

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35239

ALLEGHENY VALLEY RAILROAD COMPANY—PETITION FOR DECLARATORY
ORDER

Decided: March 21, 2011

This decision establishes a procedural schedule for this proceeding.

On April 23, 2009, Allegheny Valley Railroad Company (AVRC) filed a petition for a declaratory order, asking that the Board find that a rail easement between 16th Street and 21st Street in Pittsburgh, Pa. remains available for use as a line of railroad. The Buncher Company (Buncher), a party whose property is crossed by the alleged rail easement, opposed AVRC's petition. Buncher claimed either that the rail easement had been extinguished or that the trackage was merely spur, and therefore never a line of railroad with an active rail easement. The Board received several rounds of pleadings from the parties and held an oral argument. In a decision served on June 15, 2010, the Board granted the petition for declaratory order and found that the rail easement over Buncher's property remains active.

Buncher appealed the Board's decision to the United States Court of Appeals for the District of Columbia Circuit. During that appeal, Buncher submitted to the court additional evidence – never filed before the Board – that Buncher argued would affect the Board's June 2010 decision. The Board filed a motion for voluntary remand after determining that Buncher's additional evidence could be material to both the June 2010 decision and the proceedings on appeal. The court remanded the case to the Board in an order filed on January 26, 2011.

By decision served on February 18, 2011, the declaratory order proceeding was reopened and the parties were directed to confer and to file a procedural schedule governing the reopening by March 10, 2011. In addition, the decision stated that the parties should address the matter of discovery in their schedule.

On March 9, 2011, AVRC and Buncher jointly filed a proposed procedural schedule. Under the schedule, Buncher shall file an opening statement by April 11, 2011, AVRC shall file a reply within 30 days of Buncher's filing, and Buncher shall file a rebuttal within 15 days of AVRC's filing. The parties do not propose a schedule for discovery.

The parties' jointly proposed procedural schedule is reasonable and will be adopted for this proceeding as set forth below.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The parties' jointly proposed procedural schedule is adopted for this proceeding as follows:

Buncher's Opening Statement	April 11, 2011
AVRC's Reply	May 11, 2011
Buncher's Rebuttal	May 26, 2011

2. This decision is effective on the date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.