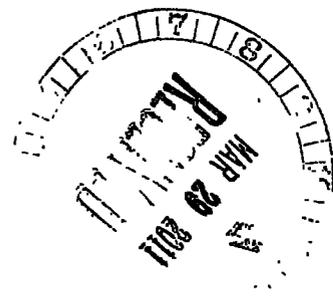


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**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

STB DOCKET NO. AB-1053 (Sub-No. 1X)



**MICHIGAN AIR-LINE RAILWAY CO.
- ABANDONMENT AND DISCONTINUANCE OF SERVICE EXEMPTION -
LINE IN OAKLAND COUNTY, MICHIGAN**

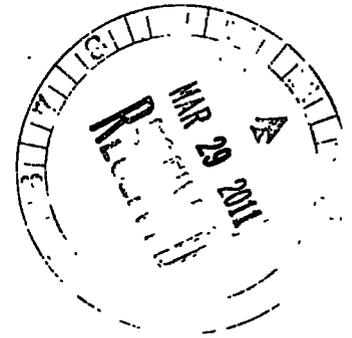
**SURREPLY OF MICHIGAN AIR-LINE RAILWAY CO.
TO AMERICAN PLASTIC TOYS, INC.'S REPLY AND
OBJECTION TO PETITION FOR EXEMPTION**

**ENTERED
Office of Proceedings
MAR 29 2011
Part of
Public Record**

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Dated: March 28, 2011

**BEFORE THE
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I. BACKGROUND

On January 28, 2011, Michigan Air-Line Railway Co. ("MAL Railway") filed with the Board in the above-referenced docket a Petition for Exemption ("Petition"), seeking exemption from the statutory and regulatory abandonment requirements for MAL Railway's line ("Line") in Oakland County, Michigan. On March 9, 2011, American Plastic Toys, Inc. ("APT"), the sole shipper on the Line, filed a Reply and Objection to Petition for Exemption ("Reply").

As a condition precedent to filing this Surreply of Michigan Air-Line Railway Co. to American Plastic Toys, Inc.'s Reply and Objection to Petition for Exemption ("Surreply"), MAL Railway has filed a Petition for Waiver and Leave to File, seeking partial waiver of the "no reply to reply" rule in 49 CFR § 1104.13(c), and requesting leave to file this Surreply. In anticipation of a favorable ruling by the Board on said Petition for Waiver and Leave to File,

MAL Railway hereby submits this Surreply, the purpose of which is to demonstrate that most of the allegations in the Reply are unsupported, unwarranted and/or irrelevant, and some of which are false, and that these allegations do not provide the Board with the basis for rejecting the Petition.

In addition, it is respectfully submitted that APT's statement at page 3 of the Reply that the Petition should be stayed, as an alternative to rejecting the Petition, does not provide any basis for the Board acting upon that request and it should be denied.

II. RESPONSES TO ALLEGATIONS

APT's Allegations Regarding Acquisition of MAL Railway by Browner Turnout Co.

In several instances in the Reply, APT states that Browner Turnout Co. acquired all of the outstanding shares of stock in MAL Railway without any intent to operate the railway. (See, e.g., Reply at pages 4 and 5.) This claim is without merit. MAL Railway is a duly certificated common carrier by rail, and subsequent to the date it was acquired by Browner Turnout Co., MAL Railway has continued to fulfill its common carrier obligation to provide freight rail service to APT. Such common carrier obligation is being fulfilled pursuant to an agreement with Railmark Holdings, Inc. ("Railmark"), d/b/a Rail Freight Solutions ("RFS"), which has been provided the requisite locomotive and other rail freight equipment necessary to provide such common carrier service. Such fact is acknowledged by APT. (See, e.g., Reply at pages 5 and 8.) Thus, through its agent, RFS, MAL Railway has just as surely provided common carrier service to APT as if MAL Railway operated the locomotive and rail freight equipment itself. It is to be noted that, as the certificated common carrier by rail, MAL Railway is responsible for the actions of RFS in providing service to APT.

On page 5 of the Reply, APT claims that "Butler [a reference to R. Robert Butler, President of MAL Railway] and his shareholder group obtained the railroad at a distressed

price level.” However, APT provides no documentation or other evidence to support this claim. Also, it is to be noted that the Verified Statement of R. Robert Butler (Exhibit D to the Petition for Exemption) does not allude to or suggest a distressed price associated with the acquisition of MAL Railway. More importantly, the price paid by Browner Turnout to acquire MAL Railway is irrelevant to this proceeding.

APT’s Allegations Regarding Traffic on the Line.

Car Loadings. In the Verified Statement of R. Robert Butler, which is included with the Petition as Exhibit D, Mr. Butler states that, in 2008 “APT received 67 car loads from MAL Railway, with no outbound product shipped by rail; in 2009, APT received 52 car loads, again with no outbound product shipped by rail; and finally in 2010, APT received 52 car loads, with no outbound product shipped by rail.”

APT states that the period of time reflected in Mr. Butler’s statement is generally one of poor economic conditions, and APT “asserts its usage in that period is not representative. Further APT expects its rail volume to increase with the improved economic conditions.” Reply at page 4. APT also claims that its usage is seasonal and that the post-Christmas period is a slow season for toy manufacturers, stating that its use of the Line varies according to its sales, which naturally vary according to general economic conditions. Reply at pages 3, 4. On page 13 of the Reply, APT states: “APT expects to continue to use and increase it’s [sic] use of the rail line.”

Later in the Reply, APT questions the validity of the traffic figures stated by Mr. Butler in his Verified Statement. APT claims it “used its rail line more in 2009 and 2010 than indicated in MAL’s Petition. It is interesting to note the MAL has no idea how much APT has paid the alternate service provider, yet MAL asserts that it knows exactly how many cars APT has transported on the rail line.” Reply at page 13. There is a very simple answer

to APT's confusion in this regard. As the certificated rail common carrier, MAL Railway is entitled to a division of revenue from CSX for the inbound shipments received by APT. Those payments go to MAL Railway, which in turn pays them to RFS. However, the division of revenue payments from CSX provide an exact accounting as to the number of inbound shipments. The figures reported in Mr. Butler's Verified Statement are derived from the record of CSX's division of revenue payments. Thus, APT's claim that it used the rail line more than reflected in the figures reported by Mr. Butler is without merit.

With respect to the cyclical and seasonal usage patterns claimed by APT, the Affidavit of B. Allen Brown, which is attached hereto as Exhibit A, is instructive. As stated in his Affidavit, Mr. Brown is the President and CEO of Railmark Holdings, Inc. ("Railmark"), the prior owner of MAL Railway. Under agreement with MAL Railway, Railmark, d/b/a Rail Freight Solutions ("RFS") carries out MAL Railway's common carrier obligation to provide service to APT. Paragraph 6 of Mr. Brown's Affidavit states that, since October 1, 2010 to date (a period of nearly 6 months) RFS has delivered only 8 cars to APT. That six-month period includes both pre-Christmas and post-Christmas time periods.

Regardless of APT's expectations of increased usage, APT's usage since Browner Turnout acquired ownership of MAL Railway, particularly usage during the past six months, does not justify MAL Railway's continued operation to serve a single shipper on the Line.

APT also claims that RFS has been unresponsive to requests for car movement and has consistently delayed such moves. Reply at page 4. Again, Mr. Brown's Affidavit provides a response to this claim. In Paragraph 6 of his Affidavit, Mr. Brown explains that the arrival of APT's rail cars is very random, and for that reason, RFS can not provide scheduled service to APT. The fact that APT has received only 8 rail cars over the last 6 months illustrates the problem very well.

Mr. Brown further notes that he is typically advised of the arrival of a rail car at the CSX interchange via e-mail from APT. He states that he was more than surprised that APT did not believe his service had been responsive at times, because he has received e-mails from APT expressing a contrary opinion. MAL Railway has never received a complaint from APT claiming unresponsive service by RFS, and MAL Railway is unaware of any complaint filed with the STB regarding the unresponsive service APT believes is being provided by RFS.

On page 9 of the Reply, APT disputes MAL Railway's assertion that APT's shipping patterns do not provide adequate usage of the line. MAL Railway's assertion of inadequate usage was predicated on rail traffic approximating 52 car loads per year. MAL Railway's assertion is magnified by the figures provided by Mr. Brown in his Affidavit, showing that only 8 cars have been delivered to APT in the past 6 months.

In connection with traffic on the Line, APT alludes to other potential shippers along the Line and the fact that MAL Railway and RFS "continue their scheme to drive away rail customers through excessive rates, dismal service and threats of discontinuance or abandonment." Reply at page 7. Again, APT has not provided any documentation or other evidence to support its claim. Moreover, Mr. Brown's Affidavit provides a response to this unwarranted claim. He notes in paragraph 4 of his Affidavit that APT has been the sole shipper on the Line since early in 2008, long before Browner Turnout acquired MAL Railway. MAL Railway has no record of any business along the Line requesting rail service subsequent to the time when MAL Railway was acquired by its current owner.

Freight Rates. APT correctly notes that "RFS has charged a flat monthly rate which has varied between \$5,000/month to \$7,250/month." Reply at page 4. In Allen Brown's Affidavit he explains in paragraphs 8 and 9 the necessity of establishing a flat monthly rate.

In January of 2010, he established a monthly rate of \$6,500, which was reduced to \$5,000 in the spring, but increased to \$7,250 later in that year. That is the rate which remains in effect today.

Mr. Brown notes in paragraph 10 of his Affidavit that the establishment of a monthly rate, rather than a per car load rate, was necessary to cover RFS's fixed costs and seasonal expenses. RFS cannot survive on using a per car load rate, because APT does not have scheduled service and, in some months (as illustrated by the most recent six-month period) there is no traffic on the Line at all. Notwithstanding RFS's imposition of monthly rates, which must be paid by APT irrespective of car loadings, Mr. Brown also states in paragraph 10 of his Affidavit that, for 2010, based on the 52 car loads delivered to APT in that year, when the total amount charged to APT pursuant to these monthly rates is figured on a per car basis, the charges to APT in 2010 were less than \$1,500 per car, which was the per car rate charged during 2008, many months prior to Browner Turnout's acquisition of MAL Railway. Thus, in 2010, APT did not pay any more on a per car basis than it had been paying, but the monthly rate payment system allowed RFS to cash flow its operations.

The fact that the monthly rate payment system instituted by RFS has resulted in a rate per car load less than what APT had been paying prior to 2010 since the imposition of a \$1,500 rate per car load in 2008, negates and shows the falsity of the following statements made by APT in its Reply:

- On page 4, APT claims that RFS has increased the cost of service.
- On page 7, APT claims that MAL Railway engaged RFS to provide freight service at sharply increased pricing.
- On page 9, APT claimed that MAL Railway knows that RFS has drastically increased the rates for the service it provides to APT.

- On page 13, APT states that MAL Railway's use of RFS has resulted in a four-fold increase of cost to APT for each car load.

APT's Allegations Regarding MAL Railway's Statement of Revenues and Expenses.

Revenues. In its Petition, MAL Railway has stated that all revenues derived from providing service to APT "are passed through" to RFS. Throughout its Reply, APT has challenged this statement in various ways. The following are some of APT's statements in this regard:

- APT states that MAL Railway's financial complaints are "recently manufactured" by the new owners of MAL Railway. Reply at page 3.
- The new owners have "alienated all revenues." Reply at page 7.
- On page 8 of the Reply, APT states that the fact revenues do not cover costs of the Line is a situation created by the current ownership.
- APT claims that MAL Railway intentionally separated itself from all revenues by engaging RFS to provide MAL Railway's common carrier service to APT. Reply at page 8.
- On page 9 of the Reply, APT states that MAL Railway's claim it receives no revenue is both a distortion and its own choice.
- On page 14 of the Reply, APT challenges the statement in the Verified Statement of R. Robert Butler (Exhibit D to Petition) that MAL Railway cannot invest money in maintenance and rehabilitation, because such investment cannot be recovered, since MAL Railway has structured a deal with RFS "which guarantees that MAL receives none of the revenue."
- APT claims it is "misleading" to state that revenues don't cover expenses, because MAL Railway has alienated all revenues. Reply at page 14.

