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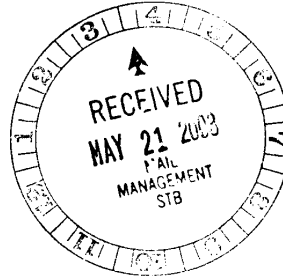
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207857

May 21, 2003



The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

RE: *Paducah & Louisville Railway, Inc. - Abandonment Exemption
- In McCracken County, KY - Docket No. AB-468 (Sub-No. 5X)*

Dear Secretary Williams:

Enclosed please find an original and eleven copies of Paducah and Louisville Railway's Reply to "Boral Bricks, Inc. Motion to Strike" filed in connection with the above-referenced proceeding.

Please acknowledge our filing of the enclosed pleading by date stamping the eleventh copy which is enclosed for that purpose and returning it to the individual making this filing to return to me. If there are any questions about this matter, please contact me.

Sincerely yours,

William A. Mullins

Enclosures

cc: All Parties of Record

ENTERED
Office of Proceedings

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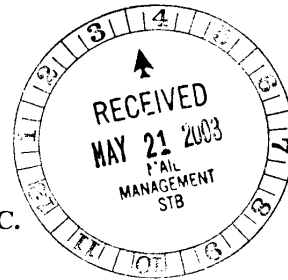
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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. AB-468 (SUB-NO. 5X)

**PADUCAH & LOUISVILLE RAILWAY INC.
-- ABANDONMENT EXEMPTION --
IN McCRACKEN COUNTY, KY**

**REPLY TO BORAL BRICKS, INC.
MOTION TO STRIKE**



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May 21, 2003

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SURFACE TRANSPORTATION BOARD**

DOCKET NO. AB-468 (SUB-NO. 5X)

**PADUCAH & LOUISVILLE RAILWAY INC.
-- ABANDONMENT EXEMPTION --
IN McCRACKEN COUNTY, KY**

**REPLY TO BORAL BRICKS, INC.
MOTION TO STRIKE**

The Paducah & Louisville Railway, Inc. ("P&L"), by its counsel, hereby files its Reply to the Boral Bricks, Inc. ("Boral") Motion to Strike P&L's Rebuttal to Boral's Reply in Protest to Petition for Exemption ("Motion to Strike"), filed on May 14, 2003. Boral's Motion to Strike asserts several erroneous arguments to support its fatuous claim that P&L's Rebuttal to Boral's Reply in Protest to Petition for Exemption ("P&L's Rebuttal") violated the Surface Transportation Board's ("the Board") procedural rules and policies. P&L's Rebuttal was proper and thus Boral's Motion should be denied.

Contrary to Boral's suggestion, P&L's Rebuttal did not contravene or violate any of the Board's regulations governing abandonment exemption proceedings any more than Boral itself violated or contravened those same rules. Indeed, under the exemption rules at 49 C.F.R. § 1121.4, Boral is not even entitled to file a reply because "public comments are generally not sought." In fact, those rules do not even address the filing of replies or rebuttals.

Notwithstanding the specific rules for exemption proceedings that do not allow for public comments and notwithstanding the general rule that requires parties to file replies to any pleading within twenty days, 49 C.F.R. § 1104.13(a), Boral nonetheless filed a reply, which was

filed approximately twenty days beyond the deadline set forth in § 1104.13(a) and forty-one days after the filing of the Petition for Exemption. The mere fact that Boral was even allowed to file a reply in a proceeding where replies and public comment are not normally allowed provides ample grounds to accept P&L's Rebuttal and to deny the Motion to Strike. Otherwise, Boral would have been given an opportunity to provide comment, but P&L would not have been allowed to address those arguments. Thus, in order to give this Board a fair and accurate picture of the established facts and to provide the Board with a full and precise record, P&L's Rebuttal should be accepted.

Although Boral availed itself of the opportunity to protest the Petition for Exemption in its Reply, it now complains that P&L's Rebuttal is invalid because there is no rule explicitly allowing parties to submit such a pleading. As noted above, however, if the Board had required both parties to follow the normal exemption rules, then Boral itself would have been prohibited from filing its Reply. It is indeed hypocritical for Boral to argue that P&L's Rebuttal is invalid because there is no formal rule authorizing rebuttals to replies in abandonment exemption proceedings when there is no formal rule authorizing replies to abandonment exemption proceedings either.

