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209123

October 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

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 Status Report, 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.

ENTERED
Office of Proceedings

OCT 16 2003

Part of
Public Record

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)



STATUS REPORT

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: October 16, 2003

BEFORE THE
SURFACE TRANSPORTATION BOARD

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



STATUS REPORT

This Status Report is filed pursuant to the September 25, 2003, decision of the Director of the Board's Office of Proceedings directing the Central Michigan Railway Company ("CMR") and Plastatech Engineering, Ltd. ("Plastatech") to negotiate.

Plastatech's most recent filing with the Board in this proceeding was its September 25, 2003, Reply in Opposition To Motion For Expedited Decision. Since that date, Plastatech has obtained additional information that has caused it to reject as inadequate the settlement proposal from CMR that was referred to in the September 25 decision. Thereafter, the parties have been unable to come to agreement despite good faith negotiations.

Additional Information

1. **Timing.** CMR has in its pleadings indicated that the public interest requires haste in authorizing demolition of the subject railway bridge ("The Bridge") to permit the Michigan Department of Transportation ("MDOT") to widen the I-75 highway.

Plastatech's representatives contacted MDOT's design engineer Andrew Philp at MDOT's Bay City, Michigan, office and contacted Terry Palmer, MDOT's project director in Bridgeport Township, a few doors down from Plastatech's own facility. Both MDOT

representatives confirmed that any plans to widen I-75 are merely in the “thought process” now. CMR’s statement that MDOT has a removal bid for The Bridge that will go stale if demolition does not occur this year is a red herring since MDOT is in a “fix it first” modality and has no current plan to demolish The Bridge in 2003 or 2004. In fact, MDOT has during September-October, 2003, completely resurfaced and re-striped I-75 for a substantial distance both north and south of the Bridge; it seems exceedingly unlikely that MDOT would rip this new work up in the foreseeable future to widen I-75.

2. Fair Compensation. Plastatech submitted a Freedom of Information Act (“FOIA”) request to MDOT concerning MDOT’s negotiations with CMR for the acquisition of The Bridge and abandonment of the track now serving only Plastatech. MDOT’s statutorily-mandated disclosure was received by Plastatech on September 25th. The FOIA disclosure indicates that MDOT’s offer to buy The Bridge for \$3,046,500 resulted from MDOT’s acceptance of CMR’s financial proposal contained in a July 30, 2002, letter to Kirk T. Steudle at MDOT from Charles A. Pinkerton, III, CMR’s President (the “Pinkerton Letter”), a copy of which is attached hereto. (Attachment 1).

As is self-evident, CMR predicted in the Pinkerton Letter that its revenues from rail traffic over The Bridge would increase by at least 7% annually from the year 2002 figure of \$736,000. CMR projected its damages out ten years and anticipated its losses from abandonment of The Bridge at \$6,095,000, which it discounted to present value by 50% to arrive at a settlement figure with MDOT for \$3,046,500 for acquisition of The Bridge.

However, contrary to its above representations to MDOT that The Bridge is a valuable source of revenue, CMR is articulating a position here before the Board that The Bridge is a money-loser for CMR. Obviously these contradictory positions cannot both be true.

Accepting for the sake of argument CMR's current position that servicing Plastatech over The Bridge results in a loss, and accepting MDOT's evident willingness to pay CMR \$3,046,500 for a money-losing Bridge, it is important for the Board to bear in mind that Plastatech's desire to be made whole can be accomplished by CMR using MDOT's money, not CMR's own money.

Plastatech received 81 rail carloads in 2002 across The Bridge. It takes three trucks to empty a railcar. Plastatech has been quoted a transloading and trucking price of \$700 per truck from the closest transload site to Plastatech's facility. Hence Plastatech's increased costs in Year One alone due to rail loss would be \$170,100 ($81 \times 3 \times \$700 = \$170,100$).

The Pinkerton Letter anticipates a 7% growth factor (based on multiple shippers) for traffic across The Bridge. That corresponds closely to Plastatech's own experience: 40 carloads in the first half of 2002 vis-a-vis 43 carloads in the first half of 2003, which is an increase of 7.5 percent. Per the attached calculations (Attachment 2), a 7% annual growth rate applied to the \$170,100 Year One number would yield a payment stream of \$2,514,690 over ten years (the time frame agreed upon in the Pinkerton Letter), even without factoring in an increase in transloading-trucking charges above \$700 per truck.

Discounting this cash flow stream back to present value at a current interest rate of 5% yields a present value of \$1,984,269. Applying yet another "extremely aggressive" (to quote the Pinkerton Letter) discount of 50% yields the sum of \$992,135 in Plastatech's mathematically-

provable damages.^{1/} Applying the CMR methodology to MDOT's \$3,046,500 figure would still leave CMR with \$2,054,365 net, in return for abandoning what CMR calls a money-losing Bridge and would facilitate the public's interest in removing The Bridge (however pressing or dormant that interest might currently be).

Fair compensation to Plastatech to help it cover its provable increased shipping costs out of the three million dollars-plus MDOT windfall to CMR "could form the basis for an agreement between CMR and Plastatech regarding compensation". . . but nothing less will do so.