- Similarly, APT claims that MAL Railway has made a “conscious effort to beggar itself.” Reply at page 15.

The foregoing unsubstantiated claims must be considered in the context that, since RFS incurs the operating costs in providing rail common carrier service to APT, it is only appropriate that all revenues derived from providing such service should be passed through to RFS. There are no revenues accruing to MAL Railway or to RFS, other than the revenues derived from providing common carrier service to APT. Therefore, there is nothing suspect about the fact MAL Railway does not receive any revenues.

It also should be observed that, in B. Allen Brown’s Affidavit (Exhibit A), he states in paragraph 11 that, as early as 2008, long before Browner Turnout acquired MAL Railway, Mr. Brown began alerting APT to the possibility of the eventual cessation of rail service, due to the increasing costs of serving only one shipper. The situation confronting APT is not one of recent origin. MAL Railway did not have adequate revenues when it was acquired by Browner Turnout.

Avoidable Costs. The Petition references maintenance and rehabilitation that MAL Railway will incur in the forecast year in order to meet its common carrier obligation. Petition at page 7. These costs are characterized as “avoidable cost,” since they will not be incurred if the Board authorizes abandonment of the Line. *Id.*

APT claims that MAL Railway has overstated and artificially increased its costs. Reply at page 8. However, in the Verified Statement of Martin Ramsey (Exhibit E to Petition), Mr. Ramsey makes it clear that the calculation of the various costs included in avoidable costs have been calculated using methods approved by the Board or in accordance with FRA directives.

On page 7 of the Reply, APT claims that MAL Railway failed to engage in any maintenance, thereby inflating its “supposed avoidable costs.” That statement is not true. Through the efforts of RFS, maintenance has been performed subsequent to the time when Browner Turnout acquired MAL Railway. In the Affidavit of B. Allen Brown, at paragraph 13, Mr. Brown states that Railmark has performed maintenance on the Line, both as the owner of MAL Railway and under the auspices of RFS, as agent for MAL Railway. He indicates that such maintenance includes replacement of broken bars and bolts, repair of washouts and other maintenance necessary to continue providing service to APT.

Moreover, in paragraph 14 of his Affidavit, Mr. Brown indicates that, even though APT is the only shipper on the Line, RFS is still required to comply with federal regulations promulgated by the FRA. These regulations require RFS to conduct signal inspection and maintenance, locomotive engineer certification, drug and alcohol programs, maintain safety standards of locomotive and railcars, provide monthly incident reporting and other practices to comply with these federal requirements. While some of these are technically not maintenance costs, they are costs incurred in providing service to APT.

At page 10 of the Reply, APT contends that MAL Railway’s calculation of “avoidable maintenance” is misleading, because MAL Railway has never performed any maintenance on the Line and has intentionally built up a claim for deferred maintenance. Yet, APT offers no documentation or other evidence to support that claim. In fact, the maintenance reflected in the Petition at page 7 was calculated by Mr. Ramsey on the basis of a method approved by the Board in *Conrail-Aban.-Bet. Warsaw & Valp. Counties, IN*, 9 I.C.C. 2d 1299, 1304 (1993). That case recognized the validity of applying an average maintenance cost of \$6,000 per mile, which the Board recognized in the foregoing case as being a reasonable estimate of such costs in abandonment cases. APT has challenged the use

of this methodology, because it is based upon a 17-year old case. In response, it is to be noted that there are numerous cases which have cited the *Conrail Aban.* case with approval. Most recently, in the Board's decision in *Dakota Northern Railroad, Inc. – Discontinuance of Service Exemption – In Walsh and Pembina Counties, ND*, STB docket No. AB-1041X (Service Date: Late Release January 22, 2010), the Board once again approved using this methodology. In a footnote to the statement of normalized maintenance on page 2 of the decision, the Board noted that use of the average cost of \$6,000 per mile is a reasonable estimate of such cost, and it cited the above-referenced *Conrail Aban.* case.

Also, on page 14 of the Reply, APT states that the Verified Statement of R. Robert Butler, attached to the Petition as Exhibit D, “suggests that MAL cannot invest money in maintenance or rehabilitation because the investment can not be recovered. This is obviously because MAL has structured a deal with the service provider which guarantees that MAL receives none of the revenue.” The issue of insufficient revenue has been addressed previously, so there is no need to further address this issue in connection with maintenance costs.

With respect to rehabilitation costs, APT contends that MAL Railway's claim that repairs to crossings at signals will constitute a minimum of \$25,000 in the forecast year is misleading, MAL Railway will be subject to the cost for repairs to these crossings regardless of whether or not the Line is abandoned and can not be considered as avoidable cost. Reply at page 16.

APT is incorrect in its understanding of this situation. If the Line is abandoned, and a salvage contractor is engaged to remove the rails, ties and other track materials from the right-of-way, there will be no further “rail crossings,” which will necessitate the scope of repairs that a rail crossing would entail. In fact, after abandonment, some of the

municipalities traversed by the Line will assume the repair of some of these crossings, and in other instances, the salvage contractor will repair those crossings. Thus, as long as the crossings remain rail crossings, the costs reported in the Petition are valid, and they can be considered as avoidable costs, since they will not be incurred if the Line is abandoned.

APT's Allegations Regarding Potential Sale of Line's Right-of-Way When it is Abandoned.

Sales Price. APT is correct that Browner Turnout Co. acquired MAL Railway with the intent of ultimately abandoning the Line and discontinuing service. In R. Robert Butler's Verified Statement attached to the Petition as Exhibit D, he indicates that he was "candid with APT regarding his intentions of acquiring the railroad, abandoning its rail line in Oakland County, Michigan, and conveying the abandoned right-of-way to local units of government who would develop it into a recreational trail." But, APT suggests that MAL Railway will sell the abandoned right-of-way "at inflated prices." Reply at page 4.

If that were the only inaccurate statement made by APT regarding sale of the abandoned right-of-way, it would not be worthy of a response in this surreply. However, APT also states that MAL Railway's claim that the Line "is vastly more valuable abandoned than as an operating railway is not supported." Reply at page 9. Further, APT states that the value placed on the Line by MAL Railway for purposes of the Opportunity Costs calculation is "deceptive and misleading." Reply at page 10. In addition, APT contends that the "alleged \$5.4 Million Dollar [sic] appraisal" is "highly suspect and no support is provided." Reply at page 10. Thus, since the Line's net liquidation value is factored into the calculation of Opportunity Costs, the value of the Line and the potential price for which it may be sold subsequent to abandonment need to be addressed.

As was stated in the Petition, the STB approved MAL Railway's abandonment of its rail line in West Bloomfield Township pursuant to a Notice of Exemption in STB Docket No. AB-1053X (Service Date: August 24, 2010), because no rail traffic had occurred over MAL Railway's line in West Bloomfield Township, Michigan, for more than two years. Subsequent to its abandonment, MAL Railway and West Bloomfield Parks and Recreation Commission ("WBPRC") entered into a Purchase Agreement, whereby the abandoned right-of-way in West Bloomfield Township was sold to WBPRC.

Attached hereto as Exhibit B is the Affidavit of Daniel J. Navarre, Director of WBPRC, in which Mr. Navarre states that an appraisal of MAL Railway's entire rail line in Oakland County, Michigan, was performed in 2008, and a copy of that appraisal pertaining to the segment of the Line in West Bloomfield Township was attached to the grant application submitted by WBPRC to the Michigan Natural Resources Trust Fund ("MNRTF") whereby WBPRC sought grant moneys to reimburse it for the purchase of the West Bloomfield portion of MAL Railway's line in Oakland County. The grant was awarded by MNRTF in December of 2008, and during the due diligence process thereafter required by MDNRE, WBPRC was required to submit two new appraisals of the property to be acquired. WBPRC obtained these appraisals and submitted them to MDNRE, which determined that one of the appraisals was appropriate to establish the fair market value of the property.

In the Purchase Agreement between WBPRC and MAL Railway, MAL Railway agreed to sell the abandoned line to WBPRC for the fair market value, as determined by MDNRE, and that was in fact, the price paid by WBPRC to MAL Railway. Accordingly, it can scarcely be said, as contended by APT, that MAL Railway sold the line in West Bloomfield Township at an inflated price.

The foregoing is important and relevant to the calculation of Opportunity Costs in the Petition. The appraisal used by MAL Railway as the basis for determining the value of the Line in these calculations is part of the same appraisal appended to WBPRC's grant application to MNRTF. As explained by Mr. Navarre in his Affidavit (Exhibit A), MNRTF awarded the grant on the basis of that appraisal. Therefore, it is reasonable to assume that, should a grant application be submitted to MNRTF for funds to purchase the Line's abandoned right-of-way based upon that same appraisal, MNRTF would likely accept the appraisal as the basis for awarding the grant. Thus, MAL Railway respectfully submits that its calculation of Opportunity Costs, using the value obtained from the appraisal, is a reasonable calculation, notwithstanding APT's claim that such calculation is "deceptive and misleading." Reply at page 10.

Grant Funding. With respect to grant funding to be used for enabling the purchase of the Line's abandoned right-of-way, APT has made several blatantly false claims that MAL Railway has sought grant moneys from Michigan state agencies. On page 5 of the Reply is the following statement:

In late 2010, MAL sought to obtain acquisition grants from Michigan Department of Transportation ("MDOT") and the Michigan Natural Resources Trust Fund ("MNRTF") to fund a sale of this very Line to the Trail Authority.

Subsequently, on page 10 of the Reply, APT reiterated and elaborated on its false accusation, as follows:

Prior to the application for the proposed MNRTF Grant (Exhibit 1), MAL's current owner, Mr. Butler, sought matching funds from the Michigan Department of Transportation. While seeking these funds, he misled MDOT. MAL caused MDOT to believe that the entire line did not have rail traffic. However, when APT made themselves known to MDOT, MDOT ceased supporting the grant. Nevertheless, MAL continued to seek a Michigan Natural Resources Trust Fund Grant to enable the Rails for Trails purchase.

Again, on page 11 of the Reply, APT claims that MAL Railway has made a submission to MNRTF.

MAL Railway states unequivocally that neither it nor its President, Mr. R. Robert Butler, has ever sought grant funding or matching funds from MDOT, MNRTF or any other Michigan state agency. The foregoing quotes and statements from the Reply are patently false. APT's own exhibit to the Reply (Exhibit 1) reveals the falsity of the quoted statement from page 10 of the Reply. On pages 2 and 3 of Exhibit 1 to the Reply, the grant application referenced on page 10 of the Reply is clearly identified on several occasions as having been submitted by the Commerce, Walled Lake and Wixom Trailway Management Council ("Council"), not by MAL Railway.

Also, APT has not provided any documentation to support its claim that "MAL caused MDOT to believe that the entire line did not have rail traffic." MAL Railway categorically denies ever claiming to MDOT or anyone else that the Line which is the subject of this docket, and which constitutes the "entire line" owned by MAL Railway, did not have any rail traffic. As explained in the Affidavit of Phillip Adkison (attached hereto as Exhibit C) and the Affidavit of Nancy Krupiarz (attached hereto as Exhibit D), immediately prior to the time MNRTF's Board of Trustees considered the Council's grant application at its meeting on December 1, 2010, the Council was trying (to no avail) to meet with APT in an effort to accommodate APT's concerns about abandonment of the Line.

