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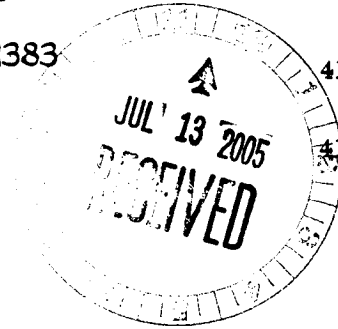
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July 7, 2005

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

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

Dear Secretary Williams:

Enclosed for filing please find the original and ten copies of the Reply of Railroad Ventures, Inc. to the Petition of Ohio Rail Development Commission to Intervene, or In the Alternative, Appear as *Amicus Curia* in support of Columbiana County Port Authority. A request for Board permission to late file this Reply, to which ORDC counsel does not object, was submitted to the Board on July 5, 2005. Please time stamp a copy of this letter as proof of filing and return it to the undersigned in the enclosed stamped envelope provided for that purpose. Copies of this Reply have been served on all parties of record.

Very truly yours,

VUONO & GRAY, L.L.C.

Richard R. Wilson
Attorney for Railroad Ventures, Inc.

RRW/klh
Enclosures

xc: All Parties of Record
Railroad Ventures, Inc.

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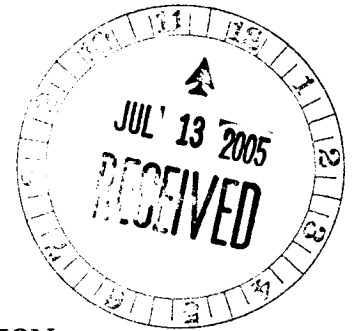
JUL 13 2005

Part of
Public Record

Before the
SURFACE TRANSPORTATION BOARD

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



**REPLY OF RAILROAD VENTURES, INC. TO OHIO RAIL DEVELOPMENT
COMMISSION'S PETITION TO INTERVENE OR, IN THE ALTERNATIVE,
APPEAR AS *AMICUS CURIA* IN SUPPORT OF
COLUMBIANA COUNTY PORT AUTHORITY**

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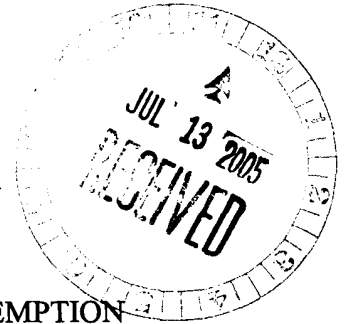
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COLUMBIANA COUNTY PORT AUTHORITY**

INTRODUCTION

Railroad Ventures, Inc. ("RVI") hereby replies to the Ohio Rail Development Commission's ("ORDC") Petition to Intervene or, In the Alternative, Appear as *Amicus Curia* in support of the Columbiana County Port Authority ("CCPA"). For the reasons set forth herein, RVI respectfully requests that the Board deny the ORDC Petition.

BACKGROUND

In its October 2000 decision, the STB directed RVI to place \$375,000 into an escrow account for the purpose of assuring the availability of funds to make specified repairs to rail crossings and signal facilities on the former Youngstown and Southern Railroad line. Subsequently, to address disputes between RVI and CCPA regarding appropriate escrow account administrative procedures and accountability safeguards, the Board issued an order dated November 8, 2001, transferring the escrow funds to CCPA in preference to placing those funds into the custody of ORDC and imposing accountability standards on CCPA and Central Columbiana and Pennsylvania Railroad Company

(“CCPR”). The Board’s November, 2001 order established a requirement for a post expenditure audit of CCPR’s and CCPA’s compliance with the Board’s escrow account procedures and safeguards.

On January 21, 2003, CCPA and CCPR filed a Joint Motion with the Board purporting to justify the expenditure of the entire escrow fund and sought Board approval of those expenditures. RVI conducted an extensive audit of CCPA’s and CCPR’s expenditure documents and filed evidence demonstrating CCPA’s and CCPR’s substantial non-compliance with the Board’s November 2001 order. Over the next eight months, the parties submitted an extensive pleading record regarding these expenditures. Fourteen months later, on December 13, 2004, the Board issued a decision directing CCPA and/or CCPR to refund to RVI \$217,282 for failure to comply with the requirements of the Board’s escrow account order.

On January 3 and 6, 2005 CCPA and CCPR filed a Joint Petition to Reopen and Reconsider and a Petition for Stay of Refund which the Board granted over RVI’s objection on January 10, 2005. Thus, at present, the Joint Petition to Reopen and RVI’s Reply in Opposition are currently pending for decision before the Board. At no time throughout the four year period during which the record described above was being created by the parties did ORDC seek to assert any interest or participate in the Board’s proceedings.

