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August 10, 2009

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

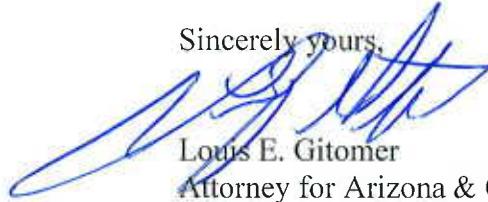
RE: Docket No. AB-1022 (Sub-No. 1X), *Arizona & California  
Railroad Company—Abandonment Exemption—in San Bernardino  
and Riverside Counties, CA (Between Rice and Ripley)*

Dear Acting Secretary Quinlan:

Enclosed for efilng by the Arizona & California Railroad Company (“ARZC”) is a Motion for Extension of Procedural Schedule.

Thank you for your assistance. If you have any questions please call or email me.

Sincerely yours,



Louis E. Gitomer  
Attorney for Arizona & California Railroad  
Company

Enclosure

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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Docket No. AB-1022 (Sub-No. 1X)

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ARIZONA & CALIFORNIA RAILROAD COMPANY—ABANDONMENT—  
IN SAN BERNARDINO AND RIVERSIDE COUNTIES, CA  
(BETWEEN RICE AND RIPLEY)

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MOTION FOR EXTENSION OF PROCEDURAL SCHEDULE

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Attorneys for: ARIZONA & CALIFORNIA  
RAILROAD COMPANY

Dated: August 10, 2009

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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Docket No. AB-1022 (Sub-No. 1X)

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ARIZONA & CALIFORNIA RAILROAD COMPANY—ABANDONMENT—  
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MOTION FOR EXTENSION OF PROCEDURAL SCHEDULE

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The Arizona & California Railroad Company (“ARZC”) files this Motion for Extension of Procedural Schedule in order to obtain information necessary to negotiate with the BG&CM Railroad, Inc. (“BG&CM”), and if necessary to litigate the fair market value of the involved railroad line. ARZC seeks an extension of the end of the negotiating period from August 21, 2009 until October 28, 2009.

In *Arizona & California Railroad Company-Abandonment Exemption-in San Bernardino and Riverside Counties, CA*, STB Docket No. AB-1022 (Sub-No. 1X) (STB served June 30, 2009) (the “*Decision*”), the Surface Transportation Board (the “Board”) granted a Petition for Exemption filed by ARZC to abandon 49.40-mile rail line between Rice, CA, milepost 0.0, and Ripley, CA, milepost 49.4 in San Bernardino and Riverside Counties, CA (the “Line”) from the prior approval requirements of 49 U.S.C. §10903. In considering the opportunity cost of the Line, the Board at pages 5-6 stated:

The NLV used to calculate opportunity cost also includes a valuation of the line’s real estate. The Committee argues that the Board should value the line’s real estate at zero because ARZC has not provided original deeds to prove marketable fee title to the land. We agree. The expert real estate appraisal submitted by ARZC did not rely on a review of a legal description or proof of fee title; rather, the appraiser relied solely on ARZC’s description of what types of title it had on the line. Because ARZC did not provide sufficient support for its

land valuation (such as deeds or a verified statement from a real estate attorney) to its land appraiser or the Board, we will value the line's real estate at zero.<sup>7</sup> *San Pedro Railroad Operating Company, LLC—Abandonment Exemption—in Cochise County, AZ*, STB Docket No. AB-1081X, slip op. at 5 (STB served Apr. 13, 2006) (valuing a line's real estate at zero for a sale under Offer of Financial Assistance provisions if the carrier would not indemnify the purchaser for the land because no evidence of marketable title was provided).

Footnote 7 states that: "While we recognize that the land here most likely has some value, there is not enough information on this record to value the line's real estate." *Id.*, at 6.

BG&CM filed an offer of financial assistance ("OFA") on July 10, 2009 (the "First OFA"). The First OFA valued the real estate on the Line at zero based on the *Decision* without considering footnote 7 and no independent analysis. At page 3, BG&CM stated: "ARZC has not provided adequate support nor explanation for its claimed land value. As a result, in the abandonment decision the Board valued the land for NLV purposes at zero. (Decision served June 30, 2009, at 5-6). Likewise, BG&CM has valued the land at zero." The Board rejected the First OFA because "BG&CM has not submitted evidence sufficient to determine that it is a financially responsible offeror. BG&CM's OFA, therefore, will be rejected without prejudice to refiling." *Arizona & California Railroad Company-Abandonment Exemption-in San Bernardino and Riverside Counties, CA*, STB Docket No. AB-1022 (Sub-No. 1X) (STB served July 15, 2009) at 1.

BG&CM filed the Second OFA on July 22, 2009. The Second OFA, at 3, repeated the language from the First OFA in explaining why BG&CM believed that the value of the real estate in the Line was zero. In accepting the Second OFA, and contrary to footnote 7 of the *Decision*, the Board accepted BG&CM's explanation for giving the real estate zero valuation when it stated "BG&CM has explained the basis for the disparity between its offer and ARZC's valuation." *Arizona & California Railroad Company-Abandonment Exemption-in San*

*Bernardino and Riverside Counties, CA*, STB Docket No. AB-1022 (Sub-No. 1X) (STB served July 29, 2009) at 2.

Under 49 U.S.C. §10904(d)(2), ARZC and BG&CM are required to negotiate the sale of the line. If ARZC and BG&CM cannot reach agreement and request the Board to establish the amount of compensation, “for proposed sales, the Board shall determine the price and other terms of sale, except that in no case shall the Board set a price which is below the fair market value of the line.” 49 U.S.C. §10904(f)(1)(b).

