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BEFORE THE  
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. FD 35914

ENTERED  
Office of Proceedings  
March 25, 2015  
Part of  
Public Record

**FORT TRANSFER COMPANY – VERIFIED PETITION FOR EXPEDITED  
RELIEF FOR SERVICE EMERGENCIES – TAZEWELL COUNTY, IL**

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**REPLY AND SUR-REBUTTAL OF  
TOLEDO, PEORIA & WESTERN RAILWAY CORP.**

(color copies included)

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Dated: March 25, 2015

Attorneys for  
Toledo, Peoria & Western Railway Corp.

BEFORE THE  
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. FD 35914

**FORT TRANSFER COMPANY – VERIFIED PETITION FOR EXPEDITED  
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**REPLY AND SUR-REBUTTAL OF  
TOLEDO, PEORIA & WESTERN RAILWAY CORP.**

Toledo, Peoria & Western Railway Corp. (“TPW”) is filing this Reply and Sur-rebuttal to respond to a letter dated March 16, 2015, from the Village of Morton (the “Village”) to the Board,<sup>1</sup> and to the Rebuttal and Supplemental Rebuttal filed by Fort Transfer Company (“Fort Transfer”). Because the Village Letter was not received, or filed, prior to the due date for TPW’s Reply, TPW did not previously have the opportunity to respond, and is filing this Reply.

TPW also asks that the Board accept this Sur-rebuttal to the Supplemental Rebuttal filed by Fort Transfer on Tuesday, March 24, 2015, and the Rebuttal filed by Fort Transfer late on Friday, March 20, 2015, to address certain inaccurate assertions in the rebuttal pleadings that were not raised previously by Fort Transfer or the proposed alternative service operator Keokuk Junction Railway Co.(“KJRY”). While the alternative service regulations do not specifically provide for sur-rebutal (or the Supplemental Rebuttal filed by Fort Transfer), the Board will allow additional replies, and sur-replies if necessary, for “good cause” or when additional information is necessary to provide a complete factual record. *Waterloo Railway Company –*

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<sup>1</sup> TPW only received the Village Letter on March 23, 2015. The Village Letter does not yet appear on the Board’s website. A copy of the Village Letter is attached hereto as Exhibit A for the Board’s reference.

*Adverse Abandonment – Lines of Bangor and Aroostook Railroad Company and Van Buren Bridge Company in Aroostook County, Maine*, STB Docket No. AB-124 (Sub-No. 2) (served May 6, 2003), slip op. at 3. In order to have a complete, accurate record, TPW requests that the Board accept this reply and sur-rebuttal.

### **Discussion**

#### **A. Reply to Village of Morton.**

The Village's letter was of course written prior to, and without the benefit of, TPW's Reply. While TPW does not dispute that the Fort Transfer and Morton Buildings are important industries to the community, so too are they important customers of TPW. As noted in the TPW Reply, TPW has not ceased service without authority. Not only is its service obligation temporarily suspended by the embargo that is imposed, but TPW is continuing to offer service through substitute transload truck service. Service to Morton Builders has continued unabated in this manner, and Morton Builders has not filed in this proceeding seeking alternative service. Fort Transfer, on the other hand, has refused substitute transload service.

Further, the Village's letter does not consider or address two important factors. First is the safety of the track. As described by TPW in its Reply, and supported by the FRA inspection attached thereto, the track is not currently safe, particularly for the hazardous materials being handled for Fort Transfer. Second, the Village does not consider the operational impacts of adding an additional carrier and additional trains on the active and already-busy tracks of three separate carriers (Norfolk Southern Railway Company ("NS"), TPW, and Tazewell & Peoria Railroad, Inc. ("TZPR")), and the interference such additional trains will have on the operations of those carriers.

For these reasons, the Village's letter does not add any additional support for Fort

Transfer's request for alternative service.

