

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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DOCKET NO. AB-491 (SUB-NO. 2X)

R.J. CORMAN RAILROAD COMPANY/PENNSYLVANIA LINES, INC.  
-- ABANDONMENT EXEMPTION --  
IN CLEARFIELD, JEFFERSON AND INDIANA COUNTIES, PENNSYLVANIA

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**P&N COAL COMPANY, INC.'S MOTION TO STRIKE AND REPLY TO R.J.  
CORMAN'S EXHIBITS OF JANUARY 6, 2009 FILING**

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Dated: January 12, 2009

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SURFACE TRANSPORTATION BOARD

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P&N Coal Company, Inc. hereby replies to R.J. Corman's January 6, 2009  
Response to P&N Coal Company, Inc.'s Request to Set Terms and Conditions of Sale:

**INTRODUCTION**

The documentation previously provided by R.J. Corman to P&N Coal Company, Inc. consisted solely of portions (5 pages) of a redacted May 2008 Report, and one summary page of a 2005 Track Appraisal. See: Exhibits F, G, and H of P&N Coal Company, Inc.'s Offer-Revised, December 2, 2008.

On January 6, 2009, R.J. Corman filed a Response to P&N Coal Company, Inc.'s Offer, which attached exhibits, documents and information which had not been previously provided to P&N Coal Company, Inc.

This Motion and Reply addresses the aforementioned January 6, 2009 filing by R.J. Corman.

**MOTION TO STRIKE R.J. CORMAN'S  
EXHIBITS FILED JANUARY 6, 2009**

49 U.S.C.10904(b) requires the carrier to provide to a party considering an OFA all pertinent information about the value of the line. 49 CFR 1152.27(a)(3) requires, in an Exemption for Proceeding, for the carrier to provide their estimated net liquidation value, including supporting data reflecting available real estate appraisals and quality and quantity of track material. See: *CSX Transportation Inc., Laporte, Porter Stark Counties*: AB-55-643-X Date of Decision April 30, 2004.

For the Board to allow additional evidence to be submitted beyond the time frames set forth in the Code, requires "unique circumstances", such as volatile fluctuations in scrap steel prices. See: *CSX Transportation Inc. – Laporte Porter Stark Counties Id.*. Also see *Toledo*

*Peoria Western Railway vs. Surface Transportation Board*, 462 F. 3d. 734(2006), commenting upon the Surface Transportation Board disfavoring such evidence but allowing same when considering sharp increases in steel prices.

§1152.27(g)(4) does not provide for the carrier to submit “new evidence” but to simply reply to the Offerors evidence. Nor does the Code provide authority to submit new evidence supporting different terms. It is submitted that none of the Exhibits, discussed hereafter, but for the American Metals Market values, present “unique circumstances” to allow the admission of these documents.

Accordingly, Exhibits A, B, C, and E submitted January 6, 2009 by R.J. Corman should be rejected by the Surface Transportation Board as same were not provided to P&N Coal Company, Inc. in its Request for Information and Documentation in Support of R.J. Corman’s “Minimum Purchase Price”. Exhibit D, insofar as reflecting American Metals Values, is not objected to.<sup>1</sup>

Finally as to Striking the Exhibits it should be noted that R.J. Corman’s January 6, 2009 filing contains a Certification and Verification executed by Sherman W. Petree, President, dated January 2, 2009, and notarized January 2, 2009. That Verification states that the information contained in the response of R.J. Corman including “information on track and OFA valuation, real estate valuation and other information set forth in the response is true and correct”. Exhibit’s D & E attached to the January 6, 2009 filing are dated January 6, 2009, and thus should be rejected as unverified and improper, contrary to R.J. Corman’s own Certification and Verification.

#### **COMMENT ON R.J. CORMAN’S RESPONSE IF EXHIBITS ALLOWED**

Should the Surface Transportation Board not grant P&N Coal Company, Inc.’s Motion to Strike the Evidence Submitted in the R.J. Corman’s January 6, 2009 Response, then it would be appropriate that P&N Coal Company, Inc. be given the opportunity to respond by comment to this new evidence set forth hereafter:

**Ties:** R.J. Corman would have the Surface Transportation Board believe that in the greatest economic down turn since the 1930’s depression, the value of used railroad ties have increased in value, from \$43,569.00 in April, 2005, to \$114,471.00 in October 2008, and astoundingly, to a current January of 2009 value of \$144,534.08. R.J. Corman justifies these increases without substance or credibility. As to the individual Exhibits:

- Exhibit “B”, Page 1 of 3, a letter from A&K Railroad Materials Inc., is a statement of the current price to sell relay ties and does not suggest whether these are to purchase new or used ties and should be rejected.

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<sup>1</sup> As noted previously, Exhibit “A”, page 1 of 4 was produced previously however, same was significantly “redacted” with blacked out portions as noted in Exhibit “B” of P&N Company, Inc.’s previous Petition To Toll 30 Day Period For Submitting Offer.

- Exhibit “B”, Page 2 of 3, Unitrack Railroad Materials Inc. is another statement as to Selling of railroad ties already in a developer’s yard and should be rejected.
- Exhibit “B”, Page 3 of 3, is nothing more than a blanket hearsay, unverified statement from “American Timber Services” without any documentation or support as to the source suggesting the price “should be about \$23.50 each”. This documentation lacks any credibility and should be rejected.
- Exhibit “C” is self serving hearsay statement from R.J. Corman’s subsidiary setting forth the average sale price of ties (which is actually consistent with P&N Coal Company, Inc.’s Offer).

