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BEFORE THE UNITED STATES

SURFACE TRANSPORTATION BOARD

STB Finance Docket No.# 35496

ENTERED

Office of Proceedings

April 11, 2012

Part of

Public Record

**DENVER AND RIO GRANDE RAILWAY HISTORICAL FOUNDATION
d/b/a DENVER AND RIO GRANDE RAILWAY LLC**

PETITION FOR A DECLARATORY ORDER

MOTION FOR LEAVE TO LATE FILE DRGRHF'S OPENING STATEMENT

Submitted by

**Donald H Shank
President and Executive Director
Denver and Rio Grande Railway
Historical Foundation
20 North Broadway Street
Monte Vista, CO 81144
(719) 852 - 7000**

Dated March 11th, 2012

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No.# 35496

**DENVER AND RIO GRANDE RAILWAY HISTORICAL FOUNDATION
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The Denver and Rio Grande Railway Historical Foundation (DRGRHF or Foundation), pursuant to the applicable regulations of the United States Surface Transportation Board (STB or Board), respectfully seeks leave from the Board to late file our opening statement in the above captioned proceeding. The Foundation, in support of its request states:

On April 2nd, 2012, the STB graciously granted DRGRHF's request for an extension of time to file its opening statement in the above captioned. The DRGRHF learned of the Board's April 2nd decision on April 3rd, 2012 when the Foundation's staff checked the Board's website.

On April 4th, 2012, the Foundation began expeditiously to put together its opening statement. Until the Board's April 2nd decision was released, the Foundation had no way of knowing if its request would be granted, or if the case would be dismissed for lack of prosecution. While drafting the opening statement, the DRGRHF began to realize that the Foundation did not have all the documents in its possession necessary to adequately draft a statement in support of its position.

The underlying controversy in this proceeding stems from a court case held in 2011 in Monte Vista Municipal Court. The case is referenced, and fully described in the Foundation's opening statement. Many documents critical to this proceeding, were also needed, and used, in

the Municipal Court proceeding. Those documents had subsequently been turned over to Mr. Ronald E. Howard, an licensed Colorado attorney, who was representing Mr. Donald H. Shank in the municipal court matter.

On April 5th, 2012, the Foundation made an effort to secure the documents from Mr. Howard. Mr Howard, however, was traveling and was unable to secure and transmit the material the Foundation requested until Monday, April 9th. April 6th, through April 8th, was the Easter holiday weekend year. Monday, April 9th, was the date the opening statement was due.

After receiving all the documents from Mr. Howard, the Foundation needed some time to review the documents, select those documents it needed in support of its opening statement, and then scan and reproduce the selected documents for filing.

The documents which the Foundation requested are important to this proceeding. They include items such as:

- | | |
|-------------------------------------|--|
| A. Copies or the original citations | B. Copies of the ordinances in questions |
| C. The Court's signed order | D. Important property leases |
| E. Critical correspondence | F. Previously filed pleadings |

All of the above documentation is critical in order to give the Board a complete and thorough understanding of the controversy currently before it.

Instead of requesting a second extension of time, the Foundation thought it would be more prudent to finish preparing the opening statement as quickly as possible, and then ask for leave to late file the document. The DRGRHF believed this way would be more appropriate and would conserve the Board's resources. The Board now has the opening statement in its possession, and can choose to rule on the motion at some point in the future when the Board is ruling on more than one issue with respect to this proceeding.

The DRGRHF is truly grateful to the Board for granting the first request for an extension of time in this proceeding. Had the Foundation been able to obtain the documents it needed on April 5th or 6th, it would have timely filed its opening statement April 9th.

The DRGRHF recognizes the importance of meeting deadlines. It greatly embarrassed the Foundation to have missed our own deadline. The Foundation is deeply regretful of missing the deadline.

The DRGRHF would like to point out to the Board, the Foundation did finish preparing its opening statement within two days of receiving the documents from Mr. Howard. Had it received the documents on April 6th, the foundation would have submitted the opening statement on time on April 9th. Instead, it received the documents on April 9th, and finished its opening statement on April 11th.

The DRGRHF would respectfully submit that it made a good faith effort to do all it could, from the time it learned of the STB's April 2nd decision, to complete and file its opening statement on time. But for the fact Mr. Howard was traveling and was unable to reproduce and transmit the documents , the Foundation would have met the deadline on time.

The DRGRHF understands that the decision to either accept, or reject the pleading is now at the discretion of the Board. We would ask that the Board accept our sincere apologies. We would respectfully ask that the Board grant our request and accept our late filed opening statement.

On behalf of the
Denver and Rio Grande Railway Historical Foundation

Respectfully submitted,

Donald H. Shank /s/

Donald H. Shank
President

VERIFICATION

I, Donald H. Shank, due solemnly swear, under penalty of perjury that I am authorized to prepare and file the above “*Motion for leave to late file DRGRHF’s opening statement*”. I also certify that all the facts and representations contained herein are true and accurate to the best of my knowledge and belief.

Respectfully submitted,

Donald H. Shank /s/

Donald H. Shank
President

CERTIFICATE OF SERVICE

I, Donald H. Shank, do hereby certify, under penalty of perjury, that a copy of the foregoing letter of Ronald E. Howard, Esq., was served, via 1st Class United States Mail, on this, the 11th day of April, 2012, upon the following parties:

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Respectfully Submitted,

Donald H. Shank /s/
Donald H. Shank