

Law Offices

VUONO & GRAY, LLC

2310 Grant Building

Pittsburgh, PA 15219-2383

August 18, 2003

John A. Vuono
William A. Gray
Mark T. Vuono*
Dennis J. Kusturiss
Christine M. Dolfi
Louise R. Schrage
Susan C. Indrisano+

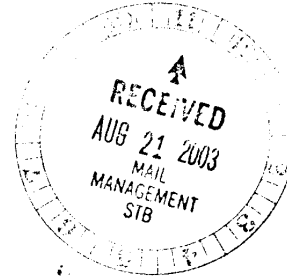
*Also Admitted in Florida
+Also Admitted in Maryland

Richard R. Wilson
of Counsel

Telephone
412-471-1800

Facsimile
412-471-4477

Re: Railroad Ventures, Inc.-Abandonment Exemption
-Between Youngstown, OH and Darlington, PA
In Mahoning and Columbiana Counties, OH
and Beaver County, PA
Docket No. AB556 (Sub No. 2X)



208744

Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

ENTERED
Office of Proceedings

2003

Part of
Public Record

Dear Sir:

Enclosed for filing in the above-captioned proceeding please find the original and ten (10) copies of the Surrebuttal Testimony and Legal Arguments of Railroad Ventures, Inc.

Copies of this pleading have been served on all parties of record. Please date stamp and return a copy of this letter in the enclosed self-addressed stamped envelope provided for that purpose to indicate your receipt of this filing.

Very truly yours,

VUONO & GRAY, LLC

A handwritten signature in dark ink, appearing to read "Richard R. Wilson".

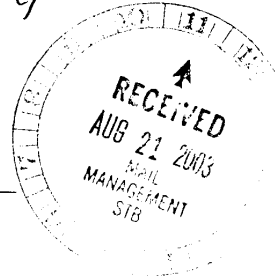
Richard R. Wilson

CW/27409

Enclosures

cc: All Parties of Record

208744
Before the
SURFACE TRANSPORTATION BOARD
Washington, D.C.



DOCKET NO: AB 556 (Sub No. 2X)
RAILROAD VENTURES, INC. – ABANDONMENT EXEMPTION
BETWEEN YOUNGSTOWN, OH AND DARLINGTON, PA,
IN MAHONING AND COLUMBIANA COUNTIES, OH
AND BEAVER COUNTY, PA

SURREBUTTAL TESTIMONY AND LEGAL ARGUMENT BY
RAILROAD VENTURES, INC.

ENTERED
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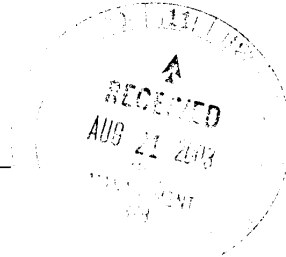
AUG 21 2003

Part of
Sub. 2003

RICHARD R. WILSON, ESQ.
Attorney for Railroad Ventures, Inc.
Pa. I.D. #25661
Vuono & Gray, L.L.C.
2310 Grant Building
Pittsburgh, PA 15219
(412) 471-1800

Dated: August 21, 2003

Before the
SURFACE TRANSPORTATION BOARD
Washington, D.C.



DOCKET NO: AB 556 (Sub No. 2X)
RAILROAD VENTURES, INC. – EXEMPT ABANDONMENT
BETWEEN YOUNGSTOWN, OH AND DARLINGTON, PA,
IN MAHONING AND COLUMBIANA COUNTIES, OH AND BEAVER COUNTY,
PA --RAIL LINE OF YOUNGSTOWN & SOUTHERN RAILROAD COMPANY

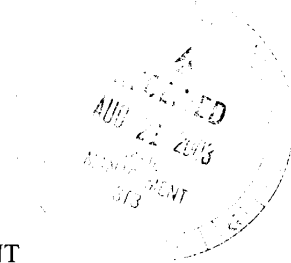
SURREBUTTAL AND LEGAL ARGUMENT BY
RAILROAD VENTURES, INC.

