



## Wisconsin Department of Transportation

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236814

October 14, 2014

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

ENTERED  
Office of Proceedings  
October 14, 2014  
Part of  
Public Record

ELECTRONIC FILING

**RE: STB Finance Docket No. 35854**  
**Wisconsin Department of Transportation – Petition for Declaratory Ruling –**  
**Reedsburg Line, near Madison, Wisconsin**

Dear Ms. Brown:

It has come to my attention that the Cover Letter, which I filed electronically on October 13, 2014, along with a Motion and Reply on behalf of the Wisconsin Department of Transportation (WisDOT) in the above-entitled docket contained an error in the caption and content. WisDOT has corrected the Cover Letter to reflect the correct docket and information in the filing.

I respectfully request that you accept this correspondence and corrected Cover Letter as a correction to the earlier filing.

I have served this correction letter and corrected filing upon all parties on the service list as well.

Please contact me with any questions or concerns.

Sincerely,

A handwritten signature in cursive script that reads "Kathleen Chung".

Kathleen Chung  
Attorney

cc: William Breitsprecher, FRRD  
Attorney Eileen Brownlee, WRRTC  
Attorney Karl Morrel, WSOR  
Attorney Mack Shumate, UP

October 13, 2014

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

**RE: STB Finance Docket No. 35854  
Wisconsin Department of Transportation – Petition for Declaratory  
Ruling – Reedsburg Line, near Madison, Wisconsin**

**ELECTRONIC FILING**

Dear Ms. Brown:

On behalf of the Wisconsin Department of Transportation, I respectfully submit this Motion and Reply electronically.

Sincerely yours,

A handwritten signature in cursive script that reads "Kathleen Chung". The signature is written in black ink and is positioned above a horizontal line.

Kathleen Chung, State Bar no. 1032802  
Assistant General Counsel

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**STB FINANCE DOCKET NO. 35854**

**WISCONSIN DEPARTMENT OF TRANSPORTATION  
-- PETITION FOR DECLARATORY ORDER--  
REEDSBURG LINE NEAR MADISON, WI**

**MOTION TO REJECT OR STRIKE AND REPLY TO FRIENDS FOR  
RESPONSIBLE RAIL DEVELOPMENT**

Kathleen Chung, State Bar No. 1032802  
Assistant General Counsel  
Wisconsin Department of Transportation  
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Madison, Wisconsin 53707-7910  
Tel. (608) 266-8810

Attorney for Petitioner

**ELECTRONIC FILING**

Dated: October 13, 2014

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB FINANCE DOCKET NO. 35854**

**WISCONSIN DEPARTMENT OF TRANSPORTATION  
-- PETITION FOR DECLARATORY ORDER--  
REEDSBURG LINE NEAR MADISON, WI**

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**MOTION TO REJECT OR STRIKE AND REPLY TO FRIENDS FOR  
RESPONSIBLE RAIL DEVELOPMENT**

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**I. Breitsprecher may not practice before the Board, and the filing does  
not conform to regulations.**

The Wisconsin Department of Transportation respectfully requests that the Surface Transportation Board (“Board”) reject or strike the filing by William P. Breitsprecher on behalf of the Friends of Responsible Rail Development,<sup>1</sup> (“FRRD”), because Mr. Breitsprecher may not practice before the Board; the filing is not signed, and does not conform to Board rules. Mr. Breitsprecher is not an attorney registered with the Wisconsin State Bar,<sup>2</sup> and has not met the qualifications and requirements for practice before the Board.<sup>3</sup> The filing is not signed by Mr. Breitsprecher or anyone who may practice before the

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<sup>1</sup> The filing ID nos. 236731 and 236732 were made publicly accessible on the Board’s website on October 2, 2014 and appear to comprise one submission.

<sup>2</sup> [www.wisbar.org](http://www.wisbar.org), Lawyer Search, visited October 13, 2014.

<sup>3</sup> 49 C.F.R. Sec. 1103.3.

Board. Mr. Breitsprecher's filing purports to be on behalf of "Friends for Responsible Rail Development", implicitly a group, not an individual.

The FRRD filing is replete with personal attacks on officials and attorneys, and other persons he associates with misconduct or conspiracy. These attacks on the integrity of the persons, organizations and government entities that are parties in this proceeding constitute "personal abuse of other practitioners," and so violate Board rules.<sup>4</sup>

Although it is difficult to follow FRRD's factual allegations and conclusions, they appears to allege that this proceeding is related to a 2010 proceeding and together, these actions are improper based on conduct by a former official of the Wisconsin and Southern Railroad Company.

WisDOT's petition<sup>5</sup> in the instant proceeding seeks the Board's analysis of the proposed transaction pursuant to the *State of Maine*<sup>6</sup> line of cases and consequent legal framework, and order based upon that analysis.

Friends of Responsible Rail Development filing does not address that case law or relevant facts, and should be stricken as objectionable because its contents and implications are not relevant, immaterial, impertinent and scandalous. Therefore, to the extent the filing does not address facts or law relevant to whether the proposed transaction complies with the *State of Maine* line of inquiry, WisDOT respectfully requests that the Board strike and not consider the filing.

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<sup>4</sup> 49 C.F.R. 1103.25.

<sup>5</sup> *WisDOT Petition for Declaratory Order*, Finance Docket No. 35854, filed August 8, 2014.

