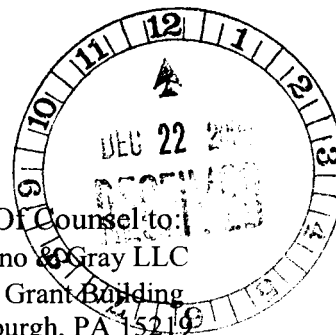


RICHARD R. WILSON, P.C.

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Of Counsel to:
Vuono & Gray LLC
2310 Grant Building
Pittsburgh, PA 15219
(412) 471-1800
(412) 471-4477 FAX

December 15, 2005

Hon. Vernon A. Williams
Secretary, Surface Transportation Board
Mercury Bldg., #711
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: Ohio Valley Railroad Company – Petition to Restore Switch Connections
and Other Relief; STB Finance Docket No. FD-34608;
Ohio Valley Railroad Company Acquisition and Operation Exemption –
Harwood Properties, Inc., STB Finance Docket No. FD-34486; and
Mid America Locomotive and Car Repair, Inc. – Petition for Declaratory
Order, STB Finance Docket No. 34599

215 415

Dear Sir:

As indicated in the above noted STB proceedings, efforts by Ohio Valley Railroad Company (“OVR”) to commence and provide common carrier rail service from its rail facilities at Harwood Yard, Evansville, Indiana have been repeatedly challenged and litigated by its connecting carrier, Indiana Southwestern Railroad (“ISW”) a subsidiary of Pioneer Railcorp. In STB Dockets 34486 and 34608, the Board rejected challenges raised by ISW to Ohio Valley’s acquisition and operation exemption and directed ISW to restore a switch connection between ISW and OVR which ISW had improperly removed.

In an effort to improve relationships between ISW and OVR, Attorney Daniel LaKemper, General Counsel for Pioneer Railcorp. and ISW met with representatives of OVR and Director Clemens and agreed to negotiate various outstanding issues between the two railroads in an effort to arrive at a commercially acceptable resolution of their differences. OVR has pursued those negotiations but no resolution has been achieved to date.

Unfortunately, on December 7, 2005 in response to track maintenance work being undertaken by OVR within Harwood Yard, Attorney LaKemper accused OVR of an unauthorized abandonment of a single yard track and then characterized OVR’s

Vernon A. Williams
December 15, 2005
Page 2

explanation of its yard maintenance work to Director Clemens as "baloney".(Exhibit A)
On Monday, December 12, 2005, Attorney LaKemper threatened OVR with an adverse abandonment proceeding before the Board in a misguided attempt to force OVR to sell its No. 4 yard track and right of way in Harwood Yard to ISW at net liquidation value.
(Exhibit B)

As demonstrated by OVR's correspondence to Attorney LaKemper and to Director Clemens, (Exhibit C) Attorney LaKemper's facts are inaccurate and his legal assertions are totally without merit and Attorney LaKemper has been so advised. The Board has no abandonment or OFA jurisdiction over individual yard tracks pursuant to 49 U.S.C. §10906. MVC Transportation Company – Petition for Declaratory Order, STB Finance Docket 34462 (Oct. 20, 2004) As long as OVR continues to hold itself out to provide common carrier rail service by means of its remaining yard facilities, OVR may maintain and reconfigure its yard tracks without abandonment authorization from the Board. Moreover, OVR has no intent to abandon rail service currently being provided in Harwood Yard. Accordingly, should Attorney LaKemper try to use his mischaracterizations of OVR's yard maintenance activities as a pretext for initiating an unwarranted proceeding before the Board, any filing by him would be in violation of 49 C.F.R. §§1104.4 (a)(3) and 1103.11, See also Fed. R. Civ. P. 11(a) and (b) and Ill. Sup. Ct. R. Prof'l Conduct R. 1.2 (f)(1) and (2)

Finally, OVR regrets the necessity of bringing this matter to the Board's attention but Attorney LaKemper's threat to initiate meritless litigation before the Board over a single yard track is both ill conceived and improper.

Very truly yours,

RICHARD R. WILSON, P.C.



Richard R. Wilson, Esq.
Attorney for Ohio Valley Railroad Company

RRW/bab
Enclosures

xc: STB – Director, Office of Proceedings
STB – Director, Bureau of Enforcement
Daniel A. LaKemper, Esq.
Ohio Valley Railroad

Main Identity - Backup

From: "Dan LaKemper" <lakemper@mtco.com>
To: <clemensm@stb.dot.gov>
Cc: <jm1carr@aol.com>; <william.e.gray@worldnet.att.net>; <bgray@ohiovalleyrailroad.com>; <Rrwilson@Atlanticbbn.Net>
Sent: Wednesday, December 07, 2005 8:58 PM
Subject: Fwd: Re: OVR track in Evansville

Mel,

This sounds exactly like the baloney you got from Iowa Northwestern. I would bet they have no intention of replacing this track. I hope the Board will not put up with this.

