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February 21, 2012

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

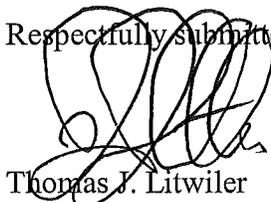
Re: **Finance Docket No. 35583**
Eastern Alabama Railway LLC -- Petition for Declaratory Order

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding are the **Comments of R.J. Corman Railroad Group**, dated February 21, 2012.

If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance on this matter. Kind regards.

Respectfully submitted,



Thomas J. Litwiler
Attorney for R.J. Corman Railroad Group

TJL:tl

Attachment

cc: Parties on Certificate of Service

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35583

EASTERN ALABAMA RAILWAY LLC --
PETITION FOR DECLARATORY ORDER

COMMENTS OF
R.J. CORMAN RAILROAD GROUP

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ATTORNEYS FOR
R.J. CORMAN RAILROAD GROUP

Dated: February 21, 2012

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35583

EASTERN ALABAMA RAILWAY LLC --
PETITION FOR DECLARATORY ORDER

COMMENTS OF
R.J. CORMAN RAILROAD GROUP

R.J. Corman Railroad Group ("Corman")¹ hereby files these comments in this declaratory order proceeding. Corman associates itself with the comments submitted on February 15, 2012 by Paducah & Louisville Railway, Inc. ("P&L Comments"), which stressed that this proceeding raises important, industry-wide questions regarding the terms and conditions under which utility crossings are forcibly obtained across railroad rights-of-way. While federal preemption under the ICC Termination Act of 1995 ("ICCTA")² may not preclude "routine" utility crossings, it must be construed to require equally routine protections that ensure the safety and integrity of railroad operations and property. The STB's decision in this proceeding should be cognizant of this principle and crafted with the understanding that the agency's rationale will likely affect numerous situations across the nation.

While Corman's experience may differ in certain details from that of P&L and petitioner Eastern Alabama Railway LLC ("EARLY"), Corman agrees with P&L that the

¹ R.J. Corman Railroad Group includes nine Class III shortline rail carriers: R.J. Corman Railroad Company/Allentown Lines, Inc.; R.J. Corman Railroad Company/Bardstown Line; R.J. Corman Railroad Company/Central Kentucky Lines, LLC; R.J. Corman Railroad Company/Cleveland Line; R.J. Corman Railroad Company/Memphis Line; R.J. Corman Railroad Company/Pennsylvania Lines Inc. ("RJCP"); R.J. Corman Railroad Company/Tennessee Terminal, LLC; R.J. Corman Railroad Company/Western Ohio Line; and R.J. Corman Railroad Company/WV Lines, a division of RJCP.

² Pub. L. 104-88, 109 Stat. 83 (1995). See 49 U.S.C. § 10501(b).

underlying dispute in this proceeding is "not an isolated incident." P&L Comments at 2. Corman has several pending or threatened situations where a utility or agency has condemned a broadly-stated easement for a utility crossing, and then balked at any restrictive language that routinely accompanies a license agreement for entry on a railroad right-of-way. Those conditions, for example, include advance notice of the utilities' intent to enter railroad property, a requirement that the utilities protect and/or move their structures when necessary to accommodate railroad construction or maintenance, and a requirement that the utilities either use only existing crossings when moving equipment across the rail line or construct a temporary crossing for that purpose. The absence of the latter requirement can be particularly dangerous, as heavy equipment moved over track without proper lateral support can leave the track out of gauge and subject to derailments.

As The Utilities Board of the City of Sylacauga, Alabama ("Utilities Board") points out, there are innumerable underground and overhead utility crossings of rail lines in the United States. Utilities Board Reply Statement and Reply to Appeal, February 13, 2012, at 2. But that truism is accompanied by another: railroads and utilities deal with safety and operational issues at those thousands of crossing every day by executing routine license agreements. EARY has submitted one example of such a form. EARY Opening Statement, February 8, 2012, Exhibit D. Yet the Utilities Board seems to claim that, because it obtained an easement by condemnation, it is not required to concur in the routine license terms that govern voluntary easements elsewhere in the nation. Reply Statement at 11 ("At a minimum, EARY has waived its right to have this crossing issue come under the license agreement by forcing the Utilities Board to pursue the condemnation action instead." (emphasis in original)).

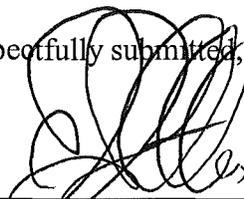
Elsewhere, the Utilities Board appears to claim that it has the right to enter railroad right-of-way without the carrier's approval or knowledge, Reply Statement at 20-21, and even claims that in doing so it is not subject to Federal Railroad Administration regulations regarding railroad worker safety. Reply Statement at 24, n.12. Those are troubling assertions. And while the Utilities Board indicates that, in a "spirit of cooperation," it will follow "reasonable safety precautions of EARY," Reply Statement at 12, that representation sounds as if a utility's compliance with routine safety conditions is discretionary. And if "reasonable safety precautions" are not specified in advance in writing, it is difficult to see how they can be meaningfully relied upon.

Corman does not take a position on the ultimate outcome of the particular dispute between EARY and the Utilities Board. Corman's point is that it has experienced analogous difficulties with utilities that condemn an easement crossing and decline to conform to the routine industry terms and conditions that govern such crossings and assure that future railroad operations, maintenance and safety are not adversely affected. Case law is clear that routine utility crossings are not preempted under ICCTA so long as they do not "pose undue safety risks." Maumee & Western Railroad Corporation and RMW Ventures, LLC -- Petition for Declaratory Order, Finance Docket No. 34354 (STB served March 3, 2004) at 2. A major reason why such crossings do not routinely present safety risks is because they are subject to widely-accepted, routine governing conditions as reflected in railroad form license agreements. If a utility disagrees with a particular term in those standard licenses, that may be a matter that the STB or a court will have to address. But a "routine" utility crossing cannot be declared exempt from preemption principles unless it is accompanied by the equally routine terms and conditions that preserve unimpeded rail operations and safety.

As P&L points out, permission for leave to intervene would not appear necessary to submit comments in this declaratory order proceeding. P&L Comments at 1, n.1. In any event, Corman's intention is neither to delay this proceeding nor unduly broaden the issues raised. See 49 C.F.R. § 1112.4(a)(2). Corman has filed these comments immediately upon becoming aware of this proceeding, and before the close of the record, and has simply sought to confirm to the Board that its decision here will inevitably have broader ramifications. Corman seeks such permission as may be required to file these comments.

WHEREFORE, Corman respectfully requests that the foregoing comments be accepted for consideration in this proceeding.

Respectfully submitted,

By: 

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**ATTORNEYS FOR
R.J. CORMAN RAILROAD GROUP**

Dated: February 21, 2012

CERTIFICATE OF SERVICE

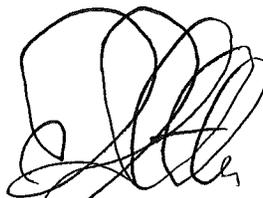
I hereby certify that on this 21st day of February, 2012, a copy of the foregoing

Comments of R.J. Corman Railroad Group was served by overnight delivery upon:

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