<sup>6</sup> Maine DOT - Acquisition Exemption - Maine Central Railroad Company, 8 I.C.C. 2d 835 (1991) ("*State of Maine*"); State of Georgia, DOT - Acquisition Exemption - Georgia Southwestern Railroad, Inc., STB Finance Docket No. 33876 (STB served July 7, 2000) ("*State of Georgia*"). WisDOT has ensured that this transaction also comports with more recent Board *State of Maine* decisions, including State of Wisconsin Department of Transportation - Petition for Declaratory Order, STB Finance Docket No. 35455 (STB served November 10, 2011) ("*State of Wisconsin - Barron County*"); and State of Wisconsin Department of Transportation - Petition for Declaratory Order, STB Finance Docket No. 35401 (STB served August 15, 2012) ("*State of Wisconsin - Gibson Line*").

Because of the false statements and defamatory allegations in the FRRD filing, the Board could consider penalties for false affirmation, if it could be proven that Mr. Breitsprecher is competent to be sworn, and can comprehend truth from fiction.<sup>7</sup>

## **II. The filing by Friends of Responsible Rail Development is not factually accurate.**

If the Board does not reject or strike the FRRD filing, WisDOT replies that the filing is not accurate or relevant, and should not be considered in the Board's analysis.

Much of the FRRD filing contents is difficult to understand, lacking cohesion and logical sequence. Nevertheless, individual statements may be identified as false. WisDOT notes that Wisconsin & Southern Railroad L.L.C. ("WSOR") has also submitted a reply<sup>8</sup>, and will not address the same factual allegations that WSOR has already refuted. Instead, WisDOT offers a sampling of errant factual assertions, and respectfully encourages the Board to consider the sample as applicable, in its discretion, to the FRRD filing at large.

WisDOT specifically will not dignify irrational scandalous or abusive allegations within this reply.<sup>9</sup>

FRRD claims that all parties, presumably including WisDOT have "refused to cooperate with requests for information."<sup>10</sup> In fact, WisDOT has and continues to reply to multiple requests from Mr. Breitsprecher for public records under Wisconsin law.

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<sup>7</sup> See 49 C.F.R. 1104.5(c).

<sup>8</sup> WSOR – Acquisition and Operation Exemption – Union Pacific Railroad Company, Finance Docket No. 35848, WSOR Motion to Reject and Reply, filed October 10, 2014.

<sup>9</sup> Frankly, many of the allegations are akin to the logic twist of "When did you stop beating your wife?" and cannot be addressed within reason.

<sup>10</sup> FRRD Filing at p.1.

FRRD claims that “operating agreements [presumably between WisDOT and WSOR] were proven to have been breached.”<sup>11</sup> There is no indication, much less proof that any provision of operating agreements between WisDOT and WSOR were breached by either party. And FRRD offers neither provision of contract, nor breach action to support this odd allegation.

FRRD claims that WisDOT provides “massive state and federal subsidies to . . . a transportation holding company.”<sup>12</sup> Assuming this holding company is Watco, WisDOT denies that this transaction provides such subsidies, and questions how FRRD Exhibit A, a criminal complaint, addresses, much less “persuasively demonstrate that, without state and federal grants and other direct & indirect subsidies, WSOR is not economically viable and would not exist.”<sup>13</sup> WisDOT is proposing to purchase property from a railroad. The Board will determine whether the common carrier obligation may be conveyed to another railroad.<sup>14</sup> The claim and the proffered support for the claim are not related – and this illuminates the confusion of the claimant.

FRRD claims that the Wisconsin Government Accountability Board<sup>15</sup> and the Office of the Milwaukee County (Wisconsin) District Attorney are involved in this transaction and or related conspiracy. In fact, WisDOT has consulted neither office for this transaction, and neither has relevant information to provide.

In sum, FRRD filing is not accurate, is not logical and may be mostly fictional. Whether the author is able to discern these deficits, the filing does not contain relevant

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<sup>11</sup> Id. at p. 2.

<sup>12</sup> Id at p. 3.

<sup>13</sup> Id. at p. 5.

<sup>14</sup> WSOR currently operates on the Reedsburg Line pursuant to a lease agreement, dated Oct. 31, 1996, between Union Pacific Railroad Company and WSOR. This lease agreement will terminate upon transaction closing, if/when WSOR does acquire the common carrier authority from the Board.

<sup>15</sup> Created by Wisconsin Statute Sec. 15.60.

information. If the Board determines the filing may be accepted and not stricken, WisDOT respectfully requests the Board disregard the contents as irrelevant and false.

#### **IV. EXPEDITED HANDLING REQUESTED**

WisDOT also respectfully renews its request that the Board issue its decision on the WisDOT Petition within 90 days of the date it filed the Petition, so that it may close this transaction as soon as possible. WisDOT believes that a 90-day schedule is consistent with the processing time the Board has utilized in deciding similar State of Maine declaratory relief cases.

WisDOT hopes to complete the transaction and accomplish the objective upgrades to the track within the Wisconsin construction season. And, WisDOT does not anticipate that this request will pose any new or unique policy issues for the Board. The opposition presented by the FRRD filing was not anticipated, and is not materially relevant.

Therefore, WisDOT respectfully requests that the Board expedite its review of this Petition and issue its decision within 90 days of August 8, 2014.

Respectfully submitted,



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Kathleen Chung

Dated: October 13, 2014

## ATTORNEY CERTIFICATION OF SERVICE

I, Kathleen Chung, an attorney-at-law of the State of Wisconsin, hereby Certify under penalty of perjury that I served a copy of the within pleading upon the following parties by regular or electronic mail on October 13, 2014:

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Mr. William Breitsprecher  
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Dated: October 13, 2014