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**BY E-FILING**

July 29, 2011

Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
Washington, D.C. 20423-0001

**RE: Finance Docket No. 35498, Adrian & Blissfield  
Rail Road Company – Continuance- in-Control--Charlotte  
Southern Railroad Company, Detroit Connecting Railroad  
Company, and Lapeer Industrial Railroad Company**

Dear Ms. Brown:

On behalf of the Adrian & Blissfield Rail Road Company (“ADBF”), I am e-filing ADBF’s Motion to Strike Reply Comments of Dale R. Pape and Scott C. Cole submitted in this proceeding on July 26 and 28, 2011, respectively.

Sincerely yours,



John D. Heffner

Enclosure

Cc: All parties of record

**ADBF-4**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**DOCKET FD 35498**

**ADRIAN & BLISSFIELD RAIL ROAD COMPANY,  
-- CONTINUANCE-IN-CONTROL--  
CHARLOTTE SOUTHERN RAILROAD COMPANY,  
DETROIT CONNECTING RAILROAD COMPANY, AND  
LAPEER INDUSTRIAL RAILROAD COMPANY**

**APPLICATION FOR AUTHORITY  
UNDER 49 U.S.C. 11323 *Et Al***

**MOTION TO STRIKE REPLY COMMENTS  
OF DALE R. PAPE AND SCOTT C. COLE**

Submitted By:

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(202) 296-3334

Counsel for Petitioner

DATED: July 29, 2011

**ADBF-4**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**ADRIAN & BLISSFIELD RAIL ROAD COMPANY,  
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**INTRODUCTION**

Pursuant to the Rules of Practice of the Surface Transportation Board (“the Board”), 49 CFR 1104.13(b), Applicant Adrian & Blissfield Rail Road Company (“ADBF”) moves to strike as impermissible “replies” a letter that Dale R. Pape (“Pape”) filed with the Board in the above-captioned proceeding on July 26, 2011 and another letter filed in this same proceeding on July 28, 2011, by Scott C. Cole. Moreover, the Board should also reject these two letters as “objectionable” within the meaning of 49 CFR 1100.8 and 10. Substantively, the letters shed no light on

the *only* basis for approval or denial of the application: whether the transaction will result in adverse competitive impacts that are both "likely" and "substantial." The letters were submitted for the sole purpose of irritating Applicant and confusing the record.

### STATEMENT OF FACTS

As the Board will recall, this proceeding involves an application filed on April 18, 2011, by ADBF at the agency's request pursuant to 49 U.S.C. 11323(a)(3) and 49 CFR 1180.4(c), to cure ADBF's inadvertent but unauthorized acquisition of control of three small railroads. After the Board served an order on May 18, 2011, accepting ADBF's application for processing, finding the transaction a "minor one," and setting deadlines for comments and replies and issuance of a decision on the merits, three parties filed notices of intent to participate: Dale R. Pape ("Pape"), a shareholder and former employee of ADBF, Scott C. Cole ("Cole"), a self-described "citizen of the State of Michigan," and Gabriel Hall, merely identified as "an individual."<sup>1</sup> Pape filed timely comments and Cole submitted comments several weeks after the deadline for public comments had elapsed. Unwilling to let ADBF have the "last word" as the

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<sup>1</sup> Mr. Hall is a former shareholder, director, and corporate officer of ADBF and now owns and manages U S Rail Corp., another short line rail carrier. Undisclosed is the fact that Mr. Pape is now a high level manager at U S Rail Corp.

Board's decision so provides,<sup>2</sup> both protestants now seek to circumvent the Board's procedures with their latest missives.