Dan LaKemper
 ISW

----- Forwarded message follows -----

Dear Mr. LaKemper:

This is in response to your e-mail of December 7, 2005; 8:57 a.m. Track #4 at Evansville yard is currently out of service and requires maintenance. In order to properly service this track, it has been necessary to remove this track and arrange for replacement track. As I am sure you are aware, performance of yard track maintenance does not require STB abandonment authority. Furthermore, as you are also well aware, there is additional adequate track in Harwood Yard to permit OVR to continue to provide rail service notwithstanding the removal of Track #4 and particularly given the fact that ISW has still not responded to OVR's switching proposal and, as a consequence, the only applicable switch rates for traffic with ISW are ISW tariff rates of several thousand dollars per car which were published by ISW to discourage any traffic to and from OVR and its shippers. In the future, please feel free to contact Mr. Gray or myself to obtain the facts regarding such matters.

----- Original Message -----

From: "Dan LaKemper" <lakemper@mtco.com>
To: <clemensm@stb.dot.gov>; <william.e.gray@worldnet.att.net>; <bgray@ohiovalleyrailroad.com>; <Rrwilson@Atlanticbbn.Net>
Cc: <jm1carr@aol.com>
Sent: Wednesday, December 07, 2005 8:57 AM
Subject: OVR track in Evansville

> Gentlemen:

> I am given to understand that Ohio Valley Railroad has begun to scrap
 > one of their tracks (generally known as Track #4, I believe) in
 > Evansville. Per our discussion at the Board's Washington office, all of
 > the Harwood Yard tracks have been declared part of OVR, and
 > are "jurisdictional" to the STB. Any such action, therefore, requires an
 > abandonment filing. If this activity does not cease, immediately, Indiana
 > Southwestern will take appropriate action.
 > Daniel A. LaKemper
 > General Counsel

EXHIBIT A

12/08/2005

Main Identity - Backup

From: "Dan LaKemper" <lakemper@mtco.com>
To: <william.e.gray@worldnet.att.net>; <bgray@ohiovalleyrailroad.com>; <Rrwilson@Atlanticbbn.Net>
Cc: <jm1carr@aol.com>
Sent: Monday, December 12, 2005 11:07 AM
Subject: Ohio Valley Railroad

Gentlemen:

I have been on the road much of the last couple weeks. As you know, I sent you an e-mail regarding Track #4 last week. If you wish to avoid an abandonment proceeding, we will buy Track #4 for NLV. Otherwise, we will file an Offer of Financial Assistance.

We are also preparing a response to your long-awaited letter regarding our rate proposal.

Daniel A. LaKemper
Indiana Southwestern Rwy. Co.

EXHIBIT B

12/14/2005

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Of Counsel to:

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2310 Grant Building

Pittsburgh, PA 15219

(412) 471-1800

(412) 471-4477 FAX

FAX TRANSMISSION

Date: 12-13-05

From: Richard R. Wilson, Esq.

To: Dan LaKemper Esq.
Fax: 309-697-~~7777~~ 8486

To:
Fax:

To:
Fax:

To:
Fax:

To:
Fax:

To:
Fax:

Comments:

WE ARE SENDING 4 pages (including this cover page). If you do not receive all pages satisfactorily, please call (814) 944-5302 and ask for Beth.

This message may constitute privileged attorney-client communication or attorney work product, and unauthorized use or disclosure is prohibited. If you are not the intended recipient of this message, please advise us by calling collect at (814) 944-5302 and forward the document to us by mail at the above address.

EXHIBIT C

Email to Mr. LaKemper
Cc to Bill Gray
Mel Clemmons

Dear Mr. LaKemper

I take strong exception to your characterization of OVR's track maintenance in Harwood Yard as "baloney". Your lack of accurate information and your condescending attitude are unprofessional and indicative of why it has been so difficult for OVR to deal with ISW in connection with the various matters that were the subject of the recent meeting with Mr. Clemmons. At that time, I understand Mr. Clemmons urged the parties to discuss these matters in a commercially reasonable fashion and I would suggest that your attitude is a major impediment to such discussions.

I would also direct your attention to Boston & M.R. Modifications of Systems, 311 ICC 474, 475 (1960) in which the ICC discussed its jurisdiction over a carrier changing from a double track operation to a one track operation on a portion of its line. In that decision, the ICC noted: "in changing from double-track to one-track operation of this portion of applicant's line . . . as long as service is not abandoned, the Commission has no jurisdiction over the removal of track." Similarly, in Notice of Exemption - Issuance of Securities and Assumption of Liabilities - Illinois Central Railroad Company, Finance Docket No. 31468 (ICC Served Sept. 18, 1989) at 4 the ICC approved the requested exemption for the issuance of securities and assumption of liabilities, but placed no requirements on the conversion of nearly 500 miles of double track to single track. Cited with approval City of Stafford, Texas v. Southern Pacific Transportation Company, STB Finance Docket No. 32395 1994 ICC Lexis 216 (Nov. 8, 1994). These cases demonstrate that there are many instances in which the Board does not have construction or abandonment jurisdiction over every railroad project even though the track involved is not a spur track under §10906. Thus, your concern regarding a single track in Harwood Yard is completely misplaced. OVR can continue to provide rail service to its customers in Harwood Yard using its other yard tracks.

