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July 21, 2014

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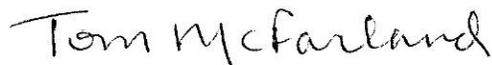
Ms. Cynthia T. Brown, Chief  
Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20024

Re: Docket No. AB-55 (Sub-No. 712X), *CSX Transportation, Inc. -- Abandonment Exemption -- in White County, IN*

Dear Ms. Brown:

Hereby transmitted is a Reply In Opposition To Motion To Strike Or For Leave To File A Substantive Response for filing with the Board in the above referenced matter.

Very truly yours,



Thomas F. McFarland  
*Attorney for Monticello Farm  
Service, Inc.*

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BEFORE THE  
SURFACE TRANSPORTATION BOARD

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CSX TRANSPORTATION, INC. --            )   DOCKET NO. AB-55  
ABANDONMENT EXEMPTION -- IN        )   (SUB-NO. 712X)  
WHITE COUNTY, IN                        )   

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**REPLY IN OPPOSITION TO MOTION TO STRIKE  
OR FOR LEAVE TO FILE A SUBSTANTIVE RESPONSE**

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MONTICELLO FARM SERVICE, INC.  
1415 North 6<sup>th</sup> Street  
Monticello, IN 47960

Protestant

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Attorney for Protestant

Date Filed: July 21, 2014

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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CSX TRANSPORTATION, INC. --	)	DOCKET NO. AB-55
ABANDONMENT EXEMPTION -- IN	)	(SUB-NO. 712X)
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**REPLY IN OPPOSITION TO MOTION TO STRIKE  
OR FOR LEAVE TO FILE A SUBSTANTIVE RESPONSE**

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Pursuant to 49 C.F.R. § 1104.13(a), MONTICELLO FARM SERVICE, INC. (MFS) hereby replies in opposition to a “Motion to Strike Reply in Opposition or in the Alternative Permit a Substantive Response,” filed by CSX Transportation, Inc. (CSXT) on July 1, 2014. The request to permit the filing of a substantive response is in essence a petition for leave to file rebuttal argument in response to MFS’s Reply in Opposition to Amended Petition for Exemption filed on June 23, 2014. That part of CSXT’s pleading will be referred to as “Petition for Leave to File Rebuttal.” CSXT’s Motion to Strike Reply in Opposition will be referred to as “Motion to Strike.”

**I. REPLY TO MOTION TO STRIKE**

CSXT’s Motion to Strike is directed at MFS’s Reply in Opposition to Amended Petition for Exemption, filed on June 23, 2014 (MFS Reply). The MFS Reply was directed at CSXT’s Amended Petition for Exemption of abandonment of the Monon-Monticello, IN rail line (Rail

Line), filed on June 2, 2014. The MFS Reply was timely filed.<sup>1/</sup>

CSXT's Motion to Strike is grounded primarily on a contention that in directing CSXT to file the Amended Petition, the Board did not provide for the filing of replies to the Amended Petition, and that in the absence of such explicit permission to file replies, MFS's Reply was unauthorized and improperly filed (Motion to Strike at 4-5). The Motion also contains a curious contention that the matter contained in the MFS Reply should have been contained in MFS's Comments filed on March 4, 2014 and, for that reason, such matter is not timely filed (*id* at 5-6), even though MFS's Substantive Reply Argument (MFS Reply at 8-10) is clearly directed at the cost evidence in CSXT's Amended Petition, which had not yet been filed when MFS's Comments were filed.

Contrary to CSXT's position, the dispositive issue regarding the procedural propriety of the filing of a reply is not whether such filing is explicitly permitted, but rather whether such filing is prohibited. That is, if the filing of a reply is not prohibited, such filing is permitted. That is evident in the governing Board regulation on replies, 49 C.F.R. § 1104.13(a), which provides as follows:

(a) Time. A party may file a reply or motion addressed to any pleading within 20 days after the pleading is filed with the Board, unless otherwise provided.<sup>2/</sup>

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<sup>1/</sup> Twenty days are allowed for a reply. 49 C.F.R. § 1104.13(a). The twentieth day after the filing of the amended Petition was Sunday, June 22, 2014. Under 49 C.F.R. § 1104.7(a), the due date for MFS's Reply was extended from that Sunday to Monday, June 23, 2014. MFS's Reply was filed on the latter date.

<sup>2/</sup> In context, "unless otherwise provided" means "unless prohibited."

The Board's regulation at 49 C.F.R. § 1104.13(c) identifies an instance in which filing of a reply is prohibited:

“(c) Reply to a Reply. A reply to a reply is not permitted.”

