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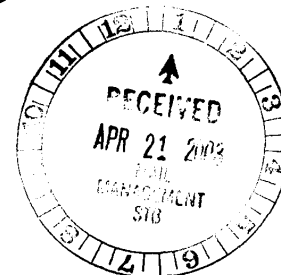
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By Hand Delivery

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

207663

April 21, 2003



Re: Docket No. AB-556 (Sub-No. 2X), Railroad Ventures, Inc. -Abandonment
Exemption- Between Youngstown, OH, and Darlington PA, in Mahoning and
Columbiana Counties, OH, and Beaver County, PA

Dear Secretary Williams:

Enclosed for filing are an original and 10 copies of the "Rebuttal Verified Statement Of
Walter J. Gane and Petition For Leave To File Rebuttal Testimony Or, In The Alternative,
Motion To Strike."

Two copies of the above-mentioned document are enclosed which we request be date-
stamped and returned to the undersigned. Thank you for your assistance in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "R.H. Streeter".

Richard H. Streeter

RHS
Enclosure
cc: Keith O'Brien, Esq.

DCDS01 RHS 69127v1

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ORIGINAL

Before the
SURFACE TRANSPORTATION BOARD

207663

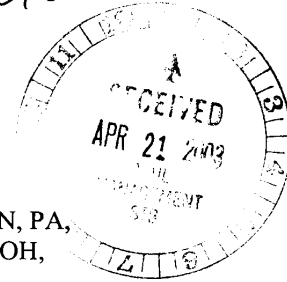
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STB Docket No. AB-556 (Sub-No. 2X)

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RAILROAD VENTURES, INC.
- ABANDONMENT EXEMPTION -
BETWEEN YOUNGSTOWN, OH, AND DARLINGTON, PA,
IN MAHONING AND COLUMBIANA COUNTIES, OH,
AND BEAVER COUNTY PA



PETITION FOR LEAVE TO FILE REBUTTAL TESTIMONY OR,
IN THE ALTERNATIVE, MOTION TO STRIKE

Come now Columbiana County Port Authority ("CCPA") and Central
Columbiana & Pennsylvania Railway, Inc. ("CCPR"), by and through counsel, and,
pursuant to 49 C.F.R. §§ 1117.1 and 1114.13(a), file this petition to permit filing of
rebuttal testimony or alternatively a motion to strike. It is respectfully submitted that
acceptance of this rebuttal testimony will assist the Board in reaching its decision. In the
alternative, the Board should strike those portions of the Verified Statement of George D.
Wehner as herein specified. Last, because Petitioners have not previously had an
opportunity to respond to the legal argument that has now been advanced by Railroad
Ventures, Inc. ("RVI"), they should be permitted an opportunity to respond.

On January 21, 2003, CCPA and CCPR filed a "Joint Motion Seeking Final
Closure of Escrow Account." That filing consisted of Verified Statements and backup
documentation which reflects the expenditures that have been made in the course of
restoring rail service over the line of track between Darlington, Pennsylvania and
Youngstown, Ohio that is the subject of the instant proceeding. Their initial submission
was supplemented on January 23 with various competitive bid proposals related to

specific repairs.

On April 4, 2003, RVI, which formerly owned the line, filed its Reply. That Reply, which is a thinly disguised collateral attack on the Board's prior Decisions, consists of a Verified Statement of George D. Wehner, ASA , with attachments, and a legal argument. As a review of Mr. Wehner's statement will show, he is alleged to be a "consultant specializing in the areas of railroad track maintenance, and railroad real estate and fixture evaluation and appraisal." There is nothing in his statement to show that he has ever worked for a railroad, or that he has any training as a civil engineer or as an accountant. Despite the lack of any demonstrated expertise, Mr. Wehner's statement consists largely of unsubstantiated assumptions concerning the history of the line; personal views regarding cost accounting methodology; and self-serving comments regarding the approach that he would have taken if he had been in charge of the project.