As part of that effort, Kathleen Jackson, the Council's Administrator, enlisted help from MAL Railway. In response to Ms. Jackson's request, MAL Railway proposed that, if APT would support MAL Railway's abandonment efforts, MAL Railway would structure its abandonment filings with the STB in a way that MAL Railway would be able to provide APT two years of additional service, before that portion of the Line serving APT was

abandoned and service discontinued. That would entail abandoning first the segment of the line between Ladd Road and Haggerty Road pursuant to a Notice of Exemption, since there has not been any rail traffic on that segment for more than two years. That would be followed by a Petition for Exemption for the remainder of the Line. That is the only reference made to any portion of the Line not having rail traffic.

As further explained in these Affidavits, when APT would not meet with the Council and would not even acknowledge MAL Railway's proposal, coupled with MNRTF's denial of the Council's grant application, MAL Railway determined it more appropriate to file the Petition for Exemption in this docket, seeking authority to abandon the entire Line.

The Affidavit of Nancy Krupiarz also provides a response to APT's claim in the statement quoted from page 10 of the Reply, that APT caused MDOT to cease supporting the Council's grant application. The exhibit attached to Ms. Krupiarz's Affidavit is a transcript of the pertinent portion of the proceedings before the MNRTF's Board of Trustees regarding the Council's grant application. It contains a statement by Mike Leon, in MDOT's Office of Economic Development, indicating that MDOT is very supportive of the completion of the Airline Tail, and also that MDOT has made a "conditional commitment [for enhancement grant funding] for this portion of the trail." It is conditioned on proper abandonment procedures being followed and that it does not cause the loss of jobs.

Another observation regarding the statement quoted from page 10 of the Reply needs to be made. APT indicates that the grant funding being sought was "to enable the Rails for Trails purchase." Another reference to "Rails to Trails property" is made by APT on page 9 of the Reply. APT obviously is confusing the Council seeking grant funding to purchase abandoned right-of-way from MAL Railway and converting it to a recreational trail, with the rail banking provisions of 49 CFR § 1152.29, commonly known as the Rails to Trails

provisions. The recreational trail envisioned by the Council, as evidenced by its various grant applications, will not utilize the Rails to Trails procedure.

One final observation regarding comments in the Reply concerning grant funding relates to the statement on page 13 of the Reply, indicating that the Verified Statement of R. Robert Butler “misleadingly suggests that there is a pending application for grant monies for local communities to purchase this section of the rail line for the Pontiac Trail system.” Here MAL Railway respectfully submits that the Council has prepared and will be submitting to MNRTF on or before April 1, 2011, a grant application seeking funds to purchase the right-of-way sought to be abandoned pursuant to the Petition.

APT’s Allegation Regarding MAL Railway’s Calculation of Opportunity Costs.

Pages 7 to 9 of the Petition contain MAL Railway’s calculation of Opportunity Costs. One of the elements of Opportunity Costs is the Net Liquidation Value (“NLV”) of the Line, which is comprised of the value of the real estate and the net salvage value. APT contends that MAL Railway’s calculation of NLV is “deceptive and misleading,” because \$5,400,000 of the approximately \$6,000,000 attributed to NLV is due to the appraisal of the real estate. Reply at pages 10, 11. This issue was discussed previously in connection with the sales price of MAL Railway’s right-of-way, once it is abandoned, and it does not warrant further discussion.

As a new element of this issue, however, APT argues that “the opportunity cost analysis should be based on the costs of the November 2009 acquisition,” rather than appraisals and other data. Reply at page 11. Continuing that contention, APT argues that the “questionable appraisals bears [sic] no relationship to the actual amount invested by Mr. Brown [sic] in his acquisition of the ownership of MAL.” It is assumed that APT’s reference to “Mr. Brown” is intended as a reference to Mr. R. Robert Butler. *Id.* This line of thought

concludes by APT suggesting that, in effect, the amount of the real estate appraisal “is simply not an accurate reflection of the amount of ownership tied up in MAL.” *Id.*

Once again, APT has provided absolutely no authority for this argument, and MAL Railway is aware of no such authority requiring use of the investment capital of the railroad owners’ in lieu of the NLV in calculating Opportunity Costs. Thus, MAL Railway respectfully suggests that this argument should be disregarded.

APT’s Allegations Regarding Offers of Financial Assistance.

APT claims that “the Petition is based on false, misleading and deceptive information. This misinformation should void the Petition, and also renders a meaningful offer of financial assistance (‘OFA’) impossible.” Reply at page 3. At first blush, such statement would suggest that APT is considering submission of an OFA to the Board. However, APT subsequently states that the incomplete, inaccurate, inapplicable and manufactured financial data prohibit “interested parties from making an offer of financial assistance (‘OFA’).” Reply at page 7. The vague reference to “interested parties” in this statement is clarified later in the Reply where APT requests that the Petition

be stayed to allow for further responses from the Michigan Department of Transportation (‘MDOT’), Oakland County Government, and the Michigan Economic Development Corporation (‘MEDC’). These entities have expressed interest in an offer of financial assistance, but the MAL’s financial information is suspect and unreliable. More complete and accurate information is required for these entities to make an OFA.

Reply at pages 8, 9. There is absolutely no support provided in the Reply for the above-quoted assertion. Moreover, if the governmental entities noted in this statement are interested in filing an OFA, the Board’s regulations provide a procedure for doing so.

In 49 CFR § 1152.27, there is a detailed procedure set forth for submitting an OFA. Initially, that regulation requires the applicant (including a petitioner in a petition for

exemption proceeding) to “provide promptly upon request to a party considering an offer of financial assistance to continue existing rail service” the various items of information set forth in the succeeding subsections of the regulation. Thus, if APT’s claim that, because MAL Railway’s financial data, as set forth in the Petition, have been “manipulated to such a point that they are false, misleading and deceptive,” and therefore the MDOT, MEDC and Oakland County “are not in a position to make an OFA,” any of those governmental entities, if it files a Notice of Intent to File an OFA, has the ability under the Board’s regulation cited above to request additional financial information and supporting documentation.

The important point here, however, is that APT has provided absolutely no documentation to support its authority to speak for and on behalf of these governmental entities. APT offers nothing to support its conclusion that the information provided in the Petition prevents any or all of these agencies from submitting an OFA. APT has no apparent authority to speak for or on behalf of any other entity, other than itself. Thus, if APT desires to submit an OFA, but believes that the financial information provided in the Petition precludes submitting a “meaningful” OFA, the Board’s regulation affords APT the ability to request of MAL Railway the additional financial data needed to prepare the OFA.

Notwithstanding the claims by APT, MAL Railway respectfully submits that the Petition provides all of the information necessary to submit a “meaningful” OFA. The information in the Petition is derived, for the most part, from the information contained in the verified statements of R. Robert Butler and Martin Ramsey, which are attached to the Petition as Exhibits D and E, respectively. The information provided by Mr. Butler and Mr. Ramsey in their verified statements is submitted under penalty of perjury. Thus, the reliability of this information is to be presumed, unless and until evidence to the contrary has

been provided. APT has not provided any documentation or other evidence that refutes the reliability of the evidence provided by Mr. Butler and Mr. Ramsey.

MAL Railway also submits that it is highly unlikely that either MDOT or MDNR (formerly MDNRE) will submit an OFA. As stated at pages 5 and 6 of the Combined Environmental and Historic Report, included in the Petition as Exhibit F, pursuant to a Michigan statute (M.C.L.A. 474.58) MDOT and MDNR have the rights of first refusal to purchase, upon the Line's abandonment, the Line's right-of-way. As required by the statute, MAL Railway submitted to each of these agencies an offer to sell the right-of-way upon its abandonment. This statute has been construed as providing MDOT with the first opportunity to exercise a right of first refusal, and if MDOT does not wish to purchase the right-of-way, the same right is subsequently accorded MDNR. By letter dated January 25, 2011, MDOT acknowledged receipt of MAL Railway's offer, and the letter outlined MDOT's intended procedure upon notification that the Line's right-of-way has been abandoned. A copy of that letter is attached hereto as Exhibit E.

It is respectfully submitted that neither MDOT nor MDNR is likely to become involved in the OFA process in this docket, considering that each has the authority to purchase the abandoned right-of-way pursuant to a Michigan statute. Of course, if a third party were to submit an OFA which was accepted by MAL Railway, the rights of MDOT and MDNR under the Michigan statute would be terminated since the right-of-way would not be abandoned.

It should be noted that a third party has, in fact, filed in this docket a notice of intent to file an OFA. On March 16, 2011, Nevada Central Railroad filed its Notice of Intent to Participate and File: Offer of Financial Assistance, ("OFA"). Pursuant to that Notice, the Nevada Central Railroad has requested documentation from MAL Railway to support the

information set forth in the Petition. MAL Railway is in the process of providing the requested information.

Miscellaneous Unfounded Allegations of APT

On pages 12 and 13 of the Reply, APT makes the following statement:

The pictures attached to the MAL petition are misleading. Many of these pictures are in fact of portions of the line which are beyond the APT facility and have been previously abandoned pursuant to the July 2010 Petition. These pictures are included in the petition in an effort to make the rail line look to be already abandoned.

A response to this unfounded accusation is provided by the Affidavit of Daniel J.

Navarre. In paragraph 8 of his Affidavit, Mr. Navarre states as follows:

I also note that the Reply at page 12 challenges the validity of the photographs included as Exhibit 2 to the Combined Environmental and Historic Report (“CEHR”), which was incorporated in and made a part of the Petition for Exemption. The photographs identified as Exhibits 2-1 to 2-10 and 2-12 to 2-17 were taken by me on September 28, 2010. On that date, along with several officers of MAL Railway and its legal counsel, I “high railed” MAL Railway’s rail line between the CSX interchange and Haggerty Road. As we traveled, I took photographs while sitting on the tailgate of the vehicle. Contrary to APT’s contention, all of the photographs I took were of the rail line and adjoining property between the CSX interchange and Haggerty Road. Sixteen of the photographs were used as exhibits to the CEHR.

APT states at pages 4 and 5 of the Reply that Browner Turnout Co. does not even claim to be an actual rail line operator. In the first paragraph of the Verified Statement of R. Robert Butler, Mr. Butler states that he is the President and majority shareholder of the owner of the Lahaina, Kaanapali and Pacific Railroad (“LKPRR”) in Hawaii, a currently operating railroad. LKPRR is regulated by the Federal Railroad Administration, and is in current good standing, belonging to the American Short Line and Regional Railroad Association.

In that same paragraph of the Reply at the top of page 5, APT states that Browner Turnout’s “primary service is obviously rail line liquidation.” That statement is false. For

the record, Browner Turnout's primary business, in terms of revenues generated, is leasing of railcars to haul freight on railroads throughout North America.

A similarly unwarranted comment is made by APT on page 11 of the Reply, where it is indicated that "Mr. Brown [sic] was engaged as a workout expert on behalf of MAL's lenders." The reference to "Mr. Brown" was apparently intended as a reference to R. Robert Butler, but Mr. Butler is not now nor has he ever been an employee or consultant or subcontractor to MAL Railway's lenders, either prior to Browner Turnout's acquisition of MAL Railway, or subsequent to that acquisition. The accusation made by APT is not only unsupported, but unwarranted.

Finally, at the top of page 10 of the Reply, APT claims that MAL Railway's "current ownership is a liquidation specialist." There is absolutely no support provided for that statement, and it is an untrue statement.

III. CONCLUSION

The Reply and Objection to Petition for Exemption filed in this docket by American Plastic Toys, Inc., requesting the Board to reject the Petition for Exemption filed in this docket, has not provided the Board with any substantial, credible evidence upon which to grant such request. The allegations made in the Reply, most of which are unsupported, unwarranted or irrelevant, and many of which are false, do not provide the Board with the basis for rejecting the Petition for Exemption or staying these proceedings.