### ARGUMENT

Both protestant letters violate the Board's long standing policy that forbids the filing of a "reply to a reply." *See*, 49 CFR 1100.13(c) which states:

**§1104.13 Replies and motions.**

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

Moreover, neither letter presents any reason justifying a waiver of the Board's longstanding prohibition. The Springfield Terminal Railway Company-Petition for a Declaratory Order-Reasonableness of Demurrage Charges, Docket No. 40128, STB served June 11, 2010 (reply to a reply rejected). However, in the event the Board should accept Mr. Pape's letter into evidence, ADBF requests leave to submit a short substantive response to ensure a complete record. Mr. Cole's letter does not deserve a substantive response because he merely reiterates and amplifies statements contained in his comments dated June 17, 2011.<sup>3</sup>

Moreover, the Board's Rules of Practice at 49 CFR 1104.8 and 10 also require rejection. Section 1104.8 allows the Board to strike "objectionable

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<sup>2</sup> The Board's May 18 decision gave ADBF the right to address any comments filed by the public by submitting its response on or before July 5, 2011. Accordingly, ADBF gets to submit "closing" evidence and argument. *See* May 18 decision at page 8.

<sup>3</sup> Mr. Cole's July 28 "reply" is limited to allegations concerning railroad operations and safety including by ADBF subsidiary the Jackson & Lansing Railroad, compliance with Michigan liquor control laws, and ADBF compliance with Board rules and regulations.

material” as redundant, irrelevant, immaterial, impertinent, or scandalous. Section 1104.10 also allows the Board to reject a document that does not comply with its rules. As a minimum, this Board should reject both letters as they do not mention, let alone address, the *sole* criterion for approval of this transaction: the impact of this transaction on competition. Furthermore, Mr. Pape’s letter appears to be in the nature of quibbling over something that happened some 10 years ago in Arizona: the circumstances regarding the end of ADBF President Mark Dobronski’s tenure as a Justice of the Peace in Arizona. The only reason for these submissions appears to be to inflame ADBF. Accordingly, the repeated rehashing of matters previously raised by these protestants is redundant, immaterial, impertinent, and possibly scandalous as well. Their comments do not belong in Board proceedings.

Should the Board accept Mr. Pape’s otherwise irrelevant comments about the circumstances behind Mr. Dobronski’s departure as an Arizona Justice of the Peace, ADBF seeks leave merely to set the record straight. Pape seizes on a statement in a February 22, 2002, order from the Supreme Court of Arizona providing

*“IT IS FURTHER ORDERED THAT Respondent Dobronski shall never again seek or hold judicial office in the State of Arizona”*

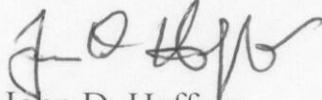
as evidence of his lack of credibility. *See*, Pape letter dated July 26, 2011, at page 2 and attachment. His assertion takes the facts out of the proper context. In fact,

Mr. Dobronski resigned and retired from his position with full benefits on October 26, 2001. The Court's statement merely reflects the obvious: that he would not ever seek or hold judicial office in Arizona again. Regardless of the circumstances behind Mr. Dobronski's departure, Mr. Pape has failed to show that Mr. Dobronski lied or misled any state or federal agency including the Board. Accordingly, there is no substantive basis for the Board to reject ADBF' application for control.

### CONCLUSION

Neither Dale R. Pape nor Scott C. Cole has presented anything warranting a denial of ADBF's control application. Their respective letters filed July 26 and July 28 constitute unauthorized and unjustified replies in violation of 49 CFR 1104.13(c). Moreover, the letters contain material that is redundant inasmuch as it has been submitted before and is objectionable and intended to inflame in violation of 49 CFR 1104.8 and 10. They should be rejected.

Respectfully submitted,



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Counsel for Petitioner

Dated: July 29, 2011

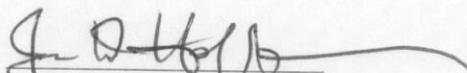
### **CERTIFICATE OF SERVICE**

I, John D. Heffner, hereby certify that I mailed a copy of Adrian & Blissfield Rail Road Company's "Motion to Strike Reply Comments of Dale R. Pape and Scott C. Cole" to the following parties on the 29<sup>th</sup> day of July, 2011, by first class U.S. Mail:

Scott C. Cole  
2700 Noon Road  
Jackson, MI 42901

Gabriel D. Hall  
7846 West Central Avenue  
Toledo, OH 43617

Dale R. Pape  
1988 West Gier Road  
Adrian, MI 49221



John D. Heffner