P&L's Rebuttal should also be accepted because P&L is entitled to file rebuttal under the abandonment application procedures, which the Board has closely followed in this proceeding. It is true that P&L did not file an abandonment application. Despite the fact that an abandonment application was not filed, however, the Board chose to treat P&L's exemption petition, at least from a procedural point, as if P&L had filed an application. The Board did so when in its *Federal Register* notice, it gave parties an opportunity to file comments or protests regarding the Petition for Exemption, not within the twenty day time period as provided in

49 C.F.R. § 1104.13(a), but within the forty-five day time period that normally applies to abandonment applications. *See* 68 Fed. Reg. 14273 (March 24, 2003). Boral took advantage of this opportunity, but proffered a number of unsubstantiated assertions that were largely incorrect, incomplete or untrue. Because the Board was treating the exemption petition from a procedural standpoint as if it were an application, rather than move to strike Boral's Reply, P&L filed a rebuttal, as it was entitled to do under the Board's rules governing abandonment applications. Accordingly, on this basis alone, the Rebuttal was proper and the Motion to Strike should be denied.

Again, it is hypocritical for Boral to complain that P&L was illegitimately availing itself of the rules that apply to full abandonment proceedings in filing its Rebuttal when it was following the same or similar procedures in filing its Reply. As noted above, by providing parties an opportunity to file comments or protests regarding the Petition for Exemption, the Board appeared to be substantially following procedures and deadlines applicable to full abandonment proceedings, since there are no similar provisions governing abandonment exemptions. Accordingly, Boral filed a reply and P&L filed a rebuttal, both of which are provided for in the regulations governing full abandonment proceedings. 49 C.F.R. § 1152.25.

In the end, it is understandable why Boral would want the P&L Rebuttal to be stricken. The Rebuttal effectively rebutted the false assertions submitted in Boral's Reply and conclusively demonstrated why the proposed abandonment was in the public interest and would not harm Boral's transportation options. However, consistent with this agency's longstanding policy of considering rebuttals to replies protesting abandonment exemption proceedings, P&L's Rebuttal should be accepted. *See Maine Central Railroad Company - Abandonment Exemption - In Androscoggin County, ME*, STB Docket No. AB-83

(Sub-No. 16X), 2000 STB LEXIS 532 *3, n.2 (STB served Sept. 15, 2000); *Buffalo & Pittsburgh Railroad, Inc. - Abandonment Exemption - In Erie and Cattaraugus Counties, NY*, STB Docket No. AB-369 (Sub-No. 3X), 1998 STB LEXIS 247 at *12 (STB served Sept. 18, 1998); *Wyoming and Colorado Railroad Company, Inc. - Abandonment Exemption - Jackson County, CO*, Docket No. AB-307 (Sub-No. 2X), 1994 ICC LEXIS 17 at *3 (ICC served Feb. 17, 1994); *Oregon, California & Eastern Railway Company - Abandonment Exemption - In Klamath County, OR*, Docket No. AB-338 (Sub-No. 1X), 1991 ICC LEXIS 272 *6-7 (ICC decided Nov. 13, 1991).

The Board's provision of an opportunity for parties to file comments or protests in this specific case and its treatment of the exemption petition as if it were an abandonment application (at least from a procedural perspective), coupled with its policy of accepting rebuttals in other abandonment exemption proceedings, more than warrants acceptance of P&L's Rebuttal into the record. Accordingly, the Board should deny Boral's Motion to Strike and consider P&L's Rebuttal.

Respectfully submitted, this 21st day of May, 2003.

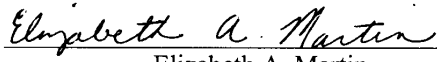


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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing "Reply to Boral Bricks, Inc. Motion to Strike" in STB Docket No. AB-468 (Sub.-No. 5X) by Paducah & Louisville Railway, Inc. was served on the parties listed below on the date indicated below by mailing a copy, first class mail postage prepaid.


Elizabeth A. Martin

May 21, 2003

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