Accordingly, it is respectfully submitted that the Board should conclude that application of the regulatory requirements and procedures of 49 U.S.C. § 10903 to the abandonment of the Line proposed by MAL Railway is not required to carry out the rail transportation policy set forth in 49 U.S.C. § 10101. Further, the Board is requested to find that regulation is not required to protect APT, as the sole shipper on the Line, from the abuse

of market power. Moreover, it has been shown in the Petition for Exemption that the abandonment proposed is of limited scope. Therefore, MAL Railway respectfully requests the Board to grant an exemption for the proposed abandonment of the Line.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'W. Robert Alderson', written over a horizontal line.

W. Robert Alderson
ALDERSON, ALDERSON, WEILER,
CONKLIN, BURGHART & CROW, L.L.C.
2101 S.W. 21st Street
Topeka, Kansas 66604
(785) 232-0753
boba@aldersonlaw.com
Attorney for Michigan Air-Line Railway Co.

Dated: March 28, 2011

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

STB DOCKET NO. AB-1053 (Sub-No. 1X)

**MICHIGAN AIR-LINE RAILWAY CO.
- ABANDONMENT AND DISCONTINUANCE OF SERVICE EXEMPTION -
LINE IN OAKLAND COUNTY, MICHIGAN**

**SURREPLY OF MICHIGAN AIR-LINE RAILWAY CO.
TO AMERICAN PLASTIC TOYS, INC.'S
REPLY AND OBJECTION TO PETITION FOR EXEMPTION**

EXHIBIT A

AFFIDAVIT OF B. ALLEN BROWN

provided to APT, either by MAL Railway when it was owned and operated by Railmark, or by RFS as the agent for MAL Railway. In fact, Affiant has received emails from APT expressing satisfaction with the service being provided by RFS.

6. The service provided to APT by RFS is not scheduled service. The arrival of APT's railcars is very random. Typically, Affiant is advised by APT of inbound traffic pursuant to email. In many cases, the email requests that empty cars at APT's plant be returned at the time the inbound traffic is picked up at the CSX interchange. Because of these typical arrangements, it is impossible to provide APT with scheduled service. For example, since October 1, 2010 to date RFS has delivered only 8 cars to APT.

7. With respect to the rates charged to APT, it was necessary for Affiant to advise APT of the necessity of increasing rates shortly after Railmark became the owner of MAL Railway. At that time, the historical rate of \$200 per car was raised to \$350. In 2007, the per car rate was increased to \$500, and in 2008, the rate was increased to \$1,500 per railcar. These increases were made long prior to Browner Turnout's acquisition of MAL Railway.

8. On December 31, 2009, it was necessary for Railmark to terminate its dinner train operations, leaving the freight service to APT as the only traffic on MAL Railway's line. Thus, on January 14, 2010, Affiant wrote to Jim Grau, APT's CFO, advising him of the necessity of establishing a monthly rate of \$6,500, regardless of the number of cars moved by RFS. The monthly rate covered all of APT's normal first quarter rail movements. A copy of Affiant's letter to Mr. Grau is attached hereto as Exhibit 1. Affiant also provided APT with a schedule of costs which produced the monthly rate of \$6,500. A copy of that schedule is attached as Exhibit 2.

9. The monthly rate of \$6,500 remained in effect during the first quarter of 2010, because some of the costs incurred by RFS that produced this rate were related to winter weather. In the spring of 2010, the monthly rate was reduced to \$5,000, but in the fall of that year it was increased to \$7,250, where it remains today.

10. It was necessary to establish a monthly rate rather than a per carload rate, because there are some months where APT does not request any service at all from RFS, and in other months there are only one or two requests for car movement; yet, RFS's fixed costs remained. The monthly rate was essential to cash flow for RFS, and it enabled RFS to cover its fixed costs and seasonal expenses, regardless of the amount of inbound traffic. Yet, for 2010, based on the 52 carloads delivered to APT in that year, when the total amount charged to APT pursuant to these monthly rates is figured on a per car basis, the charges to APT were less than \$1,500 per car, which was the per car rate charged during 2008.

11. As early as 2008, long before Browner Turnout acquired MAL Railway, Affiant started alerting APT to the possibility of the eventual cessation of services, due to the increasing costs of serving only one shipper. Attached hereto as Exhibit 3 is Affiant's email to John Gessert, President of APT dated January 29, 2010, confirming their agreement that July 1, 2010, was the date targeted for terminating RFS's service to APT. Obviously, service did not cease on that date, as APT continued to request the delivery of cars and RFS agreed to deliver them.

12. The email in Exhibit 3 also demonstrates Affiant's willingness to assist APT in the transition. In that regard, Exhibit 4 attached hereto contains communications by Affiant with APT, proposing to provide transloading services for APT. The proposal by RFS has not been accepted by APT.

13. Finally, notwithstanding contentions in the Reply to the contrary (see, e.g., Reply at page 10), Railmark has performed maintenance on the Line, both as the owner of MAL Railway and under the auspices of RFS, as agent for MAL Railway. Such maintenance includes replacement of broken bars and bolts, repair of washouts and other maintenance necessary to continue providing service to APT.

14. In addition to maintenance costs, even though APT is the only shipper on the line, RFS is still required to comply with all the provisions of 49 CFR Part 200 to Part 299. The provisions of these federal regulations require RFS to conduct signal inspection and maintenance, locomotive engineer certification, drug and alcohol programs, safety standards for locomotives and railcars, monthly incident reporting and other practices necessary to comply with these federal requirements.

AND FURTHER AFFIANT SAITH NOT.



B. Allen Brown

Subscribed and sworn to before me, the undersigned notary public in and for the state and county aforesaid, on this 25 day of March, 2011.

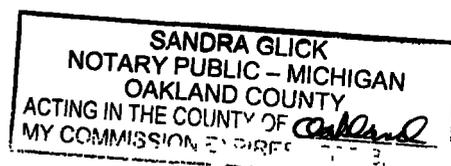


Notary Public

My Appointment Expires:

September 8, 2013

(SEAL)



01/19/10

Mr. Jim Grau, CFO
American Plastic Toys, Inc.
799 Ladd Road
Walled Lake, MI 48390

RE: DIRECT RAIL SERVICE & RATES FOR 2010

Dear Mr. Grau:

Approximately one year ago we met with Mr. Bob Fisher and Mr. Paul Albrant to discuss the direct rail service plans to your plant in Walled Lake Michigan in light of the local communities efforts to transform the rail line into a walking trail. I am sure that you have continued to read about those ongoing efforts.

During that meeting in early 2009 I informed APT that it would be about a year until the process affected direct rail service to the Walled Lake plant. During that time we also agreed to a rate of \$1,500 railcar and that we would re-visit that rate should our passenger train operations resume. Those operations did resume and this resulted in a rate reduction to \$500 per car.

Mr. Grau, we are at this point again where our railroad is only serving your plant and we have discontinued passenger train operations as of 12/31/09 and do not plan to resume them. The plan to transform the rail line into a trail has also moved forward as planned, although our ability to continue direct rail service has been increased by about three months.

The purpose of this letter is two fold. First, the rate for direct rail service for the first three months of this year is **\$6,500 Per Month**. This rate covers all of your normal first quarter rail movements and also reflects our actual costs of being able to provide that direct service to your plant. We have already invoiced APT \$1,300 in January and this will be applied to the \$6,500. I would want to meet with you so that you understand the computation of this rate. As I have indicated, our railroad is "revenue inadequate" as defined by the U.S. Surface Transportation Board (STB) and since APT is our only customer now, we have to compute our rate differently. You may not know, but this 1st quarter rate is actually lower than what the STB would use, as we have not included certain cost of capital and infrastructure costs.

The second purpose of this letter is to let APT know that we have been working on several alternatives during the past twelve months that you would find financially beneficial as APT makes the transition away from direct rail service. I had pointed out to Mr. Albrant in the past the financial benefits of making this transition to transloading including, but not limited to, reduced inventory hold, more competitive pricing and

sourcing options (now that we can get the railcar from three different Class I rail carriers), and others. I had also told them that I have pricing for the transloading and that we could possibly participate financially in a solution that would address on-site storage needs. Our company has secured trucks and transloading equipment and we have been performing these services for two of APT's shippers already this year.

Under separate cover I will be sending to Ms. Linda Tinker an invoice for the balance for the month of January. I am also available to meet with you and others as soon as you could arrange the meeting. I do have some out of town meetings over the next two weeks, but if you would call or text my cell phone (309) 370-5160 I would get back to you. I am also available Friday afternoon, 01/15/10.

Mr. Grau, I know that this topic may not be the most positive thing to discuss, but it is inevitable that it be addressed. It is also important to note that the Michigan Air-Line Railway Co. has been sold, a step in the process to transform the railroad into a trail. We are in a position to address this with APT now as not to impose an "emergency" on your operation. I know that once you and others at APT hear the alternatives we are voluntarily presenting, that this will work out well for APT in the long term.

I look forward to hearing from you soon.

Regards,

A handwritten signature in black ink, appearing to read "B. Allen Brown", written over a white background.

**B. Allen Brown, President & CEO
Railmark Holdings, Inc. and Subsidiaries
Current Operator of the Michigan Air-Line Railway Co.**

MICHIGAN AIR-LINE RAILWAY CO.

Schedule of Costs to Service APT for 1stQ 2010

| | COST ITEM | ESTIMATE/ ACTUAL |
|---|--|-----------------------------|
| 1 | Utilities / Propane For Engine Upkeep | \$3,800.00 |
| 2 | FRA Compliance (Track/Signal/Operations) | \$850.00 |
| 3 | Basic Signal Costs (No Repairs) | \$450.00 |
| 4 | Cost of Labor & Fuel For Service | \$1,300.00 |
| 5 | Fuel Filters, Oil & Other | <u>\$100.00</u> |
| | TOTAL: | <u>\$6,500.00</u> |

EXCLUDES

Cost of Capital For Rail Facilities (\$5M)
Cost of Capital For Equipment Use (\$3K)
Taxes
Overhead
Profit

Railmark Accounting

From: "Railmark Accounting" <accounting@railmark.com>
To: "John W. Gessert" <jgessert@aptoys.net>
Cc: "Jim Grau" <jgrau@APtoys.net>; "Glen Miller" <gmiller@aptoys.net>
Sent: Friday, January 29, 2010 11:49 AM
Subject: Rail Service Meeting - 01/29/10
Dear Mr. Gessert:

Thank you for talking the time to meet with me this morning on the subject of direct rail service to your plant in Walled Lake. I appreciate your time and that of your staff.

To confirm, we have mutually agreed to target July 1st, 2010 as the last date for direct rail service. I will be working with Mr. Miller to provide whatever else he needs, as well as, finalize options for the acquisition of some used railcars. I hope that I provided some additional insight today so that you might be better able to negotiate better with your suppliers. Again it is important to understand what Class I railroad serves the manufacturing plant and which major eastern carrier (CN, NS or CSX) is the line haul carrier.

The strategy I presented today was to an independent transload company, hopefully my company, this way you are not locked down again with just one carrier. I will be glad to provide my quotation in a more estimate, but we will deliver product to your facility from any Detroit area Class I point (CN, NS and CSX) for .017 per pound, plus scale ticket and any access charges (if any). That rate is good for fuel costs up to \$3.80 per gallon (diesel) and the rate would include a fuel surcharge above \$3.80. Under separate cover we will provide a transload rate for your facility in Rose City Michigan. Depending upon your continued usage of our transload services, we would also look at some type of financial participation in your used railcar purchases.

Again I apologize if you were offended by my dropping off of the letter on 01/14/10. When arrived Jim was on the phone and I did not have an appointment. So I left it and sent an e-mail encouraging a meeting as soon as possible. I did not mean to offend anyone with these actions. I was only trying to be polite since I did not have an appointment.

