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September 26, 2006

VIA FEDERAL EXPRESS

ENTERED
Office of Proceedings

Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20006

SEP 27 2006

Part of
Public Record

Re: Village of Croton-on-Hudson v. Buffalo Southern Railroad, Inc., et al.
Finance Docket No. 34905

Dear Secretary Williams:

On behalf of RSA Acquisition Co., LLC ("RSA"), a defendant in the above-captioned case, I have received a copy of a letter to you dated September 25, 2006 from counsel for the Village of Croton-on-Hudson, New York ("Croton"), the plaintiff. The letter purports to be a supplement to the reply of Croton in opposition to motions to dismiss the complaint filed on behalf of RSA and the other defendants. The reply was filed on August 29, 2006.

For the reasons stated below, the Board should reject the attempt by Croton to supplement its reply. Furthermore, even if the Board chooses to accept and consider the letter, the conclusory statements advanced by Croton do not support its contention that the complaint, as it relates to RSA, should not be dismissed.

The rules of the Board, of course, do not permit the filing of supplements on the unilateral decision of a party. In its letter, Croton neither requests authority to submit a supplement nor states any facts that would justify the Board in accepting such a supplement. As a consequence, the letter supplement should be summarily rejected and not made part of the record in these proceedings.

Even if the Board chooses to consider the letter, it provides no additional information or argument that is probative on the question whether the complaint should be dismissed as to RSA. Croton asserts that an Interim Track Agreement among CSX Transportation, Inc. ("CSX"), RSA and Buffalo Southern Railroad, Inc. ("BSOR") constitutes "evidence that RSA is actively involved in the conduct giving rise to the Formal Complaint and is thus an appropriate defendant." To the contrary, however, a

review of the Interim Track Agreement and its background demonstrates that the Agreement adds nothing to the arguments already advanced by Croton.

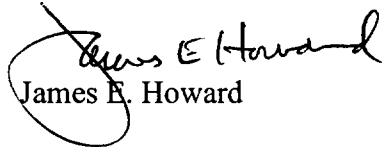
BSOR and CSX disagree on the question whether the track on which BSOR is operating in Croton is a line of railroad or an excepted track within the meaning of 49 U.S.C. 10906. This issue is currently before the Board in Finance Docket No. 34903, and the issue was described in detail in the decision of Judge McMahon of the Southern District of New York granting a preliminary injunction in favor of BSOR. In short, the issue is no secret, and it has been fully briefed and is awaiting decision by the Board.

In order to provide rail service at Croton pending the resolution of this issue, CSX agreed that it would deliver and receive rail cars at Croton pursuant to the Interim Track Agreement. As provided in the Agreement, CSX and BSOR have recognized their differences and preserved their rights to assert and defend their positions. As a prerequisite to its execution of the Agreement, CSX insisted that RSA, as BSOR's lessor, also be a signatory. The fact that RSA is the primary lessee of the property is also acknowledged and widely understood, both in the proceedings before the Board and in the Southern District of New York. Thus, the fact that RSA is a party to the Interim Track Agreement adds nothing new to any arguments on the question whether RSA should or should not be a defendant in the above-captioned case.

An examination of the Interim Track Agreement demonstrates that, while RSA may be a signatory of the Agreement, RSA has no duties or responsibilities pursuant to the Agreement. Rather, BSOR and CSX are the only parties that have express duties and responsibilities, thereby further undermining Croton's argument that the Agreement somehow shows active conduct by RSA.

The supplemental letter dated September 25, 2006 should not be made part of the record. If it is, it should, for the reasons stated above, be accorded no weight. Ten copies of this letter are enclosed.

Very truly yours,


James E. Howard

Enclosures

cc: Mary Gabrielle Sprague
Michael B. Gerrard
John T. McManus