In the absence of a higher going-concern value for continued rail use, the proper valuation standard in proceedings for offers to purchase under section 10904 is the NLV of the rail properties for their highest and best nonrail use. *Chi. & N. W. Transp. Co.—Abandonment*, 363 I.C.C. 956, 958 (1981) (*Lake Geneva Line*), *aff’d sub nom. Chi. & N. W. Transp. Co. v. United States*, 678 F.2d 665 (7th Cir. 1982). NLV includes the value of the underlying real estate plus the net salvage value of track and track materials.

*San Joaquin Valley Railroad Company—Abandonment Exemption—in Tulare County, CA*, STB Docket No. AB-398 (Sub-No. 7X) (STB served August 26, 2008) at 3.

As the Board recognized in the *Decision*, the real estate in the Line has some value. Indeed, ARZC believes that based on the “expert real estate appraisal” the real estate has significant value. ARZC has retained the First American Title Insurance Company (“First American”) to prepare a Preliminary Report to determine ARZC’s fee simple title in the Line to demonstrate the value of the real estate to BG&CM, and if necessary to the Board. Exhibit 1 hereto is an affidavit dated August 7, 2009 from Mr. Michael D. Hickey, Assistant Vice President of First American attesting that it will take First American “no less than ten weeks to prepare the Preliminary Report.” So that the Preliminary Report can be prepared and used in negotiations with BG&CM to demonstrate ARZC’s fee simple title and value of the real estate, and if necessary presented to the Board, ARZC respectfully requests the Board to extend the end

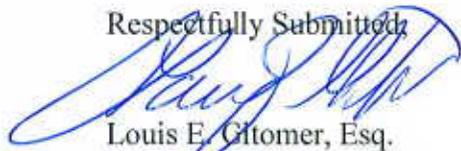
of the negotiation period from August 21, 2009 until October 28, 2009. If no agreement is reached between ARZC and BG&CM by October 28, 2009, then either party may request the Board to establish terms and conditions on or before October 28, 2009, with the reply due on November 2, 2009.

ARZC recognizes and appreciates the Board's consistent efforts to expedite abandonment proceedings. However, in this proceeding, ARZC contends that there are two reasons for the Board to grant the extension that ARZC seeks. First, the deadlines in the statute are intended to protect "carriers from protracted legal proceedings which are calculated merely to tediously extend the abandonment process." H.R. Rep. No. 96-1430, 96th Cong., 2d Sess. 125 (1980). Second, ARZC cannot be forced to sell the Line for less than its fair market value (49 U.S.C. §10904(f)(1)(b)) and ARZC will use the Preliminary Report to demonstrate its fee simple ownership interest in the real estate in the Line. ARZC is willing to extend this proceeding in order to develop evidence to protect its right to fair market value for the real estate in the Line.

For the reasons presented above, ARZC respectfully requests the Board to extend the end of the period for negotiations in this proceeding until October 28, 2009.

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Respectfully Submitted



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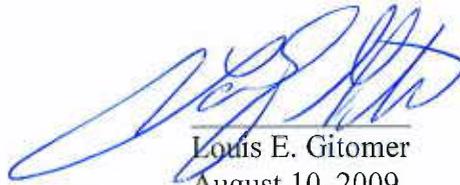
Attorneys for: ARIZONA & CALIFORNIA  
RAILROAD COMPANY

Dated: August 10, 2009

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that the Motion for Extension of Procedural Schedule in Docket No. AB-1022 (Sub-No. 1X), *Arizona & California Railroad Company—Abandonment Exemption—in San Bernardino and Riverside Counties, CA (Between Rice and Ripley)*, was served electronically on August 10, 2009, on the following parties:

Thomas F. McFarland  
Thomas F. McFarland, P.C.  
208 South LaSalle Street, Suite 1890  
Chicago, IL 60604-1112



Louis E. Gitomer  
August 10, 2009

**EXHIBIT 1-AFFIDAVIT OF MR. MICHAEL D. HICKEY**



*First American  
Title Insurance Company*

NATIONAL COMMERCIAL SERVICES

Michael D. Hickey  
Senior National Underwriter

August 7, 2009

The undersigned being duly sworn, deposes and says:

I am a Senior National Underwriter and Assistant Vice President for First American Title Company.

I have been requested to research the time and cost to prepare a Preliminary Report on the Ripley Subdivision described as "All of that certain 49.85 mile railroad described in Deed dated December 31, 1942, from California Southern Railroad Company, filed for record January 18, 1943 in Book 568 of Official Records at page 278 of the records of Riverside California."

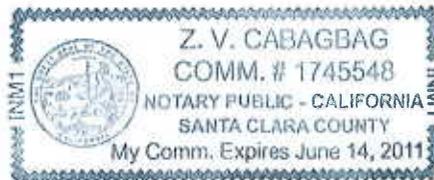
I performed such research and determined that it would take no less than ten weeks to prepare a Preliminary Report on the Ripley Subdivision.

Date: August 7, 2009

Michael D. Hickey  
Assistant Vice President  
First American Title Company

State of California  
County of Santa Clara

Subscribed and sworn to (or affirmed) before me on this 7<sup>th</sup> day of August, 2009, by Michael D. Hickey, proved to me on the basis of satisfactory evidence to be the person who appeared before me.



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