CONCLUSION

The information identified above, which was not available to Plastatech at the time of its most recent Board filing, underscores that this proposed abandonment would not be properly decided under accelerated exemption procedure. Unquestionably, CMR has not justified the proposed abandonment under traditional decisional criteria. If the abandonment were deemed to be justified in light of the proposed highway widening project, a legitimate issue would be presented under 49 U.S.C. § 10903(e)(1)(B) whether and to what extent public convenience and necessity requires that approval of the abandonment be conditioned on CMR compensating Plastatech for its loss of rail service. That is a complex issue that can be adequately resolved only through a formal proceeding utilizing discovery and sworn evidence. Thus, CMR's Petition for Exemption should be denied leaving it with the option of filing a formal abandonment application that complies with all of the requirements of 49 C.F.R. § 1152.22 if it chooses to proceed.

^{1/} Attachment 2 also takes into account Plastatech's lost investment in rail-related assets at book value of \$57,787.

Respectfully submitted,

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

Protestant

Thomas F. McFarland *kl*

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Attorney for Protestant

DATE FILED: October 16, 2003

Charles A. Pinkerton, III
President

July 30, 2002



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Kirk T. Steudle
Regional Engineer
Michigan Department of Transportation
55 E. Morley Drive
Saginaw, MI 48601

Dear Mr. Steudle:

I want to thank you for the update on the I-75 widening project which we received at your office last week. I was very impressed with the number of alternatives that have been considered over the past three years to reduce the overall cost of this project.

Following the meeting, at your request we have evaluated the appraisal provided by M-DOT in an effort to arrive at a final valuation for the Central Michigan Railroad to agree to the elimination of its current crossing of I-75. In general the appraisal is quite well done and shows a clear understanding of the strategic nature of the I-75 crossing to the Central Michigan Railroad. The appraisal is accurate in stating that the current annual revenue is averaging approximately \$736,000, but we cannot agree with the accuracy of the assumption that revenue will only grow at 1 1/2% a year. While we don't believe that we can keep up the current trend of a 32% annual growth in revenue we do believe that a minimal acceptable assumption for a 10-year period would be a 7% annual revenue growth. Using this assumption in place of the 1 1/2 % included in the appraisal would set the 10-year appraised value of this revenue stream at \$6,095,000. If I understand you correctly, it is the intention of MDOT to discount this revenue stream by 50% to arrive at a purchase price for the railroad crossing.

While we find a 50% discount to be an extremely aggressive, if we reach agreement on the 7% revenue growth mentioned above we will accept your discounting method. This would result in a purchase price of \$3,046,500.

We also have given consideration as to how a reconstructed railroad bridge could be done in an economical way to minimize the cost of a temporary run around. First we looked at the possibility of constructing a trans-load facility and moving the freight dislocated by construction rail traffic. Our concern here is that our current major shipper on the east side of the bridge has developed an operation which utilizes the rail cars as his inventory storage method and he is not set up to handle truck traffic.

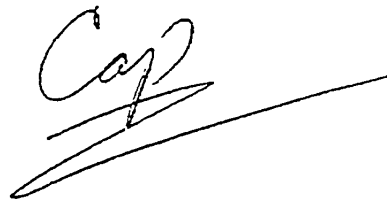
Mr. Kirk Steudle
July 30, 2002
Page Two

For obvious reasons it would not be in the railroads best interest to assist the shipper in revamping its current operations to receive truck traffic. For these reasons we cannot agree to a reload facility as an option to maintain temporary rail traffic. We would, however, work closely with you to minimize the cost of any temporary structure. We suggest that you look at utilizing the existing steel spans by first building a temporary sub-structure and then shifting the existing steel spans over to the temporary sub-structure. We realize that this would require some short term dislocation of rail service while the steel spans are being moved. However, we believe that we could accommodate dislocation.

It is our belief that once you adjust the existing cost estimate to add in the cost of demolition of the existing bridge, the addition of a temporary railroad bridge and the application of a 20% contingency fund and a 15% engineering fund, the cost of the bridge replacement will equal or exceed the purchase price discussed above.

We look forward to hearing from you on this proposal in the near future.

Sincerely,

A handwritten signature in dark ink, appearing to read "Cap", followed by a long horizontal line extending to the right.

/pf

ATTACHMENT 2

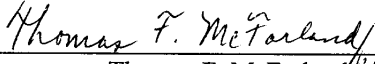
Railroad Abandonment - Settlement Calculations

	<u>Railcars*</u>		Added Transportation <u>per car</u>	Total Annual Transportation <u>Expense</u>
year 1	87	x	\$2,100	\$182,007
year 2	93	x	\$2,100	\$194,747
year 3	99	x	\$2,100	\$208,380
year 4	106	x	\$2,100	\$222,966
year 5	114	x	\$2,100	\$238,574
year 6	122	x	\$2,100	\$255,274
year 7	130	x	\$2,100	\$273,143
year 8	139	x	\$2,100	\$292,263
year 9	149	x	\$2,100	\$312,722
year 10	159	x	\$2,100	\$334,612
Total Future Value - added trans. costs				\$2,514,690
Net Present Value - added trans. costs (discounted at 5%)				\$1,984,269
50% discount of NPV				\$992,135
Add: Undepreciated value of rail trackage and unloading equipment				<u>\$57,787</u>
Total Lump Sum Settlement				<u><u>\$1,049,922</u></u>

* - assuming 7% growth in railcar annual volume

CERTIFICATE OF SERVICE

I hereby certify that on October 15, 2003, I served the foregoing document, Status Report, 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