Mr. Gessert, I want to work with you and APT to make this transition to transloading as smooth as possible and within my means and limits. I believe that we had a good first meeting on the subject and look forward to working with your staff in the weeks ahead. Thank you again for your time and please contact me directly if you need anything at all, otherwise I will be working through Mr. Miller.

Regards,
B. Allen Brown
(309) 370-5160 Cell

1/29/2010

EXHIBIT 3
Page 1 of 1

Railmark Accounting Department

From: "Railmark Accounting Department" <accounting@railmark.com>
To: "Glen Miller" <gmiller@aptoys.net>
Sent: Friday, September 10, 2010 7:01 AM
Subject: Re. Transloading
Glen,

I would like to have a meeting with you once you have seen this e-mail and taken a look at our revised proposal (which will follow under separate cover). You cannot compare our transloading service with that of anyone else in this area because of the following:

- (1.) Our service is the same for all rail carriers, providing APT with the greatest amount of purchasing flexibility. Applying a bit more pressure on your vendors, you could use that flexibility to save maybe \$5,000 to \$10,000 per railcar overall.
- (2.) Bulkmatic just runs rail traffic from Norfolk Southern (NS), thus limiting you to only one major rail carrier who does not originate your load.
- (3.) Transflow just runs rail traffic from CSX, thus limiting you to only one major rail carrier who does not originate your load.
- (4.) Anyone else who has contacted you would be even a worst option as they will be limited to just one or two Class I railroads, will take a fee and still have to truck the product to you.
- (5.) Railmark's proposal has NO HIDDEN FEES! No demurrage (for the first ten days), no access fees, no access limitations, nothing. You will only pay the rate we quote and have access to all rail carriers. The only other rates you will pay is if you desire individual truck scale weights and a tank wash (as compared to our air cleaning method) then we only pass through the actual cost. Our proposal will also include a fuel surcharge calculation similar to what you have been receiving so that you can make a good comparison.

Glen, our revised proposal will be sent through our system and you will receive it under separate cover. We have "un-packaged" some items that we thought or assumed you wanted. Our new rate is 19.4% lower than our previous rate and with the three rail carrier competitive option that we are providing, should make our program superior to your other quotes. Also our program is "dedicated", meaning that you have the same driver each time that will learn all the details about this function in your operation. Railmark's driver has had 25+ years just in the plastic transloading business alone. Additionally I indicated that we have expanded our Walled Lake office to include a multi-representative customer service function, thus providing additional personalized services to you and APT.

I look forward to discussing this with you and how you can take advantage of access to all three carriers.

Regards,
B. Allen Brown
Rail Freight Solutions Inc.

9/10/2010

Railmark Accounting Department

From: "Railmark Accounting Department" <accounting@railmark.com>
To: "Glen Miller" <gmiller@aptoys.net>
Sent: Friday, September 10, 2010 11:02 AM
Attach: RFS APT Response.pdf
Subject: Revised Quote

Glenn,

Our revised quote, as requested. I am hopeful that you find our newest value added services and a 19.4% reduction from our last rate to be what APT needs to move forward with Railmark.

Please let me know when we can meet.

Regards,
B. Allen Brown

9/10/2010



**840 North Pontiac Trail; Walled Lake, MI 48390
(248) 960-9440 Office; (248) 960-9444 Fax**

September 10, 2010

Mr. Glen Miller
Engineering Manager
American Plastic Toys, Inc.
799 Ladd Road
Walled Lake, MI 48390

RE: INFORMATION YOU REQUESTED – REVISED QUOTE

Dear Mr. Miller:

Thank you for the opportunity to provide a revised quote for the rail to truck transfer services to your plant in Walled Lake Michigan. Our latest quote is 19.4% lower than our previous quote, primarily due to now having a location where we can access all three rail carriers thereby providing you with the best competitive access possible. This feature of having access to multiple Class I railroads is a feature highly desired by shippers and will serve to save you money over the long term with an ability to demand competitive pricing with your suppliers.

Our program also offers other key advantages. We are providing a single dedicated driver who will understand all of your requirements. Our driver has over 25 years in the truck delivery of plastics. The other advantage is a local Customer Service Center that is staffed by four individuals that will know your business and can provide answers when you need them.

Our revised rate is **\$0.0137** Per Pound (based upon 45,000 lbs minimum), and as you had requested, we have broken it out as follows:

(1.) Based on 45,000 lbs: Overall charge is \$616.50 (\$0.0137)

(a.) Unload From Railcar - \$99.00 (\$0.0022)

(b.) Transport to APT - \$418.50 (\$0.0093)

(c.) Transfer to APT Silo - \$99.00 (\$0.0022)

**(d.) Associated Customer Services & Administration –
No Allocation from Rate, but included in services provided.**

(e.) No hidden fees. Demurrage is based upon "TEN FREE DAYS", which we are sure you are not getting elsewhere. There are no access fees.

(2.) Fuel Surcharges:

- (a.) **Baseline is \$3.00 Per Gallon**
- (b.) **Add to rate .0001 cents per pound for every \$.10 cent increase per gallon based upon the "Federal Fuel Index".**

(3.) Other Services Fees (Optional):

- (a.) **Scale Fees. This would be for individual truck scale weights. We are providing a dedicated trailer and you will have rail weights. However, if you desire individual truck scale weights we will only charge what their actual costs are, which is usually around \$10 each (load and empty).**
- (b.) **Washout Fees. Our rate includes high pressure air cleaning of the take between railcars, however, should you require a full high pressure water wash, this would carry a separate rate. Please keep in mind that we are providing a dedicated trailer to your business.**

I hope that you find this competitive and with value added services. I cannot stress the importance of having equal access to all three major rail carriers. Please provide a time when we can meet. Call me anytime on my cell phone (309) 370-5160.

Regards,

B. Allen Brown

President & CEO
Rail Freight Solutions Inc.
A Railmark Company

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

STB DOCKET NO. AB-1053 (Sub-No. 1X)

**MICHIGAN AIR-LINE RAILWAY CO.
- ABANDONMENT AND DISCONTINUANCE OF SERVICE EXEMPTION -
LINE IN OAKLAND COUNTY, MICHIGAN**

**SURREPLY OF MICHIGAN AIR-LINE RAILWAY CO.
TO AMERICAN PLASTIC TOYS, INC.'S
REPLY AND OBJECTION TO PETITION FOR EXEMPTION**

EXHIBIT B

AFFIDAVIT OF DANIEL J. NAVARRE

5. The MNRTF awarded WBPRC the grant in December of 2008, and after the Michigan legislature and governor approved the appropriations bill containing the grant moneys, WBPRC began the due diligence process.

6. As part of that process, since the grant application valued the real property at more than \$500,000, WBPRC was required to obtain two new appraisals. Accordingly, the First Appraisal of MAL Railway's line in Oakland County was updated, and a second appraisal ("Second Appraisal") was obtained in July of 2009. These appraisals were submitted to the real estate division of MDNRE, for its determination of the fair market value of the right-of-way in West Bloomfield Township. In a letter from the MDNRE dated January 25, 2010, WBPRC was advised that the amount of the Second Appraisal was determined to be the fair market value of the property to be acquired.

7. Following the STB's approval of abandonment of MAL Railway's rail line in West Bloomfield Township in August of 2010, WBPRC and MAL Railway entered into a Purchase Agreement for the abandoned right-of-way. The purchase price in the agreement was the fair market value of the abandoned right-of-way, as determined by the MDNRE.

8. I also note that the Reply at page 12 challenges the validity of the photographs included as Exhibit 2 to the Combined Environmental and Historic Report ("CEHR"), which was incorporated in and made a part of the Petition for Exemption. The photographs identified as Exhibits 2-1 to 2-10 and 2-12 to 2-17 were taken by me on September 28, 2010. On that date, along with several officers of MAL Railway and its legal counsel, I "high railed" MAL Railway's rail line between the CSX interchange and Haggerty Road. As we traveled, I took photographs while sitting on the tailgate of the vehicle. Contrary to APT's contention, all of the photographs I took were of the rail line and adjoining property between

the CSX interchange and Haggerty Road. Sixteen of the photographs were used as exhibits to the CEHR.

AND FURTHER AFFIANT SAITH NOT.


Daniel J. Navarre

Subscribed and sworn to before me, the undersigned notary public in and for the state and county aforesaid, on this 23 day of March, 2011.


Notary Public

My Appointment Expires:

Jan. 27, 2012

(SEAL)

SANDRA L. MCGILL
NOTARY PUBLIC-STATE OF MICHIGAN
COUNTY OF WASHTENAW
My Commission Expires January 27, 2012
Acting in County of Oakland

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

STB DOCKET NO. AB-1053 (Sub-No. 1X)

**MICHIGAN AIR-LINE RAILWAY CO.
- ABANDONMENT AND DISCONTINUANCE OF SERVICE EXEMPTION -
LINE IN OAKLAND COUNTY, MICHIGAN**

**SURREPLY OF MICHIGAN AIR-LINE RAILWAY CO.
TO AMERICAN PLASTIC TOYS, INC.'S
REPLY AND OBJECTION TO PETITION FOR EXEMPTION**

EXHIBIT C

AFFIDAVIT OF PHILLIP E. ADKISON

STATE OF MICHIGAN)
) ss:
COUNTY OF OAKLAND)

AFFIDAVIT OF PHILLIP G. ADKISON

Phillip G. Adkison, of lawful age, being first duly sworn, deposes and states as follows:

1. Affiant is a lawyer duly licensed to practice law in the State of Michigan, and is a member of the law firm of Adkison, Need & Allen, a professional limited liability company, whose address is 40950 Woodward, Suite 300, Bloomfield Hills, Michigan 48304.

2. I serve as the lawyer for the Commerce, Walled Lake and Wixom Trailway Management Council (“Council”), which was formed by an interlocal agreement by and among the Charter Township of Commerce, Oakland County, Michigan, the City of Walled Lake, Michigan and the City of Wixom, Michigan, effective in May of 2009.

3. The Council was formed for the purpose of acquiring and managing the railroad right-of-way owned by Michigan Air-Line Railway Co. (“MAL Railway”) upon the abandonment of the right-of-way, as approved by the U.S. Surface Transportation Board.

4. I have received a copy of the Petition for Exemption filed by MAL Railway in STB Docket No. AB-1053 (Sub. No. 1X), by which MAL Railway seeks to abandon the remaining portion of its rail line in Oakland County, Michigan. I also have been provided a copy of the Reply and Objection to Petition for Exemption (“Reply”) filed by American Plastic Toys, Inc. (“APT”) in this docket.

5. On page 13 of the Reply, APT makes the following statement: “APT expects to continue to use and increase it’s[sic] use of the rail line.” Notwithstanding their statement, APT declined to meet and/or negotiate with the Council concerning a possible extension of time by MAL Railway, during which rail freight service to APT by MAL Railway would be

continued, regardless of any abandonment of MAL Railway's rail line authorized by the U.S. Surface Transportation Board.

6. On several occasions, Kathleen Jackson, the Council's Administrator, attempted to arrange a meeting for her and me with Mr. John W. Gessert, President of APT. Ms. Jackson suggested a number of dates and times for the meeting. For the most part, Mr. Gessert did not respond to those requests.

7. Ms. Jackson's requests for a meeting were preceded by correspondence involving MAL Railway's attorney, W. Robert Alderson. On October 25, 2010, Ms. Jackson wrote to Mr. Alderson, inquiring whether MAL Railway would consider offering to provide rail service to APT for a period of time exceeding the reasonably expected time required for abandonment of the railroad's remaining line in Oakland County, Michigan. Mr. Alderson responded promptly with a letter to Ms. Jackson dated October 27, 2010. A copy of that letter is attached to this Affidavit as Exhibit A.

8. As can be seen from Mr. Alderson's letter, he indicated that, in exchange for APT's cooperation in the abandonment of the line, MAL Railway would be willing to guarantee service at current rates for a period of two years.

