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January 16, 2009

VIA ELECTRONIC DELIVERY

Ms. Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 "E" Street S.W.
Washington, DC 20423-0001

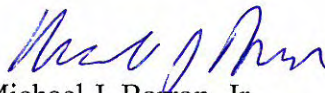
Re: **Docket No. AB-491 (Sub-No. 2X)**
R.J. Corman Railroad Company/Pennsylvania Lines, Inc.—Abandonment
Exemption—In Clearfield, Jefferson and Indiana Counties, Pennsylvania

Dear Secretary Quinlan:

Enclosed for filing in the above-captioned proceeding is the Response of R.J. Corman Railroad Company/Pennsylvania Lines, Inc. to P&N Coal Company, Inc.'s Motion to Strike and Reply to R.J. Corman's Exhibits of January 6, 2009 filing in the above-referenced docket, which Response is dated January 16, 2009.

Feel free to contact me if you have any questions. Thank you for your assistance in this matter.

Very truly yours,



Michael J. Barron, Jr.
Attorney for
R.J. Corman Railroad Company/
Pennsylvania Lines, Inc.

MJB: arw
Enclosure
cc: Mr. Jeffrey Lundy

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

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

Michael J. Barron, Jr.
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**ATTORNEY FOR R.J. CORMAN RAILROAD
COMPANY/PENNSYLVANIA LINES, INC.**

Dated: January 16, 2009

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

R.J. Corman Railroad Company/Pennsylvania Lines, Inc. ("RJCP") hereby responds to the Motion to Strike and Reply to R.J. Corman's Exhibits filed by P&N Company Company, Inc. ("P&N") in this proceeding on January 13, 2009. RJCP urges the Surface Transportation Board to deny the relief sought by P&N.

INTRODUCTION

The Board should deny the relief sought by P&N in its motion filed January 13, 2009. RJCP is entitled to put in its own evidence as part of its case-in-chief. P&N's motion is an impermissible reply to a reply, and thus in violation of 49 C.F.R. §1104.13, and is an attempt to put in evidence and information after the parties have fully submitted their cases in support of valuation, in violation of 49 C.F.R. §1152.27(h)(4).¹

¹ As an initial matter, RJCP notes that P&N took a full week to submit this pleading, even though RJCP had only 6 days (which 6 days included the New Year's Holiday) under STB rules to respond to P&N's Request to Set Terms and Conditions. The delay since briefing on the OFA process was supposedly closed until this motion was filed, especially given the Board's mandate to rule on the Request to Set Terms and Conditions within 30 days after it is filed, is further reason the motion of P&N should be denied.

RESPONSE OF RJCP TO P&N'S REQUEST TO STRIKE

P&N moves to strike Exhibits A, B, C and E of RJCP's January 6 pleading on the basis that such information was not authorized by the rules because they were not submitted to P&N in response to its requests for information.

P&N is wrong. The remedy for P&N if it is dissatisfied with the responses to the information requests is to seek to toll the OFA process, which P&N did once already over the objection of RJCP, who asserted that the request to toll was filed after the due date for such requests under the STB's rules. Then, having received an extension to submit their OFA until December 8, 2008 (see STB Order served in this docket on November 5, 2008), and while the parties were still in the process of exchanging information and reviewing information requests, P&N filed its final OFA on December 2, 2008, 6 days before its final OFA was due. P&N therefore started the process and triggered the deadlines which have brought the parties to where the situation is at today. It is simply unfair for P&N to start the OFA process and the process leading to a Board order to set terms and conditions, and then come back and try to turn the clock back to the situation before the OFA was filed and complain that the information submitted by RJCP is inadequate. Again, what P&N should have done, if it felt the information was inadequate, was file an additional request to toll the OFA.

P&N's interpretation of the rules of 49 C.F.R. §1152.27 is incorrect. P&N refers to a subsection "(g)(4)" of §1152.27. Subsection (g) of 1152.27 only has parts 1 and 2. RJCP assumes that P&N is referring to subsection (h)(4). That section reads:

"The offeror must submit all evidence and information supporting the terms it seeks within 30 days after the offer is made. The carrier's reply to this evidence and support for the terms it seeks are due within 35 days after the offer is made. No rebuttal evidence will be permitted, and evidence and information submitted after these dates will be rejected." (emphasis mine).

Contrary to P&N's argument that this section prohibits the carrier from submitting new evidence but allows only a reply to the offeror's evidence, the section quoted makes it clear that the carrier is entitled to do both. Indeed, it directs the carrier to reply to the offeror's evidence and give support for the terms the carrier seeks. If the Board's rule were to only allow the carrier to reply to the offeror's evidence, then the emphasized language of the rule would not have been used.

