

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**RESPONSE TO REPLY IN OPPOSITION
TO PETITIONERS' RESPONSE, RENEWED PETITIONS AND
SUPPLEMENTAL SUBMISSION**

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Dated: June 17, 2008

BEAUFORT RAILROAD COMPANY,) FINANCE DOCKET
INC. - MODIFIED RAIL CERTIFICATE) NO. 34943

Just over eighteen months ago, the Beaufort Railroad Company, Inc ("BRC") and the South Carolina State Ports Authority (collectively, the "South Carolina Parties") represented to the Board that they wanted to reestablish freight rail service over the right-of-way at issue in this proceeding, that they were ready, willing and able to achieve that goal, that they had already formed BRC, the railroad company to be used to perform the service, that they had entered into all the agreements necessary to permit the railroad to begin service, that they had developed an effective business plan for the railroad, that they had maintained the right-of-way up to operating standards, and that they would do whatever was necessary to assure that effective rail service was reinstituted immediately. In reliance upon those representations, just twenty-seven days later, the Board issued its Notice declaring that BRC qualified for a Modified Rail Certificate.

Shortly thereafter, when Landowners found out about the Notice filed by the South Carolina Parties and the Notice the Board issued in response, doubts arose and questions were asked about the true intentions of the South Carolina Parties. Landowners and others challenged

the credibility of the South Carolina Parties' filings and suggested that the true motives of the applicants were significantly different from what they had disclosed to the Board. Landowners and others also expressed considerable skepticism about the South Carolina Parties' description of the condition of the line and pointed out significant deficiencies in their Notice. In light of all the foregoing, Landowners asked the Board to reconsider its December 28, 2006 Notice, hold the entire proceeding in abeyance, and institute a fact-gathering investigation to test the bona fides of the South Carolina Parties' Notice and explore more thoroughly their true intentions.

In response, the South Carolina Parties addressed the Landowners' questions and concerns dismissively and reassured the Board that they truly intended to reestablish rail service over the right-of-way as they had represented in their December 1, 2006 Notice. In addition, they reassured the Board that the line was in good condition and would continue to be maintained at an operational level. Their assurances about their plans and the present condition of the line were so strong and unwavering that the Board denied the Landowners' request for an investigation and, as to the condition of the line, declared -- based on the representations of the South Carolina Parties -- that the line "is capable of accepting shipper traffic at this time." Board's March 19, 2008 Decision, at page 7 (emphasis added).

Landowners knew, based on what they were able to observe of a limited portion of the right-of-way, that the South Carolina Parties had led the Board to assume that the railroad line was in much better condition than it was but, absent the factual investigation they sought, the only thing Landowners could do to try to correct the Board's misimpression was to produce and file with the Board a series of photographs showing that the actual condition of portions of the

line was much worse than the South Carolina Parties had permitted the Board to assume^{1/} and certainly was not up to operational levels of maintenance.

At or about the time Landowners submitted their photographic evidence, developments were underway in Beaufort that would, once and for all, prove that Landowners' suspicions about the South Carolina Parties' December 2006 Notice were well founded and that the South Carolina Parties had misused and abused the Board's processes. As explained in the Landowners' Supplemental Submission filed with the Board on May 21, 2008, through public pronouncements by the Beaufort-Jasper Water & Sewer Authority, it had become clear beyond any doubt that the South Carolina Parties never had any intention of reestablishing rail service over the right-of-way and only filed its Notice on December 1, 2006 in hopes of somehow giving it sufficient power and authority to do something quite different with the line, something it had never disclosed to the Board or to concerned citizens of South Carolina.

When confronted by Landowners, the South Carolina Parties announced a truly stunning change of position. After repeatedly dismissing Landowners' doubts and suspicions regarding the intentions of the South Carolina Parties, they finally admitted that they had never been committed to reestablishing rail service over the right-of-way and that their actual intention was

^{1/} Landowners did not represent that the photographs they submitted were of "all of the line," as the South Carolina Parties allege. South Carolina Parties' June 4, 2008 Reply, at page 4. In fact, Landowners expressly stated that their photographs were of only limited portions of the line, areas where they could have lawful access. Landowners' May 15, 2008 Response to Reply, at page 11. More importantly, however, the photographs provide the best evidence regarding the true condition of the line and show what the South Carolina Parties must know and must have known since December 2006 that the line is not and has not been capable of accepting shipper traffic "at this time "

to put themselves in a position where they could sell the right-of-way to others who could use it for any number of things, none of which included the operation of a railroad.