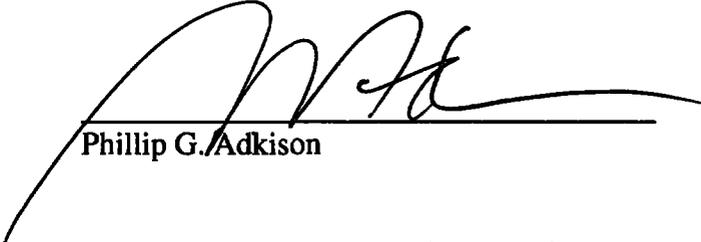
9. Ms. Jackson provided me with a copy of Mr. Alderson's letter, and under cover of my letter of November 12, 2010, I sent a copy of Mr. Alderson's letter to Mr. Gessert and Mr. James Grau, Treasurer of APT. A copy of my letter also is attached as Exhibit B.

10. In my November 12, 2010 letter, I discussed the thrust of Mr. Alderson's letter, and I mentioned the inability of Ms. Jackson and I to arrange a "face-to-face" meeting to thoroughly explore MAL Railway's offer. I encouraged a prompt response to my letter, in

order to accommodate the deadline of November 15, 2010, for the submission of materials to MNRTF in connection with the Council's grant application.

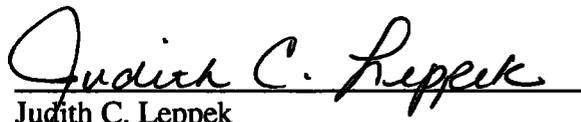
11. No response to my letter was forthcoming from APT.

AND FURTHER AFFIANT SAITH NOT.



Phillip G. Adkison

Subscribed and sworn to before me, the undersigned notary public in and for the state and county aforesaid, on this 22nd day of March, 2011.



Judith C. Leppek
Notary Public, State of Michigan
County of Macomb
My commission expires: October 12, 2011
Acting in the County of Oakland

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KANSAS AND MISSOURI

boba@aldersonlaw.com

October 27, 2010

Kathleen C. Jackson
Commerce Township Planner
2009 Township Drive
Commerce Township, Michigan 48390

Dear Ms. Jackson:

I am in receipt of your letter of October 25, 2010, which was written in your capacity as Administrator of the Commerce, Walled Lake and Wixom Trailway Management Council ("Council"). In your letter, you expressed your understanding that Michigan Air-Line Railway Co. ("MAL") is currently planning to proceed with the abandonment of MAL's line extending from Haggerty Road to its interchange with the CSX rail line in Wixom, notwithstanding the unwillingness of American Plastic Toys ("APT") to support the abandonment of the segment of that line which currently is used to provide rail service to APT.

You further expressed the Council's understanding of APT's concerns, but you also expressed the Council's recognition that abandonment of that segment is inevitable and the Council supports the proposal to abandon the right-of-way and sell it to the Council for railway purposes as expeditiously as possible.

Based on these understandings, you have inquired whether MAL would consider offering to provide rail service to APT for a period of time exceeding the reasonably expected time required for abandonment of the entire line, as an incentive to APT to withdraw its objection to the abandonment. In support of this request, you note that the Council is dependent upon grant money to purchase the right-of-way and the support of APT is critical to obtaining funds for the purchase of the entire line between Haggerty Road and the interchange with CSX west of Wixom during the current grant cycle.

In response, I would note that you are correct in your understanding that MAL's current plan is for the abandonment of the remainder of its line from Haggerty Road to the CSX interchange, pursuant to a Petition for Exemption. I estimate that it will require about 30 days for me to send out the required notices and complete preparation of the Petition for Exemption. Once the

EXHIBIT A

Kathleen C. Jackson
Commerce Township Planner
October 27, 2010
Page 2 of 3

petition is filed with the Surface Transportation Board ("STB") it will be approximately four months before the abandonment is approved by the STB. So, realistically, it will be approximately five months before the entire line could be abandoned. MAL would then proceed to cause the rails, ties and other track materials to be removed from the right-of-way, and MAL already has received an acceptable bid for salvaging the line.

However, I have discussed your request with R. Robert Butler, President of MAL, and after considerable deliberation, he has authorized me to propose the following scenario MAL would be willing to pursue to accommodate your request.

First, rather than seeking the STB's approval of abandoning the entire line pursuant to a Petition for Exemption, MAL would be willing to seek abandonment in phases. The first phase would be to abandon the segment from the west line of Haggerty Road to the west line of Ladd Road pursuant to a Notice of Exemption, as opposed to a Petition for Exemption. The notice of exemption procedure is simpler and much faster than abandonment pursuant to a Petition for Exemption. The notice of exemption procedure may be used where there has been no rail traffic on the line to be abandoned for at least two years prior to the date the notice of exemption is filed with the STB. It is the procedure used to abandon the line in West Bloomfield Township. On the other hand, the Petition for Exemption is commonly used where one or more shippers remain on the line to be abandoned, but where the rail carrier can demonstrate that the costs of serving those shippers exceed the revenues derived by the rail carrier from providing such service. This is the procedure that will be required for abandonment of the segment of MAL's line from the west line of Ladd Road to the CSX interchange.

MAL is willing to structure these two procedures so as to provide APT with rail service on essentially the same terms and conditions as are now being provided, for an additional two years. This would be accomplished by filing with the STB a Notice of Exemption for the line segment between Haggerty Road and Ladd Road. As noted above, this is a simpler, faster procedure than is required for a Petition for Exemption. Again, I estimate that it will take about 30 days for me to send out the required notices and file the Notice of Exemption. Once it is filed with the STB, the STB's decision must be rendered within 50 days. Thus, abandonment of this segment of the line should be completed within approximately three (3) months.

MAL will not begin the process of preparing and filing the Petition for Exemption seeking abandonment of the line segment from Ladd Road to the CSX interchange until approximately five (5) months after the STB approves abandonment of the Haggerty Road to Ladd Road segment. As stated previously, once it is filed, a Petition for Exemption requires approximately four (4) months (110 days) for the STB decision to be issued. Thus, if the foregoing process begins on or about November 1, 2010, the entire line will be approved for abandonment by October 31, 2011, approximately one year from now.

Here, it is to be noted that abandonment granted by the STB is permissive. The STB's decision approving abandonment of a line simply provides authority to abandon the line. However, a rail

Kathleen C. Jackson
Commerce Township Planner
October 27, 2010
Page 3 of 3

carrier which has been granted authority to abandon a line has one year in which to consummate abandonment of that line and give notice thereof to the STB. Otherwise, the abandonment process must begin anew.

Thus, while abandonment of the segment from Haggerty Road to Ladd Road will be consummated as soon as possible after the STB authorizes its abandonment, MAL will delay consummating abandonment of the Ladd Road to the CSX interchange segment for nearly one year after its abandonment is approved. During that time, MAL would continue providing rail service to APT. Therefore, by approximately October 31, 2012, consummation of the abandonment of the entire line will be accomplished, but APT will have been provided approximately two years of additional rail service.

In exchange for MAL implementing this bifurcated procedure and providing two years of additional rail service to APT, we would require that APT agree to send a letter to the Michigan Department of Transportation, acceptable to you, supporting the Council's proposed recreational trail on the abandoned line, and that APT send a letter to STB, acceptable to MAL, advising that it does not object to MAL's abandonment of the line from Ladd Road to the CSX interchange. That letter would be included as an exhibit to MAL's Petition for Exemption seeking STB's approval of that line's abandonment.

MAL believes the foregoing proposal is abundantly fair to APT. I trust you agree. If you do, I think it would be more appropriate for you to visit with APT regarding this proposal. In so doing, please feel free to share this letter with them.

Very truly yours,



W. Robert Alderson
ALDERSON, ALDERSON, WEILER,
CONKLIN, BURGHART & CROW, LLC

WRA/jk/bjb
cc: R. Robert Butler



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OF COUNSEL:
KEVIN M. CHUDLER
COLEMAN E. KLEIN

November 12, 2010

Via Electronic Mail Only

Mr. John Gessert
President
American Plastic Toys, Inc
799 Ladd Road,
P.O. Box 100
Walled Lake, MI 48390-0100

Mr. James Grau
Treasurer
American Plastic Toys, Inc
799 Ladd Road,
P.O. Box 100
Walled Lake, MI 48390-0100

Re: Abandonment of Michigan Airline Railway Line ("MAL")

Gentlemen:

Our office represents the Commerce, Walled Lake, and Wixom Trailway Management Council ("Council"). The Council was established to acquire and manage the Michigan Airline Railway right-of-way as a recreational trailway in the event its owners successfully pursue abandonment of the rail line with the U.S. Surface Transportation Board ("STB"). The Council is solely dependent upon grant funds to finance railroad right of way acquisition following abandonment. It has applied to the Michigan Department of Natural Resources Trust Fund for a grant to purchase the right-of-way from its interchange with the CSX rail line in Wixom to Haggerty Road on the eastern boundary of Commerce Township after consummation of abandonment.

The Council has been informed by MAL that it intends to file a Notice of Exemption for the portion of the right of way east of Ladd Road and a Petition for Exemption for the portion of the railroad right-of-way west of Ladd Road. As we understand it, a Petition for Exemption must be filed in circumstances where there has been rail traffic on the railroad during the two year period prior to the date the Petition is filed with the STB. Based on our review of the law and rules governing this process we believe that it is likely to take approximately three (3) months for the rail line east of Ladd Road to be formally abandoned using the Notice of Exemption process while the STB is required to make a decision on the merits of a Petition for Exemption 110 days from the date the Petition for Exemption is filed with respect to that portion of the railroad west of Ladd Road.

The Council understands that American Plastic Toys, Inc. ("APT") opposes abandonment for that portion of the rail line west of Ladd Road because it currently services your business. APT's opposition to the abandonment has resulted in the Michigan Department of Transportation

refusing to support the grant application filed by the Council. Without support from MDOT, it is highly unlikely that Council will be successful in its request for grant funding.

After considering the entire circumstances, the Council requested that MAL consider offering service to your business for a period of time exceeding the 110 days time period that could reasonably be expected if a Petition for Exemption is filed and if any challenge to abandonment is unsuccessful. This was done in the hope that such an offer might induce APT to withdraw its objection to abandonment, if it concludes, as the Council has, that abandonment is inevitable in any event. If APT withdraws its objection to abandonment, it is reasonable to assume that MDOT would then support the Council's grant application.

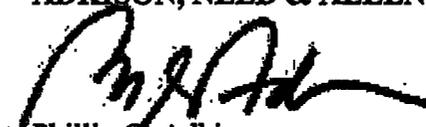
I am attaching a copy of a letter responding to the Council's request from the attorney for MAL. Essentially that this letter states that in exchange for APT's cooperation in the abandonment process, MAL would be willing to guarantee service at current rates for a period of two (2) years.

The Council's Director and I had hoped to meet with APT representatives face-to-face in order to thoroughly explore MAL's offer to extend service for a period of two (2) years, but our Director has been unsuccessful in arranging a meeting. The deadline for submission of materials to the Michigan Department of Natural Resources Trust Fund is November 15, 2010 and a decision on the Council's grant application is expected on December 1, 2010. We understand that the lateness of this request makes a timely submission difficult, if not impossible, even if APT is willing to entertain a change in its position. If APT's position remains unchanged, it means that the Council cannot reasonably expect to see funding for the portion of the line west of Ladd Road during this fiscal year, even if abandonment is approved in 110 days. The Council believes that this grant cycle represents the best opportunity for funding this acquisition in the near term. We are requesting that you consider withdrawing your opposition to the abandonment in exchange for the additional year of rail service MAL is willing to offer for your cooperation in the process.

