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September 26, 2022

VIA E-FILINGCynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001Re: Union Railroad Company, LLC – Abandonment Exemption – In the City of McKeesport, Allegheny County, Pennsylvania, AB-183 (Sub-No. 5X)**Petition for Partial Waiver of the Consummation Notice Requirement**

Between 2016 and 2017, Union Railroad Company, LLC (“URR”) began discussions with DB Pipe, LLC, a Pennsylvania limited liability company (“DB Pipe, LLC”), about DB Pipe, LLC acquiring URR’s adjacent facilities (the “Line”) located in the City of McKeesport, Allegheny County, PA (the “DB Pipe Sale”).¹ After several years of URR not providing any common carrier service over the Line, on May 3, 2021, URR filed a two-year out-of-service notice of exemption (“Notice”) seeking abandonment authority for the Line, to sell the Line to DB Pipe, LLC as private industry track. Per the Board’s May 21, 2021 decision, URR had until May 21, 2022, to consummate its abandonment authority and the DB Pipe Sale, or if there were no legal or regulatory barriers to consummation URR’s abandonment authority would expire.² While URR consummated the DB Pipe Sale before May 21, 2022, due to a series of intervening events, the consummation notice for the abandonment did not get timely filed with the Board.

¹ The Line, which does not have mileposts, is generally bounded on the north by the Monongahela River; on the east by the McKeesport/North Versailles Township line; on the south by Lysle Blvd., 5th Avenue, Bowman Avenue, and/or East Pittsburgh McKeesport Road; and on the west by the Youghiogheny River.

² See Union Railroad Company, LLC – Abandonment Exemption – In the City of McKeesport in Allegheny County, PA, AB-183 (Sub-No. 5X) (STB served May 21, 2021) (Decision ID 50772).

While the abandonment was originally subject to a Section 106 condition, the Board removed that condition in a decision served August 3, 2021. See Union Railroad Company, LLC – Abandonment Exemption – In the City of McKeesport in Allegheny County, PA, AB-183 (Sub-No. 5X) (STB served August 3, 2021) (Decision ID 50881).

Thus, URR is filing this letter seeking a partial waiver of the consummation notice requirement for the reasons explained herein.

A little over a month after the Notice was filed, on June 7, 2021, United States Steel Corporation ("U.S. Steel"), the former indirect parent company of URR,³ agreed to sell URR's direct parent company, Transtar, LLC ("Transtar"), including URR (the "Transtar Sale"). The Transtar Sale closed on July 28, 2021, at which time U.S. Steel, Transtar, and URR entered into a Transition Services Agreement, pursuant to which, from July 28, 2021, through July 28, 2022, U. S. Steel would host Transtar's and URR's information technology ("IT") infrastructure (e.g., email, accounting, payroll, phones, railroad operations, etc.) and provide Transtar and URR with various services (e.g., accounting, finance, HR, payroll, procurement, records management, etc.). Since the closing of the Transtar Sale over a year ago, Transtar and URR have, among other things: designed, purchased, licensed, installed, implemented, and trained employees on its own new IT infrastructure; hired their own personnel to provide some services; established their own relationships with vendors to provide other services; and transitioned all of their IT and services to their own systems, employees, or vendors. This highly complex process drew upon multiple resources within Transtar and URR and proved too complex to complete by the July 28, 2022, expiration of the Transition Services Agreements, which Transtar and URR found necessary to extend through September 30, 2022.

Additionally, during that time, Transtar hired a new chief legal officer with limited prior railroad experience, who, while assisting in managing the transition of all of Transtar's and URR's IT and services to its own systems, employees, and vendors, was getting up to speed with all aspects of Transtar's business, including customer relationships, regulatory requirements, compliance programs, and real estate matters, including the DB Pipe Sale. In the midst of those changes, URR closed on the DB Pipe Sale over the 2021 holiday season on December 30, 2021.⁴ URR's outside counsel had prepared a consummation notice⁵ that URR was ready to file within

³ USS, a non-carrier, previously owned all of the issued and outstanding membership interests of Transtar, a non-carrier holding company, which, in turn, owns all of the issued and outstanding ownership interests of five Class III common carrier railroads subject to the jurisdiction of the STB, including URR.

⁴ Had URR timely filed its consummation notice in accordance with the provisions of 49 C.F.R. § 1152.29(e)(2) and the Board's May 21, 2021, decision (as modified by subsequent decisions of the Board on June 17, 2021, and August 3, 2021), URR would have advised the Board that it had exercised the authority granted to it and has fully consummated abandonment of the MCR Track effective December 30, 2021. Should the Board grant this Petition, URR is not requesting retroactive authority, but rather is requesting that its consummation notice (See Exhibit A) be considered timely filed.

⁵ 49 C.F.R. § 1152.29(e)(2) provides that to exercise abandonment authority, a notice of consummation of an authorized rail abandonment must be filed with the Board within one year after the service date of the decision that authorized or exempted the abandonment. That regulation provides that, in the absence of such timely notice, the railroad's abandonment authority lapses, and the rail line remains subject to Board jurisdiction.

the required one-year period. However, due to the myriad issues facing Transtar and URR noted above, the notice simply did not get filed and was unintentionally overlooked.

Recently, while preparing for the September 30, 2022, transition from U.S. Steel's systems and services, Transtar and URR discovered that the consummation notice was not filed as required on May 21, 2022. As a result of URR's failure to file a consummation notice, DB Pipe, LLC owns an actively regulated railroad, which it did not seek Board authority to acquire.⁶ Rather than force DB Pipe, LLC, who unknowingly acquired a regulated railroad, to seek after-the-fact acquisition authority and/or require URR or DB Pipe, LLC to refile for abandonment authority to terminate common carrier operations again, URR is requesting a partial waiver of the consummation notice requirements to allow the consummation notice being filed today to be considered as timely filed.