There was no such prohibition in the Board's decision served May 23, 2014 that directed CSXT to file the Amended Petition. There is no such prohibition in the Board's regulations governing petitions for exemption of abandonment at 49 C.F.R. § 1152.60(a), *et seq.* There is no such prohibition in the Board's regulations governing petitions for exemption generally at 49 C.F.R. § 1121.4(a), *et seq.* Indeed, the opposite is true. It is provided in 49 C.F.R. § 1121.4(a) that “the Board may consider during its deliberation any public comments filed in response to a petition for exemption.”

In view of the foregoing, the filing of MFS's Reply was lawful and authorized in accordance with 49 C.F.R. § 1104.13(a) because it was not prohibited. Perhaps MFS's Reply should have cited that regulation as authority for filing that Reply, rather than 49 C.F.R. § 1117.1, which governs petitions not otherwise covered. In any event, however, the filing of MFS's Reply was legally permissible in accordance with Board regulations. That being the case, CSXT's Motion to Strike should be denied.

## **II. REPLY TO PETITION FOR LEAVE TO FILE REBUTTAL**

As made crystal-clear in a consistent line of Board decisions cited at pages 6 and 7 of MFS's Reply, the filing of CSXT's proffered Rebuttal Argument is explicitly prohibited under Board policy. As the Board said in *Central Kansas Ry. -- Aband. Exempt. -- in Sedgwick County, KS*, 2001 STB LEXIS 356 (Docket No. AB-406 [Sub-No. 14X], decision served April 10, 2001), at \*3, “CKR filed its petition knowing that our procedures provide only for the filing of a petition

and a reply thereto.” Like the rail carrier in that proceeding, CSXT also knows, or should know, of that Board procedure because petitions for exemption of abandonment filed by CSXT have been denied by the Board on at least two occasions. *See CSX Transp. Inc. -- Aband. Exempt. -- between Memphis and Cordova, in Shelby County, TN*, 2001 STB LEXIS 943 at \*7 (Docket No. AB-55 [Sub-No. 590X], decision served December 12, 2001), and *CSX Transp. Inc. -- Aband. Exempt. -- in Grant, Delaware, Henry, Randolph and Wayne Counties, IN*, 1989 ICC LEXIS 297 at \*12-16 (Docket No. AB-55 [Sub-No. 282X], decision served October 16, 1989).

Tellingly, CSXT has not challenged that well-settled Board principle in the proceeding at hand. Application of that principle dictates that CSXT’s Petition is to be denied.

Parties having opposed unauthorized pleadings on procedural grounds often respond substantively, in addition, to matter proffered in such unauthorized pleadings. That would be both inappropriate and unnecessary in the present case. It would be inappropriate because it would add yet another layer of extraneous matter to a process designed solely for the filing of a petition and reply. It would be unnecessary because it would be evident to the Board, without input from MFS, that the matter contained in CSXT’s proffered Rebuttal Argument falls far short of sustaining CSXT’s burden of proof for an exemption.

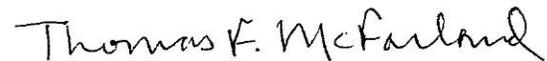
**CONCLUSION AND REQUESTED RELIEF**

WHEREFORE, for the reasons stated, CSXT's Motion to Strike and CSXT's alternative Petition for Leave to File Rebuttal should be denied.

Respectfully submitted,

MONTICELLO FARM SERVICE, INC.  
1415 North 6<sup>th</sup> Street  
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Protestant



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Attorney for Protestant

Date Filed: July 21, 2014

## CERTIFICATE OF SERVICE

I hereby certify that on July 21, 2014, I served the foregoing Reply in Opposition to Motion to Strike or for Leave to File a Substantive Response, by e-mail on Louis E. Gitomer, Esq., [lou@lgraillaw.com](mailto:lou@lgraillaw.com), and Melanie B. Yasbin, Esq., [melanie@lgraillaw.com](mailto:melanie@lgraillaw.com), with confirmation copies by first-class, U.S. mail, postage prepaid, addressed to 600 Baltimore Avenue, Suite 301, Towson, MD 21204; on July 18, 2014, by UPS overnight mail (Monday delivery) on Steven Armbrust, Esq., CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202; and on July 21, 2014 by first-class, U.S. mail, postage prepaid, on the following parties of record:

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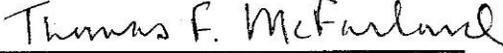
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