

ORIGINAL

Before the
SURFACE TRANSPORTATION BOARD

208931

STB 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



ENTERED
Office of Proceedings

SEP 17 2003

Part of
Public Record

MOTION TO STRIKE

Comes now Central Columbiana & Pennsylvania Railway, Inc. ("CCPR"), by and through counsel, and, pursuant to 49 C.F.R. § 1104.8, files this motion to strike. In its Decision, dated July 30, 2003, the Board permitted Railroad Ventures, Inc. ("RVI") to file an additional response. The Board specifically noted, however, that "[t]he scope of this response must be limited to the arguments and evidence presented by CCPA/CCPR in its April 21, 2003 rebuttal." Because RVI has not complied with the Board's order, the Board should strike the following portions of the statement of George Wehner that is not responsive to the evidence that was presented by CCPA and CCPR. The Board should also disregard the unverified, inadmissible hearsay testimony that permeates RVI's surrebuttal.¹

In particular, the Board should strike or disregard paragraph 3 of Mr. Wehner's statement. In that paragraph, Mr. Wehner purports to describe an alleged conversation with FRA Inspector Chet Rhodes. In the first place, Mr. Wehner's recitation of Mr. Rhodes' alleged comments is hearsay. Second, Mr. Wehner, who is believed to be an

¹ Because RVI failed to serve counsel in a timely fashion at counsel's current address, which is well known to RVI, this instant motion is timely.

employee of RVI, is not authorized to present testimony on behalf the FRA regarding the current condition of the track. Third, Mr. Wehner's comments do not repudiate the validity of the FRA documents that were introduced by CCPA and CCPR.

The Board should also strike or disregard all portions of Mr. Wehner's comments in paragraph 5 whereby he purport's to speak for the Ohio Rail Development Commission ("ORDC"), which is the only party that would be qualified to rebut CCPA's and CCPR's testimony. Unlike CCPR's witness who presented the Board with documentation to back up his affidavit, Mr. Wehner has not produced any documentation to support his "recollections" of events that transpired several years ago when he was employed by ORDC. Moreover, the documentation presented by CCPR repudiates the unsupported, misleading conjecture that only 20 carloads a year would have been handled over the line south of milepost 18.

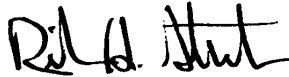
With regard to paragraph 10, Mr. Wehner is engaged in legal argument regarding the scope of the Board's Orders which created the escrow fund. Simply stated, the Board does not need Mr. Wehner's unqualified interpretation of the legal ramifications of the Board's Orders.

Mr. Wehner's references in paragraph 11 to FRA Inspector Rhodes should be stricken on the grounds that his recitation of Mr. Rhodes' alleged comments is hearsay. Mr. Wehner's references in paragraph 12 to reported comments made by residents in Columbiana should be stricken for the same reason.

Last, Mr. Wehner's comments in paragraph 14 that CCPR is "reported to be loosing (sic) money on this venture" and that this "is a matter of significant concern to ORDC because state funding was predicated on improved service and traffic

commitments by CCPR and CCPA" should also be stricken on the grounds that Mr. Wehner is not qualified to speak for ORDC and because his statements lack a verifiable basis. Moreover, they are not responsive to the Board's directive which permitted RVI to file its additional comments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R.H. Streeter", written in a cursive style.

Richard H. Streeter
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750 17th Street, N.W.
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September 16, 2003

Certificate of Service

I, Richard H. Streeter, do hereby certify that a true copy of the foregoing Motion to Strike was served this 16th day of September, by first-class mail, postage prepaid on the following:

Richard R. Wilson, Esq.
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A handwritten signature in black ink, appearing to read "Rich H. Streeter", written over a horizontal line.

Richard H. Streeter