It makes no sense, as P&N argues, that the carrier would be prohibited from offering its own evidence in its filing. As stated in RJCP's January 6 pleading, the burden is on the offeror to establish the value. The Board is required to set the price at the Constitutional minimum value, which is the greater of the net liquidation value of the line or the going concern value of the line. See 49 C.F.R. §1152.27(g)(6). It would be completely contrary to the Board's duties as set forth in these rules for the carrier to be prohibited from putting forth its own evidence as to what the Constitutional minimum value of the line should be. Indeed, P&N's reading of the rule creates a situation where the burden of proof would be on the carrier to come forth with the initial evidence in this request process to set terms and then allow P&N to respond, but that is not what the rule says. P&N comes forth with its evidence first and it has the burden of proof. That is what happened here. After P&N submitted its request to set terms and conditions, which was simply a bald request to set terms that impliedly incorporated its OFA, the railroad, working under the rules' very tight deadlines, put together its case. That included going out and soliciting up to date information on tie valuation which in this time of volatile commodity prices is consistent with Board precedent.² See STB Finance Docket No. 35160, Oregon International

² RJCP's Exhibit A provides a breakdown of ties by their condition. Due to an unexplained e-mail problem, this information was inadvertently not provided to P&N. However, P&N's valuation is not based on any breakdown of this but applies the same value to all ties; so this

Port of Coos Bay—Feeder Line Application—Coos Bay Line of the Central Oregon & Pacific Railroad, Inc., STB Decisions served October 31, 2008 and November 20, 2008. To grant P&N's request to strike these exhibits would have the effect of prohibiting RJCP from putting forth its own case-in-chief with regard to the value of the line and thus would be violative of the carrier's rights under §1152.27(h)(4) and would prohibit the Board from carrying out its duties to set the Constitutional minimum value of the line.

P&N also argues that Exhibits D and E should be stricken because they are dated subsequent to the date of the Verification signed on behalf of RJCP. RJCP is simply verifying the facts set forth and provided by this pleading. The information provided by Art Spiros did not come from RJCP, but it has its own independent verification because it is an affidavit and therefore complies with Board rules in that the statements and factual assertions that Mr. Spiros makes are supported by a verification. Therefore, it should be allowed. With regard to Exhibit D, which is the American Metals Marketing data, the market prices for December 31st, two days before the RJCP verification date, were also \$210 for No. 1 Railroad Heavy Melt and \$200 for OTM, the same prices that were in place on January 5th. Furthermore, it is totally inconsistent for P&N to argue that the AMM for Pittsburgh should be the standard used in this proceeding and then to argue that the exhibit submitted as evidence for that market should be disregarded.

missing bit of information would not affect P&N's valuation. Also, in its comments on the Exhibits in its January 13, 2009 filing, P&N does not comment on the number or breakdown of ties, just the values.

**RESPONSE OF RJCP TO P&N'S REQUEST TO
COMMENT ON RJCP'S EXHIBITS**

P&N's attempts to comment on RJCP's exhibits are nothing more than an attempt to submit additional information after the time for pleadings in this proceeding has closed; they constitute as well an impermissible reply to a reply. 49 C.F.R. §1104.13 and of 49 C.F.R. §1152.27(h)(4). Therefore, the Board should simply disregard P&N's request. If the Board, nonetheless, decides to accept P&N's comments on the exhibits, then RJCP requests an opportunity to submit additional evidence and information in support of its valuation so that this proceeding complies with 49 C.F.R. §1152.27(h)(4).

CONCLUSION

For the reasons set forth herein, the STB should deny P&N's motion to strike exhibits and to submit additional information after the time for pleadings has closed in this proceeding to set terms and conditions.

Respectfully submitted,

By: 

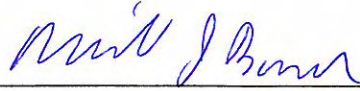
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**ATTORNEY FOR R.J. CORMAN RAILROAD
COMPANY/PENNSYLVANIA LINES, INC.**

Dated: January 16, 2009

CERTIFICATE OF SERVICE

I, Michael J. Barron, Jr., an attorney, certify that a true copy of the foregoing instrument was served upon the address listed below by email and by placing a true and correct copy in the United States Mail for delivery to the address set forth below on the 16th day of January, 2009.



Michael J. Barron, Jr.

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Lukehart & Lundy
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