If there were any remaining doubt about the validity of Landowners' concerns and suspicions, those doubt have now vanished. It is impossible to read the most recent pleading of the South Carolina Parties and conclude anything different. It is now perfectly clear that the South Carolina Parties never had any intention of reestablishing rail service over the right-of-way and that their only plan, from the start, was to try to put themselves in a position where they could do something quite different with the property, something almost certainly inconsistent with a plan to operate a railroad and also inconsistent with the interests of the owners of the right-of-way, including Landowners.

Less certain is the reason the South Carolina Parties came to the Board eighteen months ago with their declaration that they wanted to reestablish rail service over the right-of-way. It could easily be concluded, as Landowners suspect, that the South Carolina Parties developed their multi-use plan for the right-of-way at some time prior to December 2006 but determined that they could not implement that plan with confidence because they did not have a sufficient property interest in the right-of-way. Landowners suspect further that that lack of confidence arose because the South Carolina Parties concluded that with the filing of Tangent's Notice of Termination in 2003, the right-of-way had passed out of the jurisdiction of the Board and, absent Board jurisdiction, title to the property would be uncertain at best and, at worst, ownership would be found to have reverted to Landowners and others similarly situated. Thus, Landowners suspect that the South Carolina Parties filed their Notice in December 2006 in an attempt to have

the Board purport to reestablish jurisdiction over the line^{2/} so the right-of-way could be used for multiple purposes, but not for the operation of a railroad. Quite simply, there is and can be no other reason for the South Carolina Parties to have proceeded as they did. If, as the South Carolina Parties argue, the Board retained jurisdiction over the line following Tangent's filing in 2003, why would the South Carolina Parties have to file a new Notice in 2006?

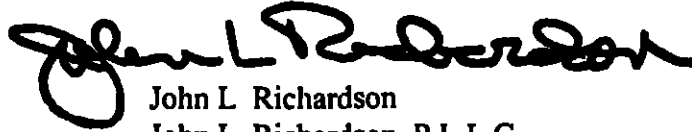
Landowners search in vain for anything in the Reply filed by the South Carolina Parties on June 4, 2008 which would allow the Board to avoid the conclusion that the South Carolina Parties have proceeded before the Board in exactly the fashion Landowners have suspected from the start. The South Carolina Parties never intended to reestablish rail service over the right-of-way, and they never devoted the resources necessary to give their railroad the slightest chance of succeeding as an interstate railroad. They used the Board's Part 1152 processes in hopes that the Board could and would reestablish jurisdiction over a right-of-way and give the South Carolina Parties a title claim they would not otherwise have -- a claim essential to the development of the property as they chose.

The Board must uphold the integrity of its processes and do whatever is necessary to assure that the South Carolina Parties are not permitted to proceed, as they now concede they have wanted to proceed, through the misuse of the Board's processes. Preservation of the Board's interests, not to mention the interests of Landowners and others similarly situated, requires that the Board reconsider the Notice it issued on December 28, 2006, declare that Notice null and

^{2/} It remains to be explained how the Board's jurisdiction, once terminated, could be reestablished through the filing of a Notice of Modified Certificate.

void, and determine that it does not have any continuing jurisdiction over the right-of-way at issue in this proceeding

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John L. Richardson". The signature is fluid and cursive, with the first name "John" being more prominent and the last name "Richardson" following in a similar style.

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Dated: June 17, 2008

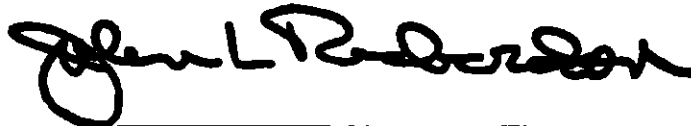
CERTIFICATE OF SERVICE

I hereby certify that, on June 17, 2008, I caused a copy of the foregoing document to be served upon the following persons by electronic mail:

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A handwritten signature in black ink, appearing to read "John L. Richardson", written over a horizontal line.

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