I am enclosing a letter dated October 27, 2010 from W. Robert Alderson, attorney for MAL outlining its offer as summarized above. Time is of the essence in responding to this offer given the intent of MAL to begin the process of abandonment and the upcoming deadlines for submitting final grant applications. Please contact me immediately if you have an interest in discussing this further.

Very truly yours,

ADKISON, NEED & ALLEN, P.L.L.C.



Phillip G. Adkison

/jl
Enc.

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

STB DOCKET NO. AB-1053 (Sub-No. 1X)

**MICHIGAN AIR-LINE RAILWAY CO.
- ABANDONMENT AND DISCONTINUANCE OF SERVICE EXEMPTION -
LINE IN OAKLAND COUNTY, MICHIGAN**

**SURREPLY OF MICHIGAN AIR-LINE RAILWAY CO.
TO AMERICAN PLASTIC TOYS, INC.'S
REPLY AND OBJECTION TO PETITION FOR EXEMPTION**

EXHIBIT D

AFFIDAVIT OF NANCY KRUPIARZ

STATE OF MICHIGAN)
) ss:
COUNTY OF INGHAM)

AFFIDAVIT OF NANCY KRUPIARZ

Nancy Krupiarz, of lawful age, being first duly sworn, deposes and states as follows:

1. Affiant is the Executive Director of the Michigan Trails and Greenways Alliance, whose office is located at 1213 Central Street, Lansing, Michigan 48912.

2. At the time it was filed with the U.S. Surface Transportation Board ("STB") on January 28, 2011, Affiant was provided a courtesy copy of the Petition for Exemption filed by the Michigan Air-Line Railway Co. ("MAL Railway"), and Affiant recently obtained a copy of the Reply and Objection to Petition for Exemption ("Reply") filed by American Plastic Toys, Inc. ("APT").

3. Attached to the Reply as Exhibit 1 are the minutes of the meeting of the Board of Trustees of the Michigan Natural Resources Trust Fund ("MNRTF") held on December 1, 2010. One of the agenda items for that meeting ("MNRTF Meeting") was consideration of the grant application submitted to MNRTF by the Commerce, Walled Lake and Wixom Trail Management Council ("Council"). Affiant has worked closely with the Council in developing its grant application, because the Council has the potential to acquire the balance of MAL Railway's rail line in Oakland County, Michigan, once it is abandoned, and to convert the abandoned right-of-way into a recreational trail, thereby completing the Airline Trail. This project is very important to the Michigan Trails and Greenways Alliance, so Affiant attended the MNRTF Meeting.

4. After Affiant had an opportunity to review the minutes of the MNRTF Meeting (see Exhibit 1 to Reply), Affiant concluded that some significant dialogue at that meeting had not been reflected in the minutes. Thus, Affiant obtained a recording of the

proceedings of that meeting and prepared a transcript of that portion of the proceedings pertinent to the Council's grant application. A copy of that transcript ("Transcript") is attached hereto as Exhibit 1. There are places on the recording obtained by Affiant that did not permit a completely accurate transcription, but Affiant believes that the Transcript is 98% accurate in reflecting the proceedings of the MNRTF Meeting.

5. From the Transcript it is apparent that the Council had submitted a grant application which was a revision of its prior grant application to MNRTF. The revisions were made to coincide with MAL Railway's efforts to accommodate APT. Rather than seek to abandon all of MAL Railway's remaining rail line in Oakland County, Michigan, by a single filing with the STB, MAL Railway proposed to abandon the line by two, separate filings. Once abandonment of the first segment was approved by the STB, a second filing would be made with the STB to abandon the balance of MAL Railway's line in Oakland County.

6. Affiant is aware from her conversations with Kathleen Jackson, the Council's Administrator, and with R. Robert Butler, President of MAL Railway, that based on its proposed bifurcation of its abandonment filings with the STB, MAL Railway had agreed that it would provide an additional two years of rail service to APT, if APT would support MAL Railway's abandonment efforts. Ms. Jackson advised that this proposal was submitted to APT under cover of a letter from the Council's attorney to Mr. John Gessert, APT's President, but no response from Mr. Gessert was forthcoming.

7. It is Affiant's understanding from her conversations with Mr. Butler that, when MNRTF failed to approve the Council's grant application at the MNRTF Meeting, coupled with APT's failure to acknowledge MAL Railway's proposal to schedule its abandonment filings in a way that would provide APT with an additional two years of rail

service at current rates, MAL Railway decided to file with the STB a Petition for Exemption, seeking authority to abandon the remainder of its line in Oakland County.

8. On the last page of the Transcript, Mr. Gessert objects to Affiant's comment that APT has not responded to efforts by the Council and MAL Railway to meet with APT "to work it out." Mr. Gessert claimed that the only meeting he had not attended was a request made by Ms. Jackson to meet the next day following her request, indicating in effect that he could not meet at that time, because it was APT's busy season. Notwithstanding Mr. Gessert's comment, Affiant is aware from conversations with Ms. Jackson that she made repeated efforts to meet with Mr. Gessert prior to the MNRTF Meeting.

9. Also, in the Reply at page 10, APT contends that APT caused the Michigan Department of Transportation ("MDOT") to cease supporting the Council's grant application. Actually, the Reply indicates that "Mr. Butler" sought matching funds from the MDOT and that he and MAL Railway mislead MDOT into believing that the entire rail line in Oakland County did not have rail traffic. There is nothing in the Transcript to support any of those contentions. Rather, the Transcript reflects that the Council filed the grant application with the MNRTF, and it includes a statement from Mike Leon of MDOT's Office of Economic Development, indicating that MDOT is "very supportive of the completion of the Airline Trail." He further states that MDOT has given "a conditional commitment for this portion of the trail and one of the conditions is that it has to go through proper abandonment procedures and also on the condition that it does not cause the loss of jobs in Michigan. So if those conditions can be met, then there has been a conditional commitment for the portion of the trail which is under consideration this evening."

10. Based on the comments of Mr. Leon, it cannot be said that MDOT does not support the Council's efforts to obtain enhancement grant funding from MDOT for purchasing MAL Railway's line, once it has been approved for abandonment by the STB.

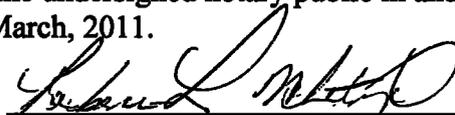
11. Finally, I have been involved in the development of the Airline Trail for many years, and I know that completion of that trail is not only important to my organization, but also is very important to the communities of Commerce Township, Walled Lake and Wixom, which formed the Council.

AND FURTHER AFFIANT SAITH NOT.



Nancy Krupiarz

Subscribed and sworn to before me, the undersigned notary public in and for the state and county aforesaid, on this 24th day of March, 2011.



Notary Public *Rebecca L. Whetzel*

My Appointment Expires:

May 12, 2016

(SEAL)

REBECCA L. WHETZEL
NOTARY PUBLIC, STATE OF MI
COUNTY OF INGHAM
MY COMMISSION EXPIRES May 12, 2016
ACTING IN COUNTY OF *Ingham*

Remarks from American Plastic Toys, Inc. and Michigan Economic Dev. Corporation,
Natural Resources Trust Fund Board Meeting, November 31, 2010

John Gessert, President, American Plastic Toys

We offer our comments against offering proposed grant to acquire approx. 5 miles of railroad row with the intention to develop a hiking biking trail from Haggerty Rd. in Walled Lake to the City limits of Wixom. This project will significantly hinder our ability to continue to support our manufacturing activities at our factory at 799 Ladd Road in Walled Lake, Michigan. This proposal will significantly increase our costs of doing business specifically at the WL facility. Our main component, plastic pellets, hence the name of APT the cost of purchasing the pellets, will increase by at least \$100,000 annually. Additionally, we stand to lose significant storage capacity by not being able to have rail cars staged at our facility as well. If we don't have rail service, we are going to have to invest up to \$300,000 in storage silos to store plastics. The logistics of getting plastics to the plant will certainly be more complicated and reduce our ability to purchase plastic competitively on the open market. The closing of the rail siding will increase truck traffic in and around the City of Walled Lake by over 250 truck loads as opposed to 60 rail cars. That certainly will have a negative effect on the environment within the Walled Lake City area as well as road conditions in the area. APT for those of you who are not familiar with our company is one of the last domestic manufacturers of toys within the United States. We distribute products throughout the United States, Mexico, Canada and some international distribution. We also have our product listed through many nationally distributed catalogs and websites. The Walled Lake facility is one of 5 buildings that the company has, 4 of which are here in Michigan and our product line is comprised of about 125 different items and again, one of the last manufacturers in the US. Its interesting to note that within the United States, that out of all the toys sold in the United States, only 15% are made here in the US. We're all aware of the difficult economic times we've had here in Michigan. Fortunately, it hasn't been the case with American Plastic Toys. We employ over 230 employees within the state; 170 which work in the Walled Lake facility, which happens to be our headquarters as well. APT in the state of MI, we spend over \$6.1 million with contractors and MI vendors. We provide all our employees with a weekly paycheck, health ins., profit sharing and optional benefits that support MI residents as well. We obviously pay into the worker's comp pool and the unemployment program here in MI. The bottom line is losing rail service to our Walled Lake facility would really force our hand and make us look more seriously at alternative locations, to take our operations from MI to outside of the state. Just this year we have been approached by KY, MS, and Alabama to review new locations, etc., etc. So please consider the negative effects it will have as you review this proposal.

KEITH CHARTERS: (TF Board Member) Sir, is that an active rail line?

APT: Yes, we bring in 50 to 60 rail cars annually to Walled Lake.

KEITH CHARTERS: I guess what I don't understand and I'm looking at staff now. It says it will connect on the west to Huron Valley Trail and the east to West Bloomfield Trail, which will indicate more of an island (??) trail, you're saying it's active. This is more than a siding.

APT: Yes, we bring cars in from the CSX yard which is in Wixom. And in order to switch those cars, those tracks are actively used east of our facility but we can store 8 rail cars at any one time.

ROB GARNER (TF board member): But you have a direct connection to the rail yard.

APT: We do now. Actually, Allan Brown which is the private company that services us, has to bring the rail cars from CSX to our rail siding and it is usually that track that they use.

ROB GARNER: They use the track to bring the cars. And this impinges on that track.

APT: Yes, it will impinge on the ability to switch cars in and out

ROB GARNER: By how much does it impinge? I mean, is it a lengthy 2/10 mile, 2 miles, is there another way to skin this cat. A Way to get what you need. The citizens down there would like to connect the trails.

APT: I might suggest that not all the citizens are necessarily in favor of this.

ROB GARNER: There's a process by which they go through process, public hearings. That's not really for us to judge. But is there a way to make it work for you and for those people who wanted the connection.

APT: We've asked that question. We said we would work with them, with the property that we control adjacent to our plant. We're not opposed to walking trails but we are opposed to a significant departure that will ?????

ROB Garner: Understood.

APT: And we talked to CSX and they said there would be no way and they didn't feel comfortable having rail service that would be that close to a walking trail. Ideally, if we can get our cars there and they convert part of that area and still provide a walking trail. That would be fine with us and we offered to do whatever we could to make that possible. We're not opposed to that We just want a way. It will really hurt obviously if it is difficult to buy plastic competitively and have to bring it in via truckload instead of rail car.

ROB GARNER: Understood. Understood. We're in the sand business in Wexford County and trucking is a much less efficient way

APT: I guess at first blush I didn't realize. But for every rail car it's 4 truck loads. You think of 60 cars and it's 40 additional truck loads working on the road. It's not a sustainable process for getting materials to our plant. I didn't mean to

ROB GARNER: No , no, that's alright. I'm glad you're here. Better to be here now than later .

APT: We've been here since 1962.

