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January 5, 2009

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Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, D. C. 20423

RE: Finance Docket No. 35208, *Winamac Southern Railway
Company—Trackage Rights Exemption—A & R Line, Inc*

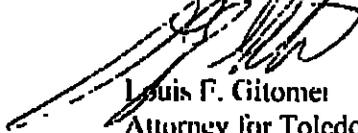
Dear Acting Secretary Quinlan:

The Toledo, Peoria and Western Railway Company would like to correct to errors in the Petition for Stay filed in the above-entitled proceeding on January 2, 2009

First, a corrected page 6 of the Petition is attached to change "WSRY" to "TP&W" and "in" to "is" in the first line of the last paragraph on that page. Secondly, the verification for Ms. Franger's statement was inadvertently omitted and is also attached hereto

This letter is being efiled. Thank you for your assistance. If you have any questions please call or email me

Sincerely yours,



Louis F. Gitomer
Attorney for Toledo, Peoria & Western Railway
Corporation

Enclosure

Cc. Mr. McFarland

WSRY's failure to obtain ICC and Board authorization for more than 13 years should not be accepted as a mere "oversight" by the Board.² WSRV is clearly in violation of 49 U.S.C. §11323. The Board "has been given wide administrative discretion to tailor remedies and sanctions for violation of the statute and its own orders. *Kraus v. Santa Fe S Pac Corp*, 878 F.2d 1193, 1198 (9th Cir. 1989) TP&W urges the Board to stay the effectiveness of the Notice so that it can act on TP&W's petition to revoke or reject the Notice and to determine the appropriate remedy for WSRV's admitted violations of the law.

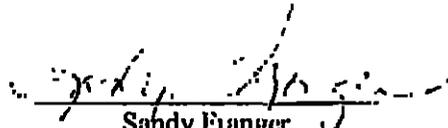
WSRV claims that the Line has been operated pursuant to the TRA for more than 13 years by third parties. Notice at 3. The attached verified statement of Ms. Sandy Franger disputes this unsubstantiated claim. Ms. Franger is extremely familiar with the operations based on her longevity with the holding companies controlling CERA and TP&W, and the responsibilities of her position. Based on Ms. Franger's verified statement, WSRV statements in the Notice that third parties have been operating the Line as agents of WSRV are false and misleading. Moreover, WSRV would have been required to obtain approval or exemption for the trackage rights in order for third parties to lawfully operate. Even if third parties had operated the Line under the TRA for WSRV, which they did not, WSRV would have violated the law since it did not have authority to operate under the TRA.

Finally, TP&W will prevail on the merits because there is no longer a trackage rights agreement between WSRV and TP&W, as successor by merger to A&R, over the Line. By letter dated January 2, 2009, TP&W terminated the TRA. See Exhibit A.

² WSRV provides no justification for its failure to seek authority or exemption from the ICC. WSRV's "oversight" should be considered even more egregious because there were two notices filed with the ICC implementing other portions of the transaction.

VERIFICATION

I, Sandy Franger, declare under penalty of perjury that to the best of my knowledge the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement. Executed this 2nd day of January 2009.


Sandy Franger