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November 18, 2015

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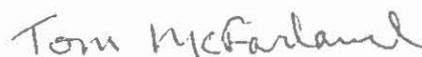
Ms. Cynthia T. Brown, Chief  
Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20024

Re: Finance Docket No. 35972, *West Belt Railway LLC -- Lease and Operation Exemption Including Interchange Commitment -- Terminal Railroad Association of St. Louis*

Dear Ms. Brown:

Hereby transmitted is a Reply to (1) Motion For Access to Confidential Documents and (2) Motion for Housekeeping Stay for filing with the Board in the above referenced matter.

Very truly yours,



Thomas F. McFarland  
*Attorney for West Belt Railway LLC*

*TMcF:kl:enc:\1706\efSTB3*

cc: Sandra L. Brown, Esq. - *by e-mail to sandy.brown@thompsonhine.com*  
James A. Sobule, Esq. - *by first-class, U.S. mail*

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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WEST BELT RAILWAY LLC -- LEASE )  
AND OPERATION EXEMPTION ) FINANCE DOCKET  
INCLUDING INTERCHANGE ) NO. 35972  
COMMITMENT -- TERMINAL )  
RAILROAD ASSOCIATION OF ST. )  
LOUIS )

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**REPLY TO (1) MOTION FOR ACCESS TO CONFIDENTIAL  
DOCUMENTS AND (2) MOTION FOR HOUSEKEEPING STAY**

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WEST BELT RAILWAY LLC  
One Arsenal Street  
St. Louis, MO 63118

Applicant

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Attorney for Applicant

Date Filed: November 18, 2015

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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WEST BELT RAILWAY LLC -- LEASE	)	
AND OPERATION EXEMPTION	)	FINANCE DOCKET
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**REPLY TO (1) MOTION FOR ACCESS TO CONFIDENTIAL  
DOCUMENTS AND (2) MOTION FOR HOUSEKEEPING STAY**

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Pursuant to 49 C.F.R. § 1150.33(h)(3)(i), WEST BELT RAILWAY, LLC (WBRY) replies to a (1) Motion for Access to Confidential Documents (Access Motion), and (2) Motion for Housekeeping Stay (Stay Motion), filed by Ameren Missouri (Ameren) on November 13, 2015.

**REPLY TO ACCESS MOTION**

WBRY hereby agrees to provide a confidential complete version of the Lease Agreement that contains an interchange commitment to an attorney or consultant for Ameren upon receipt of a signed Undertaking regarding Highly Confidential Material, in the form set out in Exhibit B of Ameren's Motion for Access to Confidential Documents, without awaiting a Board-approved Confidentiality Agreement. If counsel for Ameren were to e-mail signed Undertaking to undersigned counsel, the complete Lease Agreement would be e-mailed to Ameren's counsel on the same day.

WBRY also agrees to provide a confidential version of the Lease Agreement in which competitive and commercially sensitive information is redacted to other Ameren personnel upon

receipt of their signed Undertaking regarding Confidential Material, in the form set out in Exhibit A of Ameren's Motion for Access to Confidential Documents, without awaiting a Board-approved Confidentiality Agreement. As explained in the previous paragraph, the confidential version of the Lease Agreement would be e-mailed to persons providing signed Undertakings regarding Confidential Material on the same day that such signed Undertakings are received.

The foregoing offers to voluntarily provide access to the Lease Agreement and interchange commitment are being made on an expedited basis in order to accelerate consideration of the interchange commitment in view of the absence of any effect of the interchange commitment on Ameren, as next explained.

#### **REPLY IN OPPOSITION TO STAY MOTION**

The class exemption for WBRY's lease and operation of the subject rail line is scheduled to become effective by operation of law on November 21, 2015. See 49 C.F.R. § 1150.32(b). WBRY hereby voluntarily agrees to refrain from consummating the lease and commencing operation of the rail line until 12:01 a.m. on December 1, 2015. That additional time for review of the Lease Agreement and the absence of any adverse effect of the interchange commitment on Ameren negate a need for a housekeeping stay. For those reasons, WBRY opposes entry of a housekeeping stay in this proceeding.<sup>1/</sup>

The interchange commitment in the Lease Agreement will have absolutely no adverse effect upon Ameren. Ameren has not shipped nor received traffic over the subject rail line in nearly five years. The last railcar placed at the Ameren facility on the subject rail line was on

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<sup>1/</sup> Ameren filed its Motions without having conferred with WBRY or TRRA. Such contact could well have avoided the filing of the Motions.

December 14, 2010. Under the proposed arrangement between the TRRA and WBRY, WBRY would merely be stepping into TRRA's stead pursuant to a Handling Agreement on the subject line. The proposed arrangement will essentially be seamless for shippers on the line with no change in service. Service provided by the Central Midland Railway Company (CMR) will not be affected nor altered as a result of the proposed arrangement between TRRA and WBRY. Consequently, Ameren's service will not change in any respect as a result of the interchange commitment. TRRA will continue to interchange traffic with CMR five days per week on the siding at Shreve Avenue in St. Louis, just as it does at present.