**B. Sur-rebuttal to Fort Transfer.**

With its Supplemental Rebuttal, Fort Transfer attempts to prove the old adage: “no good deed goes unpunished.” After complaining in its Petition and in its Rebuttal about stranded empty cars, Fort Transfer now attempts to use the fact that TPW responded by making extraordinary arrangements to remove the empty cars as “evidence” that the Lead is safe to operate over. This is certainly not the case.

On Sunday, March 22, 2015, TPW sent an engine with its Roadmaster and Trainmaster as the crew to the Lead. They were able to “walk”<sup>2</sup> the locomotive down the Lead, hook up the three empties, and “walk” the cars back to the diamond with NS. The fact that TPW was able to move three empty cars at extremely slow speeds without incident, does not mean that it would be safe to handle loaded hazardous materials over the track without necessary repairs being made.<sup>3</sup> Attached are some recent photos of the Lead taken by TPW that show the broken rail in the Harding Street crossing, poor crossing conditions, an example of wide gage, and poor tie conditions. *See* photos attached hereto as Exhibit B.

TPW also disputes the unsupported claim of Fort Transfer (Fort Transfer has no demonstrated knowledge of track inspection or track repair) in its Supplemental Rebuttal, p. 2, that the replacement of a single stick of rail will make the track safe for the handling of hazardous materials cars, or that the crossing can be repaired in “a matter of hours.” As an example, even if the repair work were limited to just this one issue – which TPW absolutely

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<sup>2</sup> “Walking” refers to moving at extremely slow speeds, with one crew member getting off and inspecting the track periodically, and at all crossings, as the train moves along the line.

<sup>3</sup> In fact, the FRA inspection report prohibits such movements.

disputes -,repair of the rail and the crossing would entail coordination with the Village on closing of the road and arranging for detouring of traffic, removal of the existing asphalt, rail and ties (1 day), installation of new ties, rail and ballast (1 day), and replacement of asphalt service (3 days for asphalt to cure)<sup>4</sup> – work that together with the sourcing of the rail and delivery of materials and work crew to the site, make even this one aspect of the needed repairs more significant than Fort Transfer would have the Board believe.

The Supplemental Rebuttal, pp. 2-3, now acknowledges that transloading and substitute truck service is an option for Fort Transfer. However, for some unknown reason, Fort Transfer (blaming it on the customer), says that TPW's yard that is 9 miles away is inadequate, and that it wants to use substitute truck service from 60 miles away. TPW does not understand why trucking from its yard would be any different for Fort Transfer.

Further, the Rebuttal filed by Fort Transfer late on Friday March 20, 2015, also contains several new allegations from the Petition that TPW believes should be corrected so that the Board has a complete record before making a decision whether to grant or deny the request for alternative service. TPW briefly responds to these allegations as follows:

1. In the Rebuttal, p.3 (and again in the Supplemental Rebuttal, p. 3), Fort Transfer alleges that TPW "diverted" inbound tank cars to Fort Transfer's competitor. TPW has never diverted any cars to another party, nor is it able to do so. TPW's handling of loaded cars is strictly limited to two scenarios: (1) delivery of the cars or freight to destination, or (2) sending the cars back to origin. As acknowledged in TPW's Reply, three cars were sent back to origin because they could not be delivered to Fort Transfer, and Fort Transfer refused to accept

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<sup>4</sup> TPW would also potentially have to bid out the project as its work crews are committed to other 2015 capital projects.

substitute truck service. TPW is prohibited from holding the tank cars carrying hazardous materials for extended periods of time. *See* 49 CFR 174.14(a) (requiring that hazardous material cars generally be delivered or moved within 48 hours). If any diversion of cars occurred, TPW neither had knowledge of, nor could it have participated in same.