Mr. Wehner has provided the Board with an irrelevant, undocumented account of the track's maintenance that relies heavily on unverifiable hearsay and his personal assessment of the economic viability of the line. At the outset, it must be stressed that his views regarding the line's financial feasibility do not reflect the official position of his former employer, the Ohio Rail Development Commission ("ORDC"). As the existing record conclusively demonstrates, ORDC has consistently opposed the abandonment of the line and has repeatedly funded repairs in order to assure continued rail operations. Indeed, in order to hasten the reinstitution of rail service, ORDC and CCPA funded several repairs that would have been funded out of the escrow account were it not for RVI's deliberate harassment of the original escrow agent.

According to Mr. Wehner, the alleged purpose of his statement is to "advise the

Board that the condition of the Y&S line at the time it was acquired by RVI in late 1996 was far beyond the capability of any private corporation to remedy.” V.S. Wehner at 11. However, he has made no attempt to explain how RVI could have overlooked the asserted lack of maintenance when it made its duplicitous commitment in its Verified Notice, dated April 1, 1997, that it was acquiring the line “for the purpose of conducting rail freight common carrier operations on the former Y&S line.” Nor has he offered an explanation for why RVI eschewed proffered assistance from ORDC, CCPA and other concerned parties who were willing to assist in funding repairs.

Mr. Wehner’s attempt to rewrite history has nothing to do with the sole issue involved in this proceeding, namely whether payments from the escrow for repairs were proper. The Board’s decision to allow CCPA to acquire the Line and restore service has been affirmed by the United States Court of Appeals for the Sixth Circuit. As a result, Mr. Wehner’s arguments regarding the alleged condition of the line in 1996 are untimely and have no bearing on the issue involved herein.

Moreover, as explained in the Rebuttal Verified Statement of Walter Gane, who has worked on a daily basis on the line for nineteen years, many of Mr. Wehner’s statements are false and misleading. In particular, Mr. Gane’s proffered testimony demonstrates that Mr. Wehner’s assertions concerning the condition of the line are not credible, especially in light of recent inspection reports prepared by the Federal Railroad Administration track inspector. Furthermore, the dismal portrait of the Line’s potential that he has attempted to paint is repudiated by the increasing volume of traffic that CCPR has developed in the past two years.

In any event, much of Mr. Wehner’s statement is not responsive to the Closure

Motion filed by CCPA and CCPR. Instead, the statement appears to be little else than a collateral attack on the Board's decision to hold RVI accountable for the extensive damage that was done to the line while it was owned by RVI. The Board should not permit RVI's witness to whitewash its culpability by casting blame on the previous owner and operators who left the line in an operable condition.

For all the above-stated reasons, should the Board determine that it will treat the instant pleading as a Motion to Strike, the portion of Mr. Wehner's Verified Statement identified as "II. PERSONAL KNOWLEDGE OF THE FORMER YOUNGSTOWN AND SOUTHERN RAILROAD LINE" should be stricken. This would include all material between pages 4 and 16, including the first six lines on 16.

Mr. Gane, in his proffered Rebuttal Verified Statement, has responded to the materials under heading IV of Mr. Wehner's Verified Statement, which is entitled, "DETAILED REVIEW OF ESCROW ACCOUNT EXPENDITURES AND SUPPORTING DOCUMENTATION." By way of overview, it would be unconscionable to adopt RVI's baseless interpretation and hold CCPR to requirements that were not in place at the time that expenditures were made, especially when CCPR and CCPA had earlier proposed a procedure that would have eliminated certain of the issues that RVI is now raising in an attempt to evade responsibility for particular repairs.

CCPR was charged with the responsibility of getting the line operational as quickly as possible. Therefore, it could not wait for the Board's final resolution. Instead, it was compelled to complete the repairs in a timely fashion. In this regard it acted in good faith. Indeed, aside from the incessant complaint that competitive bidding was not used, RVI has not been able to identify a single repair that was improperly undertaken.

Nor has it been able to demonstrate the existence of any fraud, which is a prerequisite in this matter.

While it may be true that CCPR did not utilize complicated Excel spreadsheets to document every minute of work that was done at every milepost, the fact remains that the work was done. Moreover, since CCPR assumed responsibility for making the needed repairs and reinstating service, the line has passed two inspections conducted by the FRA, which is the acknowledged expert.