DAVID KURTZ (MEDC): I'm speaking on the same subject. I'm with the Michigan Economic Development Corporation and I've been working with this company to help retain them in MI. I'd like you to take into consideration when you're looking at this grant the potential impact it will have on the co. They have been here for 50 years, employing people. They have a significant base here and have operations in other states. And I don't want their cost to be prohibitive here if they lose their rail service. I believe the original grant was written so that the tracks are ripped up all the way to West Bloomfield and I think it was amended that west of Ladd Rd. would not be included in the grant. But anyhow looking at that, there's still a portion east of Ladd Rd. that is the switching yard that he was speaking of, that hasn't been abandoned yet. That's the other issue, noone's gone to the Surface Transportation Board for this section that we're talking about west of Haggerty to abandon it. So this rail is still an operating rail, and he is the customer operating on it. So I just ask for your consideration in looking at this grant and the potential impact on this company.

KEITH CHARTERS: There's no stronger supporter of rails to trails than the people sitting up here. But also jobs are pretty damned important right now. Nancy do you have a clarification of this?

NANCY: The reason why it hasn't been filed for abandonment is because there was this issue with APT and it took a while for MDOT to decide to give the conditional commitment for bisecting the trail project that was applied for under the Natural Resources Trust Fund. They determined that 3 of the 5 miles had not had any rail service for 2 years and it was ready to be abandoned right now. Now that they know MDOT has given their conditional commitment, they are going forward and so there is no interference with APT for their portion of the rail service, from Haggerty to Ladd Rd.

KEITH CHARTERS: So have we in fact scaled back the request for 3755,000?

NANCY: Yes.

KEITH: I must have the wrong paperwork.

DEB APOSTOL (Trust Fund staff): There is updated information that we received in a fax. The new request amount is \$2551,060.

DENNIS MUCHMORE (Trust Fund Board Member): Now I'm more confused.

KEITH: If we were to approve the new request of \$2 million, does that put APT out of rail service?

NANCY: No

DENNIS: I'm looking at American Plastics.

APT: Yes, it comes in from the west, there is a portion as far as the company that is servicing us now, has all of their operations on the east side of Pontiac Trail which could be a factor ??????

KEITH: Is it going to be or could be?

APT: Again, I'm not sure if they abandon that part, where they're going to put their equipment but they'll have their operations at a small one or two room building or all the equipment, all the switching done on the other side.

NANCY: The railroad has offered to work with them, in terms of keeping the rail service there, you know for an extended period of time, working with them to have a meeting, but there has no responses whatsoever, so because of that,

DENNIS: Okay, so there's been no response, but wait a minute, I've got to get this down right. We're in a position where people are asking me on the Trust Fund to vote for something that we think, at least Dave thinks, is going to cost the state business? Dave?

DAVE: The last thing I saw was that they wanted to have the trail run from Ladd Rd. east.

KEITH: I don't know who "they" is. Is that some tribe in Arizona?

DAVE: Kathleen Jackson

NANCY: It's actually the Wixom, Walled Lake and Commerce Twp. Trailway Management Council. Remember the West Bloomfield trail acquisition. It was formed right after the West Bloomfield trail acquisition grant was approved. Kathleen Jackson works for them.

DAVE: Kathleen Jackson made a filing on November 15th to amend it and amend the grant to run from east of Ladd Rd. to West Bloomfield and that's where that switching station is between Ladd Rd. and Haggerty Rd. I guess my point of being here is that I think there are some issues and it doesn't seem clear with everyone talking what all these issues are with this project. I wanted to make sure some of these issues came out and you take them under consideration.

DENNIS: Mike Leon, you going to shed some light on this? This is Michael Leon from the Economic Development office of MDOT.

MIKE: I'm Mike Leon from MDOT's office of Economic Development, here to represent the transportation enhancement program. Typically I work with the Transportation Economic Development Fund. When I was first made aware of this, as far as a communication from MEDC, there were concerns about rail service. First I'd like to say that MDOT is very supportive of the completion of the Airline Trail. We have given a conditional commitment for this portion of the trail and one of the conditions is that it has to go through proper abandonment procedures and also on the condition that it does not cause the loss of jobs in Michigan. So if those conditions can be met, then there has been a conditional commitment for the portion of the trail which is under consideration this evening. If you have any other questions, I will do my best. Typically, I do not work with the Transportation Enhancements program.

KEITH: So I'm going to look back to you a minute Deb. The amount of request is different and how much is that now?

2, 551,060

And that covers 3 of the 5 miles. And the 3 miles are abandoned already. The other 2 are betting on the comp (??). That's a yes or no answer.

NANCY: They're applying for abandonment.

KEITH: But I'm giving out money tomorrow.

NANCY: Well, it was the same thing with the West Bloomfield Trail. There had to be some sort of commitment there or a sense that this grant could happen before they would go ahead. But whether or not they abandon, it's really up to the rail company. They could just go ahead anyway and it would have to stand up to the court at the Surface Transportation Board in terms of the cost that it takes to keep the railroad operating, whether there's enough revenue. It will stand on its own no matter what. It doesn't even matter whether there's a trail there or not. They're going to abandon it since there hasn't been any rail service, it will be a faster abandonment. It will take only 50 days or so to reach that decision.

BOB GARNER: Our concern is where does transportation trigger not letting it be abandoned or trigger some formula that would not let it go if it was going to cost jobs. It's to the Trust Fund. I don't know. I'd like to be on board with this in hopes that it will work out but I'd sure as heck hate to see a company suffer extraordinarily.

NANCY: But it won't. Their part of the rail is west of the part that is going to be abandoned.

DENNIS: But Nancy, you're asking me to encourage a rail company to get out of a rail route because we give em money and they get out of a rail route and then this guy's business, someone loses their job. This trail is not worth someone losing their job over.

NANCY: On this part of the corridor, there used to be a dinner train. There was no other shipper on this part of the route. The dinner train went bankrupt. It went to another rail company. It is up to them to decide what to do with the rail service, and if they aren't able to bring in the money to keep . They would probably have to charge extra costs to American Plastic Toys to keep the other segment going.

DENNIS: Well, just historically speaking we all know that there's been 2 guys in the state who have bought up railroad in order to get grants from the state to abandon their rail lines. And we had disadvantaged people that's historically not, shouldn't be a shock because it's happened multiple times where people the rail lines, and get the state to buy the rail lines and then they abandon the rail lines. I mean that's been happening for 30 years at least and I can give you the names privately if you want them. But that was a common way of doing that and it cost a lot of companies their access to rail and the state helped them lose their access by granting these. I don't think that's any secret. So I'm just reluctant to do that Nancy based on this conversation, but that's just me and the other 4 may feel differently. I think this thing has got some loose ends that we ought to make sure are tied up before we do something like this.

NANCY: Well in the conditional commitment, MDOT was working with MEDC and had decided not to give one, and then they took a second look at it and decided that they had 3 miles that were actually good to go. That's how they gave the conditional commitment and then the grant application was amended. So that it would just be that piece. They already abandoned the 2 miles further east in West Bloomfield Township.

KEITH: Is the current grant application east of Ladd Rd. or is it ????

NANCY: It is east of Ladd Rd.

KEITH: Does it include the rail yard that they use to switch the cars back and forth and turn them around.

NANCY: I am not familiar with the actual topography but I was told that MDOT looked at it

DENNIS: Okay, I'm gonna Frank?

FRANK (Trust Fund bd. Member): It just seems that they're not on the same page. Everybody's kind of all over the place on this one. Everybody's not focused on the same . . .

NANCY: Well a lot of it is because of the fact that they have tried to set up meetings between APT and the Trailway Management Council and the railroad to work it out and there has not been any response.

APT: Oh, I have to object to that. We had met with the upstate company that purchases rail out of Nebraska. We met with them twice, Kathleen once, the mayor of Walled Lake once, we met with MEDC several times and Oakland County Econ. Dev., Irene Spanos. The only meeting that we have not had is when Kathleen said Okay I've got to get this grant application amended. Can you meet tomorrow afternoon. I'm sorry I'm in the toy business and Oct. and Nov. are kinda busy months for me, so we had an open door and we reached out to them and I find that really a rather egregious comment. We went to the rail yard and asked if there's a way that we can do both and maintain our rail service and their initial response was no they didn't feel comfortable with that. I'm here I'm trying to make our concerns known.

DENNIS: We're going to move on, so we make sure we don't strand people here tonight.

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

STB DOCKET NO. AB-1053 (Sub-No. 1X)

**MICHIGAN AIR-LINE RAILWAY CO.
- ABANDONMENT AND DISCONTINUANCE OF SERVICE EXEMPTION -
LINE IN OAKLAND COUNTY, MICHIGAN**

**SURREPLY OF MICHIGAN AIR-LINE RAILWAY CO.
TO AMERICAN PLASTIC TOYS, INC.'S
REPLY AND OBJECTION TO PETITION FOR EXEMPTION**

EXHIBIT E

LETTER FROM MICHIGAN DEPARTMENT OF TRANSPORTATION



STATE OF MICHIGAN
DEPARTMENT OF TRANSPORTATION
LANSING

RICK SNYDER
GOVERNOR

KIRK T. STEUDLE
DIRECTOR

January 25, 2011

RECEIVED

FEB 1 2011

Mr. W. Robert Alderson
Alderson, Alderson, Weiler,
Conklin, Burghart & Crow, L.L.C.
Attorney for Michigan Air-Line Railway Co.
P.O. Box 237
Topeka, Kansas 66601-0237

ALDERSON, ALDERSON, WEILER
CONKLIN, BURGHART & CROW, L.L.C.

Dear Mr. Alderson:

Offer of Michigan Air-Line Railway Company to Sell its Rail Line Between Haggerty Road and the CSX Interchange in Oakland County, Michigan, Upon its Abandonment

Thank you for your letter dated January 5, 2011, wherein you advise of your intent to apply for abandonment of the subject rail line segment, and your subsequent plan to offer said segment for sale to the Michigan Department of Transportation (MDOT). We understand the offer is based on your assumption that the appropriate Petition for Exemption would be filed on January 28, 2011, and that the Surface Transportation Board (STB) would approve the segment for abandonment on or about May 18, 2011.

MCL 474.58(2) states that "The rights a railroad company may have in *all rights of way approved for abandonment* within the state shall not be offered for sale without offering the department, on reasonable terms in the first instance, and the department of natural resources, on reasonable terms in the second instance, the right to purchase those rights."

Consequently, it is our interpretation that the time for MDOT to respond to an offer for sale does not commence until such time as Michigan Air-Line has received STB abandonment approval. As noted in the subject line of your correspondence, you indicate your offer is contingent upon a pending abandonment; therefore, we will consider your offer effective as of the date the STB approves abandonment of the line.

When the STB approves the abandonment and your offer becomes valid, MDOT will proceed in accordance with MCL 474.58(2) to notify other relevant agencies and begin the 60-day review process to determine if your offer contains "reasonable terms" and whether or not there are worthwhile public uses to justify state acquisition of this right of way.

Please notify MDOT as per MCL 474.58(1) when you have filed for abandonment. If you have any questions, please contact either me or Deb Brown, Manager, Freight Services and Safety Division, at (517) 373-9027.

Sincerely,


for Kirk T. Steudle
Director

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

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EXHIBIT F

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I have on this 28th day of March, 2011, served a copy of the above and foregoing Surreply of Michigan Air-Line Railway Co. to American Plastic Toys, Inc.'s Reply and Objection to Petition for Exemption upon all parties of record in this proceeding, by sending a copy thereof by first-class mail, postage prepaid, to:

Troy R. Taylor
Law Office of Troy R. Taylor, PLLC
107 E. Main Street, Suite 204
Northville, Michigan 48167

Robert Alan Kemp, d/b/a Nevada Central Railroad
2741 Pinewood Avenue
Henderson, Nevada 89074

A handwritten signature in black ink, appearing to read "W. Robert Alderson", written over a horizontal line.

W. Robert Alderson