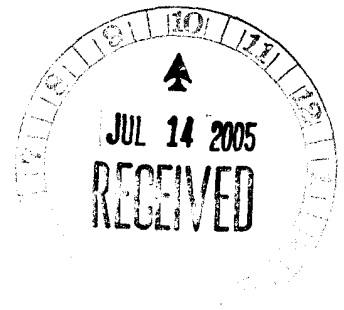


214322

Before the
SURFACE TRANSPORTATION BOARD



Docket No. AB-556 (Sub No. 2X)

RAILROAD VENTURES, INC.-ABANDONMENT EXEMPTION
BETWEEN YOUNGSTOWN, OHIO AND DARLINGTON, PA
IN MAHONING AND COLUMBIANA COUNTIES, OHIO
AND BEAVER COUNTY, PA

ENTERED
Office of Proceedings

JUL 14 2005

Part of
Public Record

REPLY OF COLUMBIANA COUNTY PORT AUTHORITY TO
PETITION TO INTERVENE OR, IN THE ALTERNATIVE,
APPEAR AS AMICUS CURIAE IN SUPPORT OF THE
COLUMBIANA COUNTY PORT AUTHORITY

Comes now Columbiana County Port Authority ("CCPA") and files its reply to the petition filed by the Ohio Rail Development Commission ("ORDC"), pursuant to 49 C.F.R. §§ 1113.7 and 1117.1. By its petition, filed June 21, 2005, ORDC has requested permission to intervene, or in the alternative to appear as amicus curiae, in support of the Joint Petition for Reopening and Reconsideration filed by CCPA and the Central Columbiana & Pennsylvania Railroad, Inc. ("CCPR"). Pursuant to the Board's Decision of July 8, 2005, which authorized the filing of replies until July 20, 2005, CCPA states that it has no objection to ORDC's request and urges the Board to consider the public interest arguments advanced by ORDC in its Petition.

It is respectfully submitted that ORDC's formal participation in this proceeding will not delay in any fashion the final outcome of this proceeding. Nor will it expand the issues to be considered by the Board. The underlying facts regarding RVI's intransigent behavior are well documented. Indeed, when it initially affirmed the Board's decision to establish the escrow account, the Sixth Circuit explicitly stated that "the STB acted reasonably in finding that RVI

had an obligation to pay for any damage to the line. ... Considering RVI's conduct since acquiring the rail line, the STB, quite wisely, required an escrow of funds to repair damage to the track done with RVI's authorization." *Railroad Ventures, Inc. v. Surface Transportation Board*, 299 F.3d 523, 560 (6th Cir. 2002).

Nor does the Petition expand the evidentiary record. The factual material that underlies ORDC's Petition is already of record. See Verified Statement of Lou Jannazo, filed by CCPA as part of its evidentiary submission on reconsideration and reopening. The Petition merely corroborates CCPA's position that hundreds of thousands of dollars of public funds were used to cover repairs that should have been paid for with escrowed funds to the limited amount that such escrowed funds were available.

ORDC's Petition highlights the *public interest* (which this Board recognized when it established the escrow account) in requiring RVI to bear full financial responsibility for the many repairs to the line and signal equipment that were necessitated "as a result of RVI's failure to keep the line operational during its ownership of the line." Ordering paragraph #8, STB Decision served November 9, 2001. Moreover, its Petition demonstrates ORDC's interest in preventing a miscarriage of justice by unjustly enriching RVI and rewarding it for deliberately attempting to undermine the efficacy of the escrow agreement. That too is a significant public interest. Plainly, had RVI cooperated, rather than obstructing the efforts that were being made to restore rail service while awaiting the release of the Board's November 9, 2001 Decision, the escrowed funds, and not public taxpayer funds administered by ORDC, would have been used for a limited portion of the essential repairs that were made between January 2001 and November 2001.

Because ORDC's Petition will not introduce any new issues or new evidence, it will not delay the Board's decision on reconsideration. Therefore, CCPA requests the Board to exercise its broad discretion and, at a minimum, treat ORDC as an *amicus curiae* and consider fully its arguments. The public interest, which ORDC represents, must be given full and careful consideration in this prolonged, contentious litigation.

Respectfully submitted,



Richard H. Streeter, Esq.
Barnes & Thornburg
750 17th St., N.W., Suite 900
Washington, D.C. 20006
202-408-6933 - telephone



Keith G. O'Brien, Esq.
Rea, Cross & Auchincloss
1707 L Street, N.W., Suite 570
Washington, D.C. 20006
202-785-3700 - telephone

Counsel for Columbiana County Port Authority

Date: July 13, 2005

CERTIFICATE OF SERVICE

I, Richard H. Streeter, hereby certify that the foregoing Reply of Columbiana County Port Authority to Petition to Intervene or, in the Alternative, Appear as Amicus Curiae in Support of the Columbiana County Port Authority, was served July 13, 2005, via first-class mail, postage prepaid, on the following:

John A. Vuono, Esq.
Richard Wilson, Esq.
Vuono & Gray, LLC
2310 Grant Building
Pittsburgh, Pennsylvania 15219-2383

Alan H. Klodell
Associate Assistant Attorney General
150 E. Gay Street, 17th Floor
Transportation Section
Columbus, OH 43215

James E. Betts, Chairman
Ohio Rail Development Commission
50 W. Broad Street
15th Floor
Columbus, OH 43215

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

Richard H. Streeter