Reply to Legal Argument

RVI's legal argument is premised on the baseless assumption that CCPA committed fraud by disbursing funds from the escrow account in the absence of a showing that CCPR had used competitive bids for each and every repair project. That argument assumes that CCPR, in the course of responding to the Board's directive to get the line repaired, had a duty to obtain competitive bids, even though no such requirement existed at the time when they were making the repairs that were needed in order to restore rail service. No such duty existed. As a result, it is inconceivable that CCPA could be held responsible for not imposing a retroactive requirement that CCPR obtain competitive bids for work that had long been completed.

Second, RVI's argument, by invoking the term "rehabilitation expenses" at page 4,¹ retroactively attempts to shift the burden to CCPA to seek approval from the Board before it authorized payment for any expenses that would seemingly fall without the scope of the insignificant and minor crossing repairs that RVI insists are the only repairs covered by the escrow account. That argument must be rejected in light of the fact that

¹ Because the pages of the argument are not numbered, counsel will assign page numbers for the Board's convenience.

the Board expressly declined to put itself in the position of arbitrating on a piecemeal basis the issue of every disputed repair. Because the Board declined to grant Petitioners' request that a procedure be established that would have afforded RVI 15 days to identify any specific repair/restoration project(s) it considered not covered by the escrow provision, with CCPA being afforded 10 days to respond, it necessarily follows that CCPA was given discretion to allow payment for all repairs that were needed in order to restore rail service. Despite RVI's latest attempt to portray the line as being incapable of being operated, the fact remains that rail service continued to the day that the line was acquired by RVI. It was only after RVI acquired the line that it mysteriously became incapable of being operated, either through deliberate steps to cut or pave over the rail or by failing to make repairs.

Third, it is specious to suggest (Argument at 4) that "CCPA and CCPR intentionally avoided seeking STB prior approval for modifications to the escrow account instructions because the Board might not permit such modifications" and because CCPA "did not want RVI or the Board to become aware that it was not requiring CCPR to adhere to competitive bidding standards." It is CCPA's and CCPR's position that every penny that was dispersed from the escrow account was used to reimburse CCPR for legitimate expenditures that were incurred during the course of repairing the line consistent with CCPR's common carrier obligation. In this regard, a close review of Mr. Wehner's statement does not reveal a single legitimate complaint that a particular repair should not have been made. Moreover, were it not for RVI's incessant harassment of the original escrow agent, escrow funds, rather than state and federal funds, would have been used to pay for many of the needed repairs.

Last, while RVI complains that CCPA refused to knuckle under to its demands that it disclose information in response to RVI's every demand, there is nothing in the STB's *November 2001 Decision* that imposed any such duty or requirement. CCPA was admittedly ordered to "keep account of all funds spent." It was not ordered to provide interim reports to RVI regarding the disbursement of funds. If RVI deemed such reports to be essential in order to prevent allegedly unauthorized expenditures, it should have filed a petition with the Board asking for a modification of the Board's decision to impose such a requirement. RVI did not do so. Having failed to do so, RVI may not retroactively read such a requirement into the STB's *November 2001 Decision*.

CCPA did not violate any duty disclose any fact. Moreover, it acted prudently when it disbursed funds to CCPR to cover the cost of repairs that had been completed long before the STB issued its *November 2001 Decision*. Plainly there is no probative evidence that CCPA ever attempted to mislead RVI or the Board. Nor can RVI show that the disbursement of funds was inappropriate.

As demonstrated by the fact that not a single carload of freight ever moved after the line was purchased by RVI, there is no avoiding the fact that RVI acquired the line under the false pretext that it intended to operate the line. RVI acquired the line for the sole purpose of dismantling it. That was never disclosed by RVI. Nor did RVI disclose the deal that it cut with Kovalchick Corporation whereby the track and track materials were sold less immediately after the line was acquired for real estate development purposes. As stated in RVI's April 1, 1997 Verified Notice of Exemption, "arrangements have been concluded with ORDC and CCPA for repair of this washout." However, RVI never revealed that those expenditures of public funds would not cause rail service to be

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of April 2003, I served a true copy of the foregoing Petition for Leave to File Rebuttal Testimony or, in the Alternative, Motion to Strike and the Rebuttal Verified Statement of Walter J. Gane via FedEx Priority Overnight on the following::

Richard R. Wilson, Esq.
Vuono & Gray, L.L.C.
2310 Grant Building
Pittsburgh, PA 15219



Richard H. Streeter

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