The most credible evidence remains as provided by Kovalchick Corporation, (see supplemental Exhibit filed by P&N Coal Company, Inc.,) an established Company that has appeared previously before the Surface Transportation Board supporting P&N Coal Company, Inc.’s position that the prices currently are those previously suggested by R.J. Corman’s 2005 Appraisal.

**Rail Siding OTM Scrap Prices:** P&N Coal Company, Inc., has no objection to the Surface Transportation Board determining the final scrap price value as of the date of decision, reflecting the American Metal Markets established buying prices per ton, but would comment upon R.J. Corman’s statements in their Response. P&N Coal Company, Inc. utilized the total tonnage of 1231 tons as the only information provided by R.J. Corman which was set forth in a “redacted” May 2008 Appraisal utilized for its financing.

**Take Up Costs:** R.J. Corman’s 2008 take up costs were in the amount of \$123,000.00. P&N Coal Company, Inc.’s Offer to Purchase proffered that ties had not increased in value from 2005 and thus utilized a 2005 take up cost of \$64,800.00<sup>2</sup>.

In R.J. Corman’s January 6, 2009 Response, R.J. Corman suggests that the price of ties has increased in value, but the take up costs have not and thus, cleverly, will stipulate to the \$64,800.00 figure. Should the Surface Transportation Board accept the original minimum purchase price of R.J. Corman’s ties, then correspondingly, the take up costs should be reflected as \$123,000.00 as submitted by R.J. Corman’s original submission, as well as in its Application for Financing. P&N Coal Company, Inc. submits however that its burden has been met and the Board should adopt the proffered P&N Coal Company, Inc.’s value and corresponding take up costs.

**Real Estate Appraisals:** Until January 6, 2009, R.J. Corman’s methodology for valuing the real estate was the previous Trail Sale to Lebanon Valley Trail. As set forth in P&N Coal Company, Inc.’s Petition To Toll, R.J. Corman had previously stated “there is no other land valuation information we have for the Hillman tract other than using this sale as a comparable”. Exhibit “G” of Petition.

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<sup>2</sup> See Page 7 of P&N Coal Company, Inc.’s Offer: “As the values more accurately reflect 2005 values for the Line, P&N Coal Company, Inc. will utilize the 2005 Take Up Costs submitted by R.J. Corman in the amount of \$64,800.00.

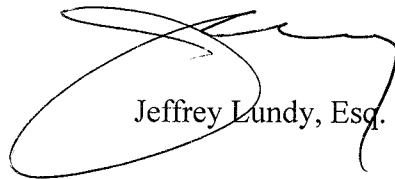
R.J. Corman specifically chose not to utilize across-the-fence "ATP" methodology to value any portion of the Line or Right-of-Way, instead utilizing comparable analysis. Indeed, that comparable analysis continues with the statements submitted by Spiros in Exhibit "E" of R.J. Corman's filing.

It is only after P&N Coal Company, Inc. provided representative and valid comparables which more accurately reflect the value of the Line, that R.J. Corman thereafter submitted a statement by Mr. Spiros<sup>3</sup> and chose to argue values on title differences. Mr. Spiros provided no support or documentation for an opinion that real estate values had increased 5% and absolutely no support for a statement that a Grantee with easement like quality would have a value of 50% of the full fee.

Although P&N Coal Company, Inc. recognizes that R.J. Corman is moving in the right direction as to reducing its valuation from \$300,000.00 to \$115,00.00, based upon the methodology of comparables, and based upon R.J. Corman's selected methodology in its original minimum purchase price for the Rail Sales, the valuation of the real estate should be as set forth in P&N Coal Company, Inc.'s Offer of \$35,000.00.

**Conclusion:** Accordingly, P&N Coal Company, Inc. requests that those Exhibits, A, B, C and E attached to R.J. Corman's January 6, 2009 Reply be stricken and that the Surface Transportation Board accept the Evidence and Exhibits submitted by P&N Coal Company, Inc. in its Revised Offer to Purchase and establish a minimum purchase price in the amount of \$186,576.00 with any adjustments to be made in the scrap steel prices at the time of the decision in this matter.

Respectfully Submitted,



Jeffrey Lundy, Esq.

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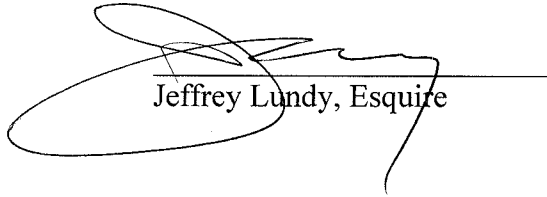
<sup>3</sup> R.J. Corman is nothing short of disingenuous to make the following statement in its Response: "P&N Coal Company, Inc., is not apparently invested in an Appraisal of the Hillman Branch Line because it did not provide any Appraisal information or provide an Appraiser's Report in offer of its support to purchase."

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 15<sup>th</sup> day of January, 2009, P&N Coal Company, Inc.'s Motion to Strike and Reply to R.J. Corman's Exhibits of January 6, 2009, filing was efiled with the Surface Transportation Board. It is hereby certified that a copy of the P&N Coal Company, Inc.'s Motion to Strike and Reply to R.J. Corman's Exhibits of January 6, 2009 was served upon RJ Corman Railroad by serving same upon their attorney by regular mail on the 15<sup>th</sup> day of January, 2009 at the following address:

Michael J. Barron, Jr.  
Fletcher & Sippel LLC  
29 North Wacker Drive  
Suite 920  
Chicago, IL 60606-2832

Also, a copy of the aforementioned was sent by email to Michael Barron, Jr.

  
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Jeffrey Lundy, Esquire