

BEFORE THE SURFACE TRANSPORTATION BOARD

219205

DOCKET NO. AB-1001 (Sub-No 0X)

CHILLICOTHE-BRUNSWICK RAIL MAINTENANCE AUTHORITY

-DISCONTINUANCE EXEMPTION-
IN LIVINGSTON, LINN and CHARITON COUNTIES, MISSOURI

MOTION TO COMPEL

Daniel A. LaKemper, Esq.
Attorney for
Vandalia Railroad Company
1318 S Johanson Road
Peoria, Illinois 61607
Tel : (309) 697-1400

Dated April 30, 2007.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO AB-1001 (Sub-No 0X)

CHILLICOTHE-BRUNSWICK RAIL MAINTENANCE AUTHORITY

**-DISCONTINUANCE EXEMPTION-
IN LIVINGSTON, LINN and CHARITON COUNTIES, MISSOURI**

MOTION TO COMPEL

On March 26, 2007, Vandalia Railroad Company (a Class III carrier, hereinafter "VRRC"), filed a Notice of Intent to File an Offer of Financial Assistance to ("OFA") under 49 CFR 1152.27, to purchase the interests of the Chillicothe-Brunswick Rail Maintenance Authority ("CBRA") in the rail line between Mile Post 226.0 at Chillicothe and Milepost 188.56 near Brunswick, in Livingston, Linn and Chariton Counties, Missouri, being approximately 37.44 miles, as described in the above-referenced proceeding (the "Line").

To date, CBRA has failed to provide any of the requested information. CBRA filed only an "Opposition," which was entered as a "Reply". There is no provision for such a filing, nor does such a filing ipso facto excuse CBRA from providing the requested information. VRRC notes that CBRA's timeliness argument is inaccurate. The Notice of Exemption specifically states that "Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on March 27, 2007". Obviously, the Notice of Intent was filed prior to March 27. CBRA misquotes the March 5 deadline for Petitions to stay "that do *not* involve environmental issues and formal expressions of intent to file an OFA". VRRC, therefore, relying on

the Notice of Exemption, calendared March 27 as the due date for its Notice of Intent. To the extent that such date was incorrect, VRRC requests leave to late file its Notice.

Further, CBRA is in no way prejudiced, nor is this proceeding delayed by providing the requested information. Other issues remain to be decided in this case, including, the issues raised by John Rupp, Jr., et al.

Given the strange structure of CBRA's filing, which could be best described as a "shot gun" attempt to avoid providing the required information, VRRC did not feel it appropriate to "reply" to what has been classified as a "reply," lest it be accused of an improper reply, and, having already filed a Motion to Strike a similar "reply" by John Rupp, Jr., et. al., VRRC waited to see if CBRA would provide the required information, which might well enlighten both VRRC and the Board as to the actual situation on this Line. CBRA, of course, has chose not to provide any information.

CBRA, however, is required to provide the requested information, unless excused by the Board, after an appropriate proceeding, none of which have occurred. The Board should not tolerate CBRA simply ignoring its responsibilities and assuming the Board will rule in its favor. The public interest can only be served by allowing a potential offeror a fair opportunity to assess the Line, not by allowing an abandoning carrier the right to decide whether there is any "basis" for an OFA.

WHEREFORE, VRRRC respectfully requests that the Board enter an order compelling CBRA to provide the requested information, and/or, to the extent necessary, grant VRRRC leave to late file its Notice of Intent to File O F A , and grant VRRRC leave respond to the substantive arguments contained in CBRA's "Opposition" filing, simultaneously with leave to respond to the arguments made by John Rupp, Jr., et al

Respectfully submitted,



Daniel A. LaKemper, Esq
Attorney for
Vandalia Railroad Company
1318 S. Johanson Road
Peoria, Illinois 61607
Tel. (309) 697-1400

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing instrument was served by electronic or facsimile transmission and/or United States Mail, first class, postage fully pre-paid, this 30th day of April, 2007 upon all parties of record as disclosed by the filings of record herein.


