affidavits of persons with personal knowledge of the fact(s)]; and (4) any rebuttal of material submitted by Applicant. In addition, a commenting party or protestant may provide a statement of position and evidence regarding (i) environmental impact; (ii) impact on rural and community development; (iii) recommended provisions for the protection of the interests of employees; (iv) suitability of the properties for

other public purposes pursuant to 49 U.S.C. § 10905; and (vi) prospective use of the right-of-way for interim trail use and rail banking under 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29. If an oral hearing is desired, the requester must make a request for an oral hearing and provide reasons why an oral hearing is necessary.

Oral hearing requests must be filed with the Board no later than 10 days after the application is filed.

Written comments and protests, including all request for public use and trail use conditions, should indicate the proceeding designation STB No. AB 1337, and must be filed with the Office of Proceedings, Surface Transportation Board, Washington, DC 20423-0001, no later than *[DATE TO BE DETERMINED BASED ON DATE OF STB DECISION ON PETITION FOR WAIVERS]*.

Interested persons may file a written comment or protest with the Board to become a party to this abandonment proceeding. A copy of each written comment or protest shall be served upon Metra's counsel in this matter, Charles A. Spitulnik, Kaplan, Kirsch and Rockwell, 1634 I (Eye) Street, NW, Suite 300, Washington, DC 20006; phone (202) 955-5600; email cspitulnik@kaplankirsch.com. The original and 10 copies of all comments and protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in Part 1152, each document filed with the Board must be served on all parties to the abandonment proceeding.

An environmental assessment ("EA") (or environmental impact statement ("EIS"), if necessary) prepared by the Office of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Office of Environmental Analysis. EAs in this abandonment proceeding normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the

EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

APPENDIX B
DRAFT FEDERAL REGISTER NOTICE

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. AB 1337

**THE COMMUTER RAIL DIVISION OF THE REGIONAL TRANSPORTATION
AUTHORITY AND THE NORTHEAST ILLINOIS REGIONAL COMMUTER
RAILROAD CORPORATION D/B/A METRA—ADVERSE ABANDONMENT—
OMNITRAX/CHICAGO RAIL LINK**

Applicant, the Commuter Rail Division of the Regional Transportation Authority and the Northeast Illinois Regional Commuter Railroad Corporation (collectively “Metra”) gives notice that on December 7, 2023, it filed with the Surface Transportation Board (“Board”), Washington, DC 20423, an application seeking abandonment of a portion of a 3,246-foot-long line of railroad known as the Root Street Wye located in Chicago, Illinois. Specifically, the portion of the Root Street Wye that Metra wishes to adversely abandon is located at the level of East 40th Street on Chicago’s South Side extending from S. Princeton Avenue on the west side to Metra’s Rock Island Branch at the I-90 Expressway on the east side (“Line”).

Metra is not aware of any document that indicates the Line contains federally granted rights-of-way. Any documentation in the railroad’s possession will be made available promptly to those requesting it. Metra’s entire case for abandonment (case in chief) was filed with the application.

Any interested person may file with the Board written comments concerning the proposed abandonment or protests (including protestant’s entire opposition case), within 45 days after the application is filed. All interested persons should be aware that following any

abandonment of the Line, the Line may be suitable for other public use, including interim trail use. Persons who may oppose the abandonment but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses, containing detailed evidence should file comments. Persons interested only in seeking public use or trail use conditions should also file comments. Persons opposing the proposed abandonment that do wish to participate actively and fully in the process should file a protest.

In addition, a commenting party or protestant may provide: (i) recommended provisions for protection of the interests of employees; (ii) a statement pertaining to prospective use of the right-of-way for interim trial use and rail banking under 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29. Parties seeking information concerning the filing of protests should refer to 49 C.F.R. § 1152.25.

Written comments and protests, including all requests for public use and trail use conditions, must indicate the proceeding designation STB AB 1337, and should be filed with the Office of Proceedings, Surface Transportation Board (Board), Washington, Dc 20423-0001, no later than *[DATE TO BE DETERMINED BASED ON DATE OF STB DECISION ON PETITION FOR WAIVERS]*. Interested persons may file a written comment or protest with the Board to become a party to this abandonment proceeding. A copy of each written comment or protest shall be served upon Metra's representative, Charles A. Spitulnik, Kaplan, Kirsch and Rockwell, 1634 I (Eye) Street, NW, Suite 300, Washington, DC 20006. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in Part 1152, every document filed with the Board must be served on all parties to the abandonment proceeding. See 49 C.F.R. § 1104.12.

Persons seeking further information concerning abandonment procedures may contact the Board or refer to the full abandonment regulations at 49 C.F.R. Part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis.

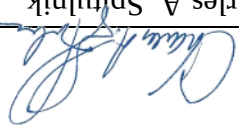
An environmental assessment ("EA") (or environmental impact statement ("EIS"), if necessary) prepared by the Office of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Office of Environmental Analysis. EAs in these abandonment proceedings normally will be made available 33 days after the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

CERTIFICATE OF SERVICE

I, Charles A. Spitulnik, certify that I have this day, December 11, 2023, served a true and correct copy of the foregoing document and letter by email upon:

Robert A. Wimbish, Esq.
Fletcher and Sippel, LLC
29 North Wacker Drive, Suite 800
Chicago, IL 60606-3208
rwimbish@fletcher-sippel.com

Dated: December 11, 2023



Charles A. Spitulnik