By order dated July 30, 2003 the Surface Transportation Board (“STB”) provided Railroad Ventures, Inc. (“RVI”) a further opportunity to respond to the rebuttal statement and legal arguments filed by Columbiana Port Authority and Central Columbiana and Pennsylvania Railroad (“CCPA/CCPR”) on April 13, 2003. By Petition for Enlargement of Time, RVI, with the consent of opposing counsel, sought an extension of the August 13, 2003 filing deadline to August 21, 2003 which was granted by the Board’s Order of August 12, 2003. RVI appreciates the opportunity afforded by the Board to address the factual and legal issues presented in the CCPA/CCPR rebuttal statement.

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. AB-556

RAILROAD VENTURES, INC. - ABANDONMENT
BETWEEN YOUNGSTOWN, OHIO AND DARLINGTON, PA
IN MAHONING AND COLUMBIANA COUNTIES, OHIO
AND BEAVER COUNTY, PA



SURREBUTTAL VERIFIED STATEMENT OF GEORGE D. WEHNER, ASA

1. My name is George D. Wehner. On April 3, 2003 I submitted a Verified Statement in this proceeding describing my audit and analysis of documents provided to RVI by CCPA and CCPR in justification for expenditures made by those parties from the escrow fund established by the Surface Transportation Board. On April 18, 2003 Walter J. Gane, an employee of CCPR, submitted a Rebuttal Verified Statement to which the Surface Transportation Board has requested that RVI respond. The purpose of this Surrebuttal Verified Statement is to address various issues raised by Mr. Gane in his April 18, 2003 statement and to point out to the Board that Mr. Gane's statement fails to address the fundamental failures and omissions which I documented in my April 3, 2003 analysis.

2. First, Mr. Gane's lack of knowledge of my professional experience and qualifications has no bearing on this matter. Furthermore, Mr. Gane's knowledge of the current condition of the CCPR line does not necessarily address the issues which I had

considered in my April 3, 2003 statement. Mr. Gane was employed by the Youngstown and Southern Railroad which was a subsidiary of the Pittsburgh and Lake Erie Railroad. He also worked as a locomotive engineer when the line was operated by the PL&W under the ownership of Mr. Reno Davis. When the Ohio and Pennsylvania Railroad ("OHPA") took over the line in 1995, Mr. Gane was not employed by that railroad and accordingly his personal knowledge regarding the condition of the line from 1995 until the line was acquired by CCPR in 2001 is certainly questionable. Furthermore, most of the factual representations concerning the physical condition of the line, the number of derailments, and the amount of traffic being handled on the line prior to its acquisition by RVI are matters which Mr. Gane, as a locomotive engineer, would have only limited knowledge. This is confirmed by Mr. Gane's reliance on second hand information provided by a former Y&S employee which has little bearing on the condition of this line in the 1990's.

3. With respect to Paragraph 4 of Mr. Gane's statement, I have spoken to FRA Inspector Chet Rhodes and he advises that since the track on CCPR is still excepted track, the FRA does not report specific exceptions. He told me that the entire line is currently in substandard condition, due primarily to center bound ties. A center bound tie is a condition in which there is very little ballast at the ends of the ties and that whatever ballast does exist is at the center of the tie. When a train is moved over such a line the weight of the train is not distributed evenly over the entire tie and road bed. This causes the tie ends to deteriorate and destabilizes the track. Mr. Rhodes indicated this condition is present over the entire rail line which confirms my own observations and prior testimony. This condition is only made worse by the heavy rains we have had this summer in Ohio. As a consequence, CCPR has experienced repeated derailments. Mr.

Gane's comments regarding the safety of rail service on the line is directly contradicted by a recent newspaper report of recurring derailments experienced by CCPR. (Exhibit A)

4. On Page 3, Paragraph 5 of Mr. Gane's statement, he relates that in 1984 there were ten or twelve men who worked on this line. That does not contradict my statement. I indicated there were two or three track men who were employed at that time to perform maintenance of way along the line. The other employees of the Y&S referred to by Mr. Gane were not performing track maintenance.