On July 5, 2005, ORDC filed its Petition to Intervene or, in the Alternative, to Appear as *Amicus Curia* in support of CCPA. ORDC’s Petition was filed four months after the pleadings on the CCPA Petition to Reopen were closed.

LEGAL ARGUMENT

A. The Petition filed by ORDC meets none of the requirements for intervention or for *amicus curia* participation.

Under the Administrative Procedures Act, interested parties are given a right to a hearing. 5 U.S.C. §554(c). However, the possibility that an adjudicative proceeding will result in an interpretation of law or regulation applicable to a particular legal situation affecting nonparties is not a basis for intervention by all who may possibly be so affected. Cf. Great Atlantic & Pacific Tea Co., 83 FTC 1356 (1874). Intervention is only appropriate where the administrative agency rules grant such a right upon showing of interest; Chicago Junction Case, 264 U.S. 258 (1924), or where the agency, in its discretion, finds that such participation will aid in addressing the matters pending before it. Cf. Fed. R.C.R. 24 (b)(2).

1. The Board's Rules of Practice do not permit ORDC intervention at this point in the proceedings.

Under 49 U.S.C. §721 and 5 U.S.C. §554, the STB is authorized to prescribe regulations to carry out the provisions of 49 U.S.C. §10101 et. seq. In accordance with these provisions, the Board has authorized intervention in oral hearings, 49 C.F.R. §1113.7, (not applicable in this proceeding) and under modified procedures at 49 C.F.R. §1112.4. Section 1112.4 addresses the modified procedures under which this proceeding has been conducted and states that intervention may be granted “in a proceeding set for modified procedure.” This regulation requires that intervention be granted only when timely sought by an interested party so that it can participate in the evidentiary record building process directed under the Board's modified procedure order. This timeliness requirement is

further emphasized by the intervention standards which a Petitioner must meet under §1112.4(a)(1) and (2):

(a) the Board may grant a petition to intervene in a proceeding set for modified procedure if intervention: (1) will not unduly disrupt the schedule for filing verified statements, except for good cause shown; and (2) would not unduly broaden the issues raised in the proceeding.

ORDC seeks intervention long after the Board rendered its decision ordering the escrow refund and long after pleadings and verified statements have been filed by CCPA and RVI with regard to the Joint Petition to Reopen. ORDC offers no good cause to supplement the record at this late date nor does it identify its interest in the escrow account or explain its failure to assert its purported interest in 2003 in support of the CCPA and CCPR Joint Motion to confirm escrow fund expenditures. Indeed, the ORDC quotes from the affidavit of Mr. Jannazo, an ORDC official, which has already been submitted to the Board by CCPA. This submission establishes that ORDC's interests have already been adequately represented before the Board by CCPA. See eg. Purness v. City of Akron, 925 F2d 941 (6th Cir 1991) (adequate representation presumed when intervenor's interest is identified with that of a party). ORDC's Petition also indicates that it may be attempting to assert, at this late date, its own claims against CCPA (and indirectly against RVI's escrow account) for funds "advanced" to CCPA by ORDC "to pay for repairs to the line." Granting ORDC's Petition at this late date may therefore unduly broaden the issues already litigated in this proceeding by the indirect assertion of claims by ORDC against RVI's escrow account for ORDC public expenditures which were never envisioned or authorized under the Board's escrow account orders. Accordingly, ORDC's Petition to Intervene fails to meet the requirements of §1112.4(a)(1) and (2) and should be denied for that reason.

2. ORDC has failed to demonstrate entitlement to discretionary permissive intervention.

ORDC also seeks permissive intervention pursuant to 49 C.F.R. §1117.1 which is directed to Petitions for Relief not otherwise covered. Permissive intervention under this section of the Board's Rules of Practice are addressed to the Board's discretion.

When granting discretionary intervention, courts and administrative agencies have established criteria which evaluate the impact which such intervention will have on the orderly conduct of an administrative proceeding and on the interests of other parties participating in that proceeding. 5 U.S.C. §555. In that connection, intervention will be denied where it is untimely, where it will delay proceedings, or where it will prejudice other parties' interest. Cf. Fed. R.C.P. 24(b), Banco Popular de Puerto Rico v. Greenblatt, 964 F2d 1227, 1230 (1st Cir. 1992) (timeliness standard more strictly applied for discretionary intervention.) Nor will intervention be granted where the positions espoused by the prospective intervenor will broaden the issues or introduce new evidence which the other parties in the proceeding have not had a fair opportunity to address. See e.g. Farmland Daries v. Commonwealth of New York Dept. of Agriculture and Market, 847 F2d 1038 (2d Cir. 1988) (post judgment intervention is disfavored)

An administrative agency may also examine whether the party proposing intervention has had an opportunity to participate in previous proceedings and whether the prospective intervenor has sufficient standing to intervene. U.S. v. Napper, 887 F2d 1528, 1532 (11 Cir. 1989). These considerations are particularly pertinent where late intervention is sought after the issuance of dispositive orders. In those situations, a petitioner bears a higher burden to demonstrate good cause for granting late intervention.