In a proceeding before the Board, the party seeking a stay must carry its burden of proof that a stay is warranted under the Board's four-part standard. Specifically, to obtain a stay here, Ameren would have to meet its burden under the so-called "Holiday Tours"<sup>2/</sup> test, and show that: – (1) there is a strong likelihood that Ameren will prevail on the merits of any challenge to the action sought to be stayed; (2) Ameren will suffer irreparable harm in the absence of a stay; (3) issuance of the stay would not substantially harm other parties; and (4) issuance of a stay would be in the public interest. A stay is an extraordinary injunctive remedy "and will generally not be granted unless the requesting party can show that it faces unredressable actual and imminent harm that would be prevented by an injunction."<sup>3/</sup>

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<sup>2/</sup> Washington Metro. Area Transit Comm'n. v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977).

<sup>3/</sup> American Chemistry Council, et al. v. Alabama Gulf Coast Railway, et al., STB Docket No. NOR 42129, (STB served May 4, 2012).

With regard to the first point, Ameren has provided no evidence to show any likelihood of prevailing on the merits of any challenge, let alone a strong likelihood. They simply have not put in any evidence to even address this requirement and therefore they have not met it.

With regard to their argument that they will suffer irreparable harm in the absence of a stay, that is simply untrue. The Board has a procedure in place, a petition to revoke, in the event Ameren has reason to believe that somehow they will be harmed by this transaction. As noted previously in this pleading, WBRY will provide the documentation sought by Ameren immediately upon receipt of the signed undertakings. Ameren will have plenty of time before the December 1, 2015 closing date to review the document and we believe upon review that they will find absolutely no impact on the service provided to Ameren as nothing in this transaction has anything to do with Ameren's receipt of rail service at Labadie. Nonetheless, should Ameren feel that it is harmed in some way, the petition to revoke process remains available at any time for them. There is simply no evidence to support their argument that they will suffer irreparable harm and indeed there is a remedy that they have should they conclude that they are harmed.

With regard to the third prong in which Ameren asserts that issuance of a stay would not substantially harm other parties, again Ameren has put no evidence in the record to indicate that this is indeed the case and therefore has not met its burden with regard to that prong.

Finally, with regard to the argument that issuance of a stay would be in the public interest, WBRY argues that issuance of a stay that in this case would in fact be opposed to the public interest.

WBRY is operating under a class exemption process, which is designed to facilitate transactions that meet certain criteria in an expeditious, minimally regulated fashion. If parties

like Ameren could simply come in and ask for issuance of a stay simply to give them an opportunity to review the documents pursuant to a request for access to confidential documents, then it really means that any party can shut down the exemption process by simply filing a motion for access. That would run completely counter to the Board's decision in Docket No. EP 714, Information Required and Notices and Petitions Containing Interchange Commitments, served November 26, 2013 in which the Board, in response to a Petition for Clarification from the American Shortline & Regional Railroad Association said, "The final rules do not change the restricted types of transactions that are eligible for our exemption process, the substantive standards for reviewing rail line transactions with the interchange commitments, or the timing of the Board decision on such transactions." Later on the Board made it clear that "our deadlines remain unchanged." Slip opinion at Page 2.

What Ameren is seeking to do here is exactly what the Board said was not going to happen when it issued the new rules with regard to disclosure of interchange commitments and the Board should make that point again clear here that a stay as requested by Ameren is simply inappropriate.

#### **CONCLUSION AND REQUESTED RELIEF**

WHEREFORE, for the reasons stated, (1) there is no need for disposition of the Access Motion in view of WBRY's agreement to voluntarily provide access to the Lease Agreement (with the interchange commitment) on an expedited basis; and (2) no justification having been shown for entry of either a housekeeping stay or a traditional stay, the Stay Motion should be denied.

Respectfully submitted,

WEST BELT RAILWAY LLC  
One Arsenal Street  
St. Louis, MO 63118

Applicant

*Thomas F. McFarland*

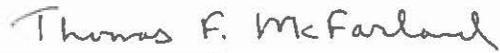
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mcfarland@aol.com

Attorney for Applicant

Date Filed: November 18, 2015

**CERTIFICATE OF SERVICE**

I hereby certify that on November 18, 2015, I served the foregoing Reply to (1) Motion for Access to Confidential Documents and (2) Motion for Housekeeping Stay by e-mail on Sandra L. Brown, Esq. at *sandy.brown@thompsonhine.com*, with confirmation by first-class, U.S. mail, postage prepaid to Thompson Hine LLP, 1919 M Street, N.W., Suite 700, Washington, DC 20036 and by first-class, U.S. mail to James A. Sobule, Ameren Corporation, 1901 Chouteau Avenue, St. Louis, MO 63103.



Thomas F. McFarland