

CHARLES H. MONTANGE
ATTORNEY AT LAW
426 NW 162ND STREET
SEATTLE, WASHINGTON 98177

(206) 546-1936
FAX: (206) 546-3739

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Hon. Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, D.C. 20423-0001

Re: City of Lincoln -- Petition for a Declaratory
Order, F.D. 34425
Objection to Various Additional Letters
from Lincoln Lumber Company (LLC)

Dear Mr. Williams:

This letter is on behalf of City of Lincoln, in response to two more letter submissions from Lincoln Lumber Company.¹

The STB website records as filed on February 5 a letter on behalf of Lincoln Lumber Company (LLC), dated January 29, 2004. This LLC letter is a reply to Lincoln's earlier reply to a motion by LLC to strike City's timely rebuttal. Under this Board's rules, replies to replies are not permitted. 49 C.F.R. § 1104.13(c). See Central Railroad of Indiana -- Exemption-- in Dearborn, et al Counties, IN, STB dkt. AB 459 (Sub-no. 2X) (replies to replies are "prohibited by [the Board's] rules" except pursuant to a motion for leave to file). LLC did not apply for leave to file, nor did LLC show any grounds for seeking such leave. Moreover, LLC shows no "new evidence" it could not previously have produced, nor any prejudice which would justify relief, much less any prejudice at all, either substantively or in the nature of allowing it to breach this Board's rule as set forth in § 1104.13(c). The reply should be rejected. Central Railroad, supra.

The STB website records as filed on February 11 another LLC letter dated February 3, 2004. This LLC letter is in the nature of a second surrebuttal.² It points out a U.S. District Court decision (Columbiana County Port Authority v. Boardman Township Park District, 154 F.Supp.2d 1165 (N.D. Ohio 2001)) from which

¹ The two submissions are the fifth and sixth out-of-time submissions by LLC by our count.

² LLC filed a motion for leave to file a different "surrebuttal" under cover letter dated January 23. LLC's February 3 letter is, then, a second surrebuttal, although submitted without even a motion for leave to file.

LLC quotes and argues. The case is not new authority (it was available long before the due date of LLC's December 29, 2003 pleading). In any event, the decision is inapplicable for the same reasons as all of LLC's cases discussed in its December 29 Reply and again in LLC's February 3 letter. The LexisNexis "overview" of the Columbiana County decision states that "[f]or the park district to have lawfully acquired the tract, it would have to seek approval of the Interstate Commerce Commission." 2001 U.S. Dist. Lexis 16033. This is a fair summary of the holding in Columbiana County insofar as relevant here, and it is also a fair summary of exactly what City of Lincoln is seeking in its Petition for a Declaratory Order in order "to ... lawfully acquire[]" the underground storm sewer easement and the 20 foot trail corridor at issue here. LLC's February 3 letter, for which LLC sought no leave to file, is clearly barred by 49 C.F.R. § 1104.13(c), in any event adds nothing, and must be rejected.

Very truly,


Charles H. Montange
for City of Lincoln

cc. Thomas McFarland, Esq. (LLC) (U.S. Mail)
Daniel LaKemper, Esq. ("commenters") (U.S. Mail)
Joel Pedersen, Esq. (City of Lincoln)