2. Although Fort Transfer questions whether the track is truly unsafe, despite the FRA inspection report confirming the condition, it presents no direct evidence of the costs of repair, or even that it or KJRY has inspected the Lead, checked the tie condition or measured the gauge of the tracks. *See* Rebuttal at 7-8; Miller V.S. at 2. *Compare* the photos attached as Exhibit B. TPW does not believe that the Board should rely on a blind commitment of KJRY to repair tracks, the condition of which it has no direct knowledge.

3. KJRY indicates that its alternative service would merely replace TPW's trains. Miller V.S. at 1. However, while this would be true with respect to operations on the Morton Industrial Lead and on the connecting tracks of NS, on TPW's connecting tracks and in TZPR's yard, these would represent extra trains that would be accommodated. TPW picks up the Morton Industrial Lead traffic in the same trains that handle its local traffic. These TPW trains will continue to run, meaning that that any service KJRY would provide will be in addition to the trains currently being handled. As noted in TPW's Reply, its connecting traffic and TZPR's yard are already very heavily used.

4. KJRY claims without support that TPW and TZPR are operated essentially as one railroad. Miller V.S. at 2. TPW acknowledges that TPW and TZPR are both direct or indirect subsidiaries of Genesee & Wyoming, Inc. However, they are independent railroads that are managed by separate General Managers. Coordination both between KJRY and TPW and between KJRY and TZPR would be required if alternative service were ordered.

### Conclusion

For the foregoing reasons and the reasons set forth in TPW's Reply, TPW requests that the Board deny the request of Fort Transfer for emergency service relief. If the Board were to determine that alternative service is necessary, then the service provided by KJRY should be limited to service on the Morton Industrial Lead, and only after the Lead is made safe for hazardous material operations.

Respectfully submitted,



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Dated: March 25, 2015

Attorneys for  
Toledo, Peoria & Western Railway Corp.

**VERIFICATION**

I, Gary R. Long, President of Toledo, Peoria & Western Railway Corp. verify under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on March 25, 2015.

  
\_\_\_\_\_  
Gary R. Long

## CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing document was served on the parties, and by the method shown below:

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Village of Morton  
120 North Main Street  
Morton, IL 61550

  
\_\_\_\_\_  
Eric M. Hocky

Dated: March 25, 2015

**EXHIBIT A**

**LETTER FROM VILLAGE OF MORTON**

# Village of Morton

120 NORTH MAIN STREET • P.O. BOX 28 • MORTON, ILLINOIS 61550-0028  
PHONE (309) 266-5361 FAX (309) 266-5508

RONALD RAINSON  
*President*

**TRUSTEES:**  
Randy Belsley  
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**VILLAGE CLERK:**  
Joseph A. Nohl

March 16, 2015

Ms. Cynthia T. Brown, Chief  
Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 "E" Street, S.W.  
Washington, D.C. 20423

RE: Fort Transfer Company – Verified Petition for Expedited Relief for Service Emergencies –  
Tazewell County, Illinois – STB Docket No. FD-35914

Dear Ms. Brown:

I have been advised that the Toledo, Peoria & Western Railway ("TP&W") recently ceased rail service to Morton, Illinois, without authority. This greatly concerns me, as Fort Transfer Company and Morton Buildings (the TP&W's two customers) are important industries to the community. Both have been in business a very long time, and contribute to the local economy with needed jobs and investments. Lack of rail service impairs their competitiveness and ability to do business. With spring planting about to begin, this is a particularly critical time for Fort Transfer.

Morton also has an active economic development program, aimed at bringing good jobs to the Village. Lack of rail service also impairs those economic development efforts.

I am, therefore, on behalf of the Village of Morton, requesting that the Board grant Fort Transfer's Petition for emergency service from Keokuk Junction Railway Co., as soon as possible.

Respectfully yours,



Ronald Rainson, President,  
Village of Morton

cc: Toledo, Peoria & Western Railway Corp.  
1990 E. Washington St.  
East Peoria, Illinois 61611  
Attn: Ross Grantham, General Manager



**EXHIBIT B**

**PHOTOS**













