

LAW OFFICE
THOMAS F. MCFARLAND, P.C.
208 SOUTH LASALLE STREET - SUITE 1890
CHICAGO, ILLINOIS 60604-1112
TELEPHONE (312) 236-0204
FAX (312) 201-9695
mcfarland@aol.com

238348

ENTERED
Office of Proceedings
May 8, 2015
Part of
Public Record

THOMAS F. MCFARLAND

May 8, 2015

By e-filing

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

Re: Docket No. AB-43 (Sub-No. 189X), *Illinois Central Railroad Company --
Abandonment Exemption -- in Champaign County, IL*

Dear Ms. Brown:

I have been retained by Topflight Grain Cooperative (Topflight) to represent its interests in the above proceeding.

Leave is respectfully requested to file this brief Reply to Illinois Central Railroad Company's (IC's) Reply filed on May 6, 2015. Justification for such leave is IC's change of position in its Reply, as explained herein.

The following factors differentiate Topflight's late-filed Formal Expression of Notice of Intent to File an OFA from decisions cited in IC's Reply (at 3, note 4) in which late-filed Formal Expressions were not accepted:

(1) Topflight's Formal Expression of Intent to File an OFA was filed on May 1, 2015. On May 5, 2015, IC's representative stated that "IC has agreed that it will accept Topflight's late-filed formal notice of intent to file an OFA, and will support a waiver of the applicable regulation to allow Topflight's...OFA to proceed." IC had stated the same thing verbally prior to the filing of Topflight's Formal Expression on May 1, so Topflight did not see a need to provide extensive justification for its late filing. IC's radical change of position now opposing acceptance and waiver was contained in its Reply filed on May 6, the next day after stating the contrary position in writing. Topflight's May 1 filing could not have anticipated that bizarre and highly prejudicial change of position.

THOMAS F. MCFARLAND

Ms. Cynthia T. Brown
May 8, 2015
Page 2

(2) IC's purported justification for its opposition -- i.e., that acceptance of Topflight's late-filed formal expression would unduly delay the abandonment process -- rings hollow in light of IC's own substantial delay in moving the abandonment process forward. IC's letters to governmental agencies in conjunction with preparation of a Draft Environmental and Historic Report are dated November 21, 2014. Under Board regulations, IC could have filed its Notice of Exemption for abandonment of the line 20 days later. Instead, IC did not file the Notice of Exemption until March 23, 2015, more than four months after beginning the abandonment process. So much for IC's asserted need for expedition.

(3) IC has not disclosed relevant facts about the rail line. The line has been out of service because of poor track conditions for most or all of the two-year period during which there were no local shipments. Topflight used the rail line extensively before it was taken out of service. In the Fall of 2013, Topflight tendered shipments for rail transportation over the line. IC stated that as a condition to rail shipment, Topflight would have to sign a three-year sidetrack agreement whereby Topflight would have to pay IC \$60,000 in the first year, \$80,000 in the second year, and \$100,000 in the third year. Those payments would have made rail shipment uneconomic. IC's exorbitant payments for rail shipments forced the shipments to be transported by truck.

Topflight respectfully requests that the Board give consideration to the foregoing factors in determining whether to accept Topflight's Formal Expression of Intent to File an OFA.

Very truly yours,



Thomas F. McFarland
*Attorney for Topflight
Grain Cooperative*

TMcF:mg:1682\efSTB1

cc: Robert A. Wimbush, Esq., *by e-mail*
Mr. Scott Docherty, *by e-mail*