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210368

February 5, 2004

Mon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

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Office of Proceedings
MAR 22 2004
Part of
Public Record



Re: STB Finance Docket No. 34354 Emergency Petition of Maumee & Western Railroad Corporation and RMW Ventures, LLC for Declaratory Order - Condemnation of Main Line Tracks By the City of Napoleon, Ohio

Dear Mr. Williams:

We are in receipt of the January 29, 2004 letter from counsel for the City of Napoleon regarding the federal district court decision in City of Napoleon, Ohio v. Maumee & Western Railroad Company, LLC, Case No. 3:03 CV 7265 (January 29, 2004). The purpose of this letter is to briefly respond to the assertions made by counsel for the City of Napoleon.

As the Board will quickly discern from its own review of the January 28 Memorandum, Opinion and Order, the Federal District Court in remanding this proceeding to the Common Pleas Court of Henry County, Ohio did so on jurisdictional grounds which do not go to the merits of the issues presented by Maumee & Western's Emergency Petition. The Court acknowledged that its finding that there is not complete preemption of state regulation of railroad crossings for purposes of federal question jurisdiction does not foreclose the issue of whether Ohio's crossing condemnation law infringes upon the exclusive jurisdiction of the STB to regulate interstate railroads. These issues were specifically presented to the Board in Maumee & Western Corporation's Emergency Petition and still require resolution.

In the meantime, upon remand of this proceeding to the Court of Common Pleas of Henry County, Ohio, Maumee & Western Railroad Corporation will seek a stay of the Common Pleas Court proceedings pending a determination by the STB of these issues. In this regard, it should be noted that Maumee & Western Railroad Corp.'s Emergency Petition was filed prior to the initiation of the state court condemnation proceeding and that the City of Napoleon has responded to that petition on the merits. Accordingly its subsequent initiation of a condemnation proceeding in state court is a collateral attack upon the jurisdiction of the STB. Maumee & Western Railroad Corp., therefore, respectfully requests that the Board issue a decision at its earliest convenience on the merits of the preemption issues presented by the condemnation proceeding initiated by the City of Napoleon.

Vernon Williams
February 5, 2004
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Should there be any further questions in connection with this matter, please do not hesitate to contact the undersigned. Please indicate your receipt of this response by stamping and returning a copy of this letter to our offices in the self addressed, stamped envelope provided for that purpose.

Very truly yours,

RICHARD R. WILSON, P.C.

A handwritten signature in black ink, appearing to read "Richard R. Wilson", with a long horizontal flourish extending to the right.

Richard R. Wilson

RRW/bab
Enclosures

xc: Jeffrey O. Moreno, Esq.
Stuart Strasfeld, Esq.