Moreover, given ISW's past conduct and its citation by FRA for deficient track conditions, ISW is hardly in a position to object to a connecting carriers' track maintenance activities. Rather, your concern evidences ISW's long standing efforts to obtain control of the Harwood Yard given ISW's lack of track capacity on its own lines.

Finally, to correct your mischaracterization of this situation to Mr. Clemmons, I have asked Bill Gray to provide a detailed explanation of precisely what is occurring at Harwood Yard to forestall any attempt to use your mischaracterization as a pretext for unwarranted proceedings before the Board.



OHIO VALLEY RAILROAD COMPANY

1601 WEST ALLENS LANE, EVANSVILLE, INDIANA 47710
HTTP://WWW.OHIOVALLEYRAILROAD.COM

TELEPHONE 412 736.5359
EMAIL: ADMIN@OHIOVALLEYRAILROAD.COM

December 8, 2005

Surface Transportation Board
Mr. Melvin Clemens, Director
Office of Compliance and Enforcement
Via Email

Dear Mr. Clemens,

I am very troubled and dismayed, but certainly not shocked or surprised by the accusations advanced by Mr. LaKemper of Pioneer Railcorp/Indiana Southwestern Railway in his emails of December 7th and 8th concerning OVR's activity with regard to track work at Harwood.

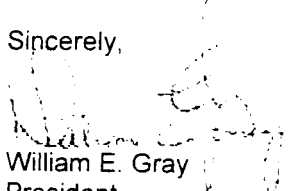
It is incredible when one considers that Mr. LaKemper on one hand has defended his Company's callous, illegal action to remove tracks ("a trick we learned from the class 1's" says he) and willfully destroy the connection to OVR and now he has the audacity to throw up this garbage about OVR's track work activities.

As you may recall in our September meeting, Mr. LaKemper declined my request for OVR to be able to use ISW's lead track to gain headroom in order to switch the sidings (formerly tracks 4 and 5) located parallel and nearest to the ISW (please see OVR track layout document). But now when I attempt to remove an unusable portion of that track (by removing a couple pieces of rail), a track made inaccessible and unusable by ISW/Pioneer's actions, he complains to the Board. This clearly appears to me to be an attempt to posture or to divert the Board's attention from the real issue of ISW's desire to keep OVR from its ability to operate as a common carrier.

To be clear, let the record show that I have instituted a track repair, upgrade, and maintenance program with the OVR mainline, sidings, and turnouts in order to reliably handle traffic. The former siding (referred to by Mr. LaKemper) is out of service on account track conditions. The only way to rehabilitate this track is to remove the track structure and then grade and install new sub-grade. Of course even then I must reconfigure the siding layout or relocate it to make it functional as the existing configuration renders it useless. I assure the Board and you personally Mr. Clemens that OVR has EVERY INTENTION of using this track and salvageable track material (from former siding number 4) for future train operations, not withstanding the uninformed, baseless, litigious remarks and accusations Mr. LaKemper has made before the Board.

OVR hereby requests your assistance to bring the parties back together to discuss the lack of movement on the matter of tariffs and the continued de-facto economic embargo of traffic to OVR by ISW.

Sincerely,


William E. Gray
President

cc: D. LaKemper (via email)
R.R. Wilson
Chmn Mulvey

OHIO VALLEY

"Ship OVR the route of friendly service"

Connection to

Property Line

Siding 3 East ~ (formerly 2,350 ft) (account point of departure)

Siding 2 East ~ 2,160 ft

Siding 1 East ~ 1,975 ft

1,770 ft tangent

Siding 1 West ~ 1,580 ft (account point of departure)

Siding 2 West North end ~ 460 ft

Siding 3 West North ~ 390 ft

Siding 4 West North ~ 395 ft

Siding 2 West South end ~ 690 ft

Siding 3 West South ~ 620

Siding 4 West South ~ 625

South Lead 377 ft

North Lead 290 ft

Existing Locomotive & Car Shop Building 150 x 50 ft

Storage

Office

Property Line

with Alignment for Mainline
with Alignment for Sidings and Siding Leads
t (account End of Track or Track out of service
is point)

OHIO VALLEY RAILROAD COMPANY
Harwood Yard, EVANS Station—North of West Allens Lane
Vanderburgh County, Evansville Indiana 47710
Track Layout and Conditions
1 NOV 05

TRANSMISSION VERIFICATION REPORT

TIME : 12/13/2005 12:12
NAME : VUONO AND GRAY
FAX : 4124714477
TEL : 4124711800
SER.# : BR0L2J852340

DATE, TIME
FAX NO./NAME
DURATION
PAGE(S)
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MODE

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