The Board has waived the consummation notice requirement when unique circumstances are present and/or the abandoning carrier provides adequate justification for its delay. In one such case, a party sought authority to acquire a rail asset that was proposed for abandonment, but the previous carrier failed to comply with the consummation notice requirement, and the new owner intended for the rail line to become non-jurisdictional industry track. See Abe Fairmont, LLC – Abandonment Exemption – In Fillmore County, NEB, AB-1106X; BNSF Railway Company – Discontinuance of Service Exemption – In Fillmore County, NEB, AB-6 (Sub-No. 488X); and Fillmore Western Railway Company – Abandonment Exemption – In Fillmore County, NEB, AB-492 (Sub-No. 2X) (STB served Jan. 29, 2018). In another case, the Board accepted a late-filed consummation notice as timely filed, when the carrier demonstrated that it failed to file a consummation notice of request an extension because it believed in good faith that the parties were finalizing the formalities of a trails use agreement and as such abandonment authority lapsed. See Louisiana & Delta Railroad, Inc. – Abandonment Exemption – In Terrebonne Parish, LA, AB-318 (Sub-No. 3X) (STB served September 1, 1998). More recently, the Board waived a consummation notice requirement for a carrier that mistakenly believed that a decision by the Board on May 24, 2019, imposing certain conditions had reset the consummation deadline. See BNSF Railway Company – Abandonment Exemption – In Pawnee County, Okla., AB-6 (Sub-No. 498X) (STB served June 12, 2020).

As the Board is aware, the Board's rules, 49 C.F.R. § 1152.29(e)(2), provide that, "[f]or good cause shown, a railroad may file a request for an extension of time to file a notice so long as it does so sufficiently in advance of the expiration of the deadline for notifying the Board of consummation to allow for timely processing." Unfortunately, as explained above URR unintentionally failed to do so. However, the Board's regulations delegate to the Director of the Office of Proceedings "authority initially" to "waive the regulations at 49 CFR part 1152, subpart C," which includes 49 C.F.R. § 1152.29(e)(2), on "appropriate petition." 49 C.F.R. §

⁶ Per the purchase and sale agreement URR and DB Pipe, LLC, the Line acquired by DB Pipe, LLC was supposed to no longer be a regulated rail line and was to be operated by DB Pipe, LLC as private industry track.

1011.7(a)(2)(xiv). See also GTE Serv. Corp. v. FCC, 782 F.2d 263, 273-74 & n.12 (D.C. Cir. 1986) (affirming an agency's "inherent powers" to control its docket).⁷

No party will be prejudiced by the Board granting the waiver sought here, and URR is simultaneously filing the required consummation notice. URR respectfully requests that the Board waive the otherwise applicable deadlines for filing a consummation notice or extension request, and accept the attached consummation notice as timely filed to avoid wasting the time and resources of both DB Pipe, LLC and the Board.⁸ In closing, URR apologizes for this unfortunate oversight. Please contact me should you have any questions about this Petition.

Sincerely,

/s/ *Crystal M. Zorbaugh*

Crystal M. Zorbaugh
Attorney for Transtar & Union Railroad Company,
LLC

cc: Parties of Record

⁷ The Director granted a similar petition where a failure to timely request a consummation deadline extension soon after the deadline expired was due to an honest mistake. See Norfolk S. Ry. Co. – Abandonment Exemption – in Marietta, Lancaster County, PA., AB 290 (Sub-No. 328X) (STB served Apr. 3, 2013).

⁸ URR believes it would be a waste of the Board's valuable resources to reprocess an abandonment notice that was approved a little over a year ago with no opposition.

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-183 (Sub-No. 5X)

**UNION RAILROAD COMPANY, LLC
– ABANDONMENT EXEMPTION –
IN THE CITY OF MCKEESPORT, ALLEGHENY COUNTY, PENNSYLVANIA**

**PETITION FOR PARTIAL WAIVER OF THE CONSUMMATION NOTICE
REQUIREMENT**

**EXHIBIT A
CONSUMMATION NOTICE**

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Via E-Filing

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

Re: Union Railroad Company, LLC – Abandonment Exemption – In the City of McKeesport, Allegheny County, Pennsylvania, AB-183 (Sub-No. 5X)

Dear Ms. Brown:

On May 3, 2021, Union Railroad Company, LLC (“URR”) filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F – Exempt Abandonments for URR to abandon approximately 5.4 miles of switching and terminal trackage known as the MCR Track in the City of McKeesport in Allegheny County, PA. (the Line). Notice of the exemption was served and published in the Federal Register on May 21, 2021 (86 Fed. Reg. 27,666).

In accordance with the provisions of 49 C.F.R. § 1152.29(e)(2) and the Board’s May 21, 2021 decision (as modified by subsequent decisions of the Board on June 17, 2021, and August 3, 2021), URR hereby advises the Board that it has exercised the authority granted to it and has fully consummated abandonment of the MCR Track as of December 30, 2021.¹ Should you have any questions concerning this notice of consummation, please contact the undersigned counsel for URR.

Sincerely,

/s/ *Crystal M. Zorbaugh*

Crystal M. Zorbaugh
Counsel for Union Railroad Company, LLC

¹ While Transtar consummated its abandonment authority on December 30, 2021. It failed to timely file its consummation notice, and as such is concurrently filing a petition requesting the Board to accept its consummation notice as timely filed.

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Ms. Cynthia Brown
September 26, 2022
Page 2

Enclosures

cc: Matthew J. Fearing
Parties of Record
Pennsylvania Public Utility Commission
Pennsylvania Department of Transportation