

Glencoe, Minnesota – April 13, 2018

**Chair Alene Tchourumoff**  
**Metropolitan Council**  
**390 Robert St. North**  
**St. Paul, MN 55101**

Dear Chair Tchourumoff:

Twin Cities and Western (TC&W) received Met Council's March 8<sup>th</sup> settlement demand regarding the Southwest Light Rail Transit project, which required a response from TC&W by April 18th. As I'm sure you expected, the proposal came as a surprise given the many months of time we have spent on this working towards acceptable construction and operating agreements. While we were in the process of reviewing the impact of your proposal and our response, we were informed that, without awaiting our reply, Met Council filed with the Surface Transportation Board (STB) to acquire the rail corridor involved and transfer the freight operating easement to Hennepin County. The Hennepin County Regional Rail Authority (HCRRA) likewise filed with the STB to acquire the Bass Lake Spur rail freight operating easement from Soo Line Railroad and to assume the role of common carrier on the Bass Lake and Kenilworth rail lines.

First, TC&W is very disappointed in the fabrication Council officials used, and continue to use, to defend their settlement proposal. The Council is employing very misleading statements to justify its abrupt abandonment of negotiations with TC&W, which, as you well know, is the only railroad providing common carrier rail service over the Bass Lake and Kenilworth corridors.

Contrary to your statements as reported in the press, TC&W has never demanded that Met Council indemnify TC&W for business losses unrelated to the SWLRT. Your statements are simply not true. I have reviewed our communications with each other on this topic and am asking you to please forward whatever document(s) you have in which TC&W asked for a "sweetheart deal," as one of your staff put it. I think we both know that TC&W has never even remotely suggested that Met Council compensate us for losses unrelated to SWLRT construction or operations. If we had I'm quite sure you or your negotiators would have rebuffed us long before the second week of March 2018.

TC&W has not vacillated from the position it has held since the day Met Council announced its intention to build and operate on the proposed route. TC&W has insisted only that the Met Council protect TC&W and its shippers from loss or damage to property or degradation of common carrier service occurring because of the light rail or because of Met Council's breach of its contract obligations to the TC&W. No one from Met Council has objected to this premise which has been stated (without opposition) on numerous occasions in our many meetings together over the last year or so. We have never contemplated grabbing additional revenue at SWLRT's expense. We merely insist that we do not incur losses we would not have occurred but for the presence of SWLRT on the freight corridor.

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Second, in your letter to me of March 8, you state that TC&W and Met Council “reached an agreement on key business terms” and you presented this to the Council on August 16, 2017. However, Met Council (or certainly its staff) was well aware on August 16 that several key issues were still outstanding and being discussed between the parties. It would have been highly misleading for anyone to have led the Council to believe that all key issues were resolved. In fact, we met with you and your team in early September and followed that meeting with a letter to your Assistant Project Director (dated September 29) outlining a path to resolution of the key issues.

As a case in point -- at the Council’s request, TC&W agreed to take the lead to find a resolution to the problem of relocating 16,000 feet of siding tracks critical to TC&W’s common carrier operations. The proposal from Met Council required us to abandon permanently those crucial siding tracks and, as both sides recognized, created two major tax implications for TC&W: (1) a federal and state income tax liability (the amount left after paying federal and state income taxes would be just over \$3.2 million less than the estimated cost of track replacement); and (2) a property tax liability (an estimated \$144,000 increase in TC&W’s annual railroad property tax liability which would diminish slowly over 30 years). Forcing TC&W to absorb these taxes is tantamount to asking TC&W and its shippers to subsidize the light rail project. As you know, TC&W and Met Council, including the attorneys specifically assigned by Met Council to work on this issue, were investing time and effort in working through these issues well after August 16.

Likewise, issues relating to indemnity, liability, and insurance were outstanding. The two sides agreed to continue discussions among the “on the ground” experts. Discussions were on-going and virtually complete by mid-October.

I will not rehash all of my September 29<sup>th</sup> letter here but, suffice it to say, both sides were well aware that no final agreement had been reached by August 16, 2017, and that we both were trying in good faith to work out the remaining issues. Instead of responding to my letter, the Council left us in the dark until its take it or leave it offer of March 8, 2018. We certainly understood the Council was busy with resistance to a ten foot concrete wall it agreed to build on the BNSF segment of the project and with the need to reissue the RFPs for the project; however, we were surprised to find that, without even so much as a phone call or the common courtesy of telling us to stop expending time and effort on land acquisition for track relocation, work we were doing at the Council’s request, the Council was plotting to scuttle all our mutual efforts to accommodate light rail in the freight rail corridor in which we provide vital common carrier service for Minnesota and South Dakota.

It now appears Council’s plan is to remove 16,000 feet of sidetrack without building any replacement track. As we have explained on numerous occasions, removal of the sidetracks will damage TC&W’s ability to efficiently and effectively provide freight rail service, denying us track we have used for over twenty-five years to set out and pick up cars and otherwise provide our customers the common carrier services they require. The Council’s position does not protect the current and long-term interests of farmers and shippers who depend on TC&W to move more than \$1.5B in freight annually. While TC&W

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remains willing to accommodate Met Council's transit project, our main concern remains -- the SWLRT project must not negatively impact our shippers. Under federal law, the Met Council's light rail plan must allow TC&W to maintain common carrier service to the shipping public at current and future levels without economic disadvantage. The Council must also honor the trackage rights agreements now in place governing the obligations of both parties in the corridor. The Met Council cannot unilaterally change those terms to suit its own needs.

The Council's recent actions and statements signal its intent to pursue the light rail project unencumbered by the legitimate concerns of TC&W or the interests of Minnesota and South Dakota farmers and shippers who depend upon TC&W to move goods to national and worldwide markets over TC&W's route through Hennepin County. As such, TC&W cannot, in the best interests of its shippers, agree to the terms of Council's March 8 settlement demand.

Again, we regret this sudden about face by the Council, but TC&W must and will vigorously defend its rights as the operating freight common carrier on the corridor and pursuant to the terms and conditions of its trackage rights agreements.

Sincerely,

Mark Wegner  
President, Twin Cities and Western Railroad