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

STB DOCKET NO. AB-1053 (Sub-No. 2X)

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

**MICHIGAN AIR-LINE RAILWAY CO.'S
PETITION FOR WAIVER AND LEAVE TO FILE**

AUG 30 2011

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Dated: August 30, 2011

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Michigan Air-Line Railway Co. ("MAL Railway") hereby respectfully requests, pursuant to 49 C.F.R. § 1110.9, that the Board temporarily waive its general rule at 49 C.F.R. § 1104.13(c) prohibiting a "reply to a reply," and permit MAL Railway's pleading entitled Surreply of Michigan Air-Line Railway Co. to American Plastic Toys, Inc.'s Reply and Objection to Second Petition for Exemption ("MAL Railway Surreply") which accompanies this petition.

The Board has permitted the filing of a reply to a reply when, for example, such a filing would help provide a complete record and clarify arguments and would not prejudice any party or unduly prolong the proceeding. See, e.g., *Tongue River Railroad Co.-Construction and Operation-Western Alignment*, Finance Docket No. 30186 (Sub-No. 3), *slip op.* at 3 (STB served March 11, 2003). In STB Docket No. AB-1053 (Sub No.-1X), the Board granted MAL Railway's Petition for Waiver and Leave to File and admitted its Surreply into evidence, because it addressed allegations first asserted in the Reply of American Plastic Toys, Inc. ("API"), and because it established a more complete record.

That is the case here. As explained more fully in the MAL Railway Surreply, that surreply is necessary, in part, to respond to and correct misstatements of fact by APT regarding its objections to the Petition for Exemption filed by MAL Railway in this Docket. Because the MAL Railway Surreply will, in this way, merely respond to misstatements of fact, the filing of the response will not prejudice APT or broaden the scope of this proceeding. Additionally, the timely filing of this petition and the MAL Railway Surreply will not prolong this proceeding or hinder the Board from timely acting on this matter. Admitting the MAL Railway Surreply into evidence will establish a more complete record.

Moreover, permitting a surreply is necessary, as a matter of due process, in order to permit a party to respond in the first instance to a reply that contains a request for new, affirmative relief. Under strict application of the "no reply to a reply" rule, such a request for affirmative relief would be completely unanswerable. *See, e.g., Union Pac. Corp. et al -Control and Merger-Southern Pac. Rail Corp., et al.*, Finance Docket No. 32760, 1999 STB Lexis 410 at *2 (decision served July 12, 1999) (permitting a response to a reply that requested affirmative relief).

That, again, is the situation here: In its Reply, APT does not simply ask the Board to reject MAL Railway's Petition for Exemption. APT asks the Board to go further and, as an alternative to rejecting the Petition for Exemption, to make the Petition for Exemption the subject of a proceeding pursuant to 49 U.S.C. § 10502(b). *See Reply* at page 4. Permitting the MAL Railway Surreply is necessary in order to allow MAL Railway to respond to APT's request to make the Petition for Exemption the subject of a proceeding under 49 U.S.C. §10502(b).

CONCLUSION

MAI. Railway respectfully requests that the Board accept for filing the Surreply of Michigan Air-Line Railway Co. to American Plastic Toys, Inc.'s Reply and Objection to Second Petition for Exemption.

Respectfully submitted,



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Dated: August 30, 2011

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I have on this 30th day of August, 2011, served a copy of the above and foregoing Petition for Waiver and Leave to File 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


W. Robert Alderson