Where a party seeking late intervention has adopted a “wait and see” attitude and moves to intervene only once the agency’s deliberation is known, the petitioner falls far short of demonstrating the good cause that would support a late intervention request. See Florida Power and Light Company, 99 F.E.R.C. P61, 318; 2002 FERC Lexis 1252 (2002).

The ORDC Petition to Intervene or, Alternatively, to Participate as *Amicus Curia* in support of CCPA meets none of these requirements. As noted above, it is late filed long after the active parties have created an extensive administrative record in which the arguments advanced by ORDC in its Petition have been fully asserted by CCPA and opposed by RVI. ORDC’s attempt to inject new claims and new evidence to support those claims at this point in the proceedings would be highly prejudicial to RVI. Indeed, the ORDC Petition to Intervene does not clearly identify its interest or the grounds for its intervention but instead makes factual assertions and legal arguments regarding purported delays in the administration and availability of escrow account funds which CCPA has already presented in its filings with the Board and which RVI has rebutted. Nor does the ORDC Petition to Intervene actually address the standards and criteria to justify intervention, instead the ORDC Petition is simply a political statement of support which reiterates legal and factual arguments that have already been presented to the Board.

The ORDC Petition also provides no explanation of why the ORDC has standing to address the disposition of the escrow account refund. ORDC provided public funds to CCPA and its bankrupt operator and is presently attempting to ascertain where and how CCPA and CCPR utilized those public monies. But ORDC has no direct legal interest in or entitlement to the escrow account fund which the Board placed under the supervision and control of CCPA. Indeed, CCPA originally suggested to the Board that these funds be placed in ORDC’s hands, but that course of action was properly rejected by the Board and

accordingly, by virtue of the Board's own decision, ORDC has no direct interest in or standing to contest the refund of the escrow account.

3. ORDC is not an appropriate *amicus curia* participant in this proceeding.

Permitting ORDC to participate at this late date in this proceeding as *amicus curia* will add nothing to the extensive record already before the Board. *Amicus* participation in STB proceedings requires that the petitioner demonstrate an adequate interest in the proceeding, and that its *amicus* brief not disrupt the schedule of filings or unduly broaden the issues in the proceeding. City of Creede, Co. – Petition for Declaratory Order, STB Finance Docket 34376 (Service Date May 3, 2005). As noted previously, ORDC has no direct, relevant, legal, or policy interest in the private dispute between RVI and CCPA over the Board's escrow refund order. Rather, it appears that ORDC seeks to influence the Board's decision on the escrow refund in order to enhance the likelihood of its own accounting for and recovery of public funds advanced to CCPA and/or CCPR for the Y&S acquisition transaction, thereby substantially broadening the issues in the refund proceeding and introducing subjects over which the STB has no jurisdiction. Finally, the administrative record with regard to the Joint Petition to Reopen is closed and is pending for decision before the Board. There is no procedural schedule for supplemental briefing of the escrow refund issue in which ORDC can now participate. Accordingly, ORDC's request to participate as *amicus curia* serves no purpose, and will only burden the staff and facilities of the Board with further filings in an already voluminous record. Cf. S. Ct. R. 37.1 (An *amicus* brief which brings no relevant matter to the attention of the Court, simply burdens the Court and its filing is not favored.)

CONCLUSION

WHEREFORE, RVI respectfully requests that ORDC's Petition to Intervene or Participate as *Amicus Curia* in support of CCPA be denied for the reasons set forth above.

Respectfully submitted,

VUONO & GRAY, LLC

By: 
Richard R. Wilson, Esq.
Attorney for Railroad Ventures, Inc.

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Dated: July 7, 2005

CERTIFICATE OF SERVICE

I hereby certify that I have this 7th day of July, 2005 served a copy of Reply of Railroad Ventures, Inc. to Ohio Rail Development Commission's Petition to Intervene or, in the Alternative, Appear as *Amicus Curia* in Support of Columbiana County Port Authority upon the following by first class United States Mail, postage prepaid:

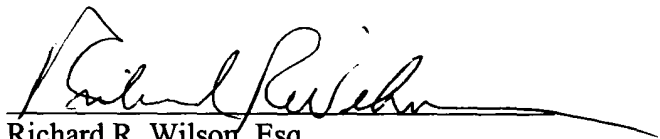
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