5. With respect to Mr. Gane's comments in Paragraph 6, Page 3 of his statement, the tie replacement between 22.5 and 29 were to correct FRA identified defects at specific locations between those mile posts. It was not an overall tie replacement program. I know this to be fact because I supervised that program for ORDC. Additionally, the customers which Mr. Gane identifies as being located at Negley, Cannelton, and Darlington during the years in which the line was operated by OHPA and PL&W were certainly located south of milepost 18 but the fact that they accounted for 50% of the traffic means nothing unless you know the number of carloads, per car revenues and per car costs. If you only handle 20 carloads a year, 50% of the traffic is 10 carloads. Moreover, Mr. Gane's recollection regarding derailments is simply inaccurate. Throughout the period in which the line was operated by P&LW and OHPA there were recurring derailments and that condition continues the present as indicated by Exhibit A.

6. In Paragraph 8, Mr. Gane claims that my discussion about signal crossings was misleading. Since Mr. Gane was employed as a locomotive engineer by PL&W and was not employed on the rail line during the period in which it was operated by OHPA, he simply has no personal knowledge from which to determine that RVI was responsible

for damage or destruction of those signals. He does not know the maintenance condition of those signals during that time period. As a locomotive engineer, he may have general knowledge concerning signals, but his rebuttal statement provides no basis for any signal expertise or the ability to analyze the cause for signal malfunctions. Moreover, he does not state when the batteries or switches became corroded or broken, he only states at the time CCPR acquired the line that was their condition. As my prior testimony indicates, I personally inspected this line on several occasions and these signals were already in a nonoperational state when RVI acquired the rail line. Mr. Gane acknowledges that birds and other animals had built nests in the meter boxes and others had been vandalized, but he simply does not know when these conditions occurred.

7. Mr. Gane is technically correct when he states that rust on the rails would not have caused the old island circuits to activate the signals without a train being present. Rust can prevent the train from completing the circuit that activates the signals when the train approaches the crossing. In this condition, the signals do not operate and motor vehicles are not warned of the train as it approaches the crossing. Moreover, rust or other conditions may also cause a signal to malfunction, and the signal will activate in the absence of an approaching train. These were the conditions that were reported by various municipalities to which RVI responded when it agreed that those signals could be temporarily disconnected to promote highway crossing safety.

8. Mr. Gane is obviously in a better position to know what signals have been installed by CCPR on the line. However, the audit information provided by CCPR did not contain that detail. I would have thought that in making improvements to the line, CCPR would have used the most current technology available since these crossings were

being federally funded, but apparently it did not. As far as the necessity for signals go, I know many short lines which operate without signals and simply flag the crossing. Indeed, some railroad safety experts contend that flagging the crossing is actually a safer practice because where there is a railroad employee present, motorists are not as inclined to run the crossing as they are when the crossing is protected only by signal lights or gates.

9. In response to Mr. Gane's comments at Paragraph 10 of his Verified Statement, I was personally involved in inspections of this line and as indicated in my prior testimony there are many instances at various locations where washouts occurred. There were two washouts which directly impacted this line in late 1996 and early 1997 but the frequency of washouts was not the principle point of my testimony. My testimony was that the nature of the particular washout in Youngstown, Ohio was a recurring problem and that the manner in which it was repaired was likely to result in further difficulties. Based on my professional experience, as a track appraiser and supervisor of state maintenance grants, I am certainly by experience and qualification in a position to make an informed observation in that regard.

10. Similarly, Mr. Gane's comments regarding the NS overpass suggest that in attempting to create more clearance, the basic drainage problem at this location will be made worse, not corrected. Furthermore, clearing and drainage work at the NS overpass has nothing to do with highway crossings for which the STB created the escrow fund. Under Mr. Gane's approach, the escrow fund was to be used, for every conceivable condition or problem to which this line was subject despite the fact that CCPA purchased the line "where is, as is". Such assertions claim too much.

11. The statements contained in Paragraph 12 of Mr. Gane's Verified Statement claim that a "substantial amount of new ballast" has been placed on the line by CCPR. However, based in my inspections and the comments of FRA Inspector Rhodes, much more ballast is needed. The question which Mr. Gane does not answer is where that ballast was placed, how much was used, and what was the condition of the track or right of way where the ballast was replaced.

12. Mr. Gane's Verified Statement is also overtly self-serving. He states that only two derailments have been suffered by CCPR. His statement was made as of April 18, 2003. On July 21, 2003 residents in Columbiana reported that there have been at least four derailments on the tracks in that community alone during June and July 2003. (See Exhibit A) It is therefore evident that the derailment problem on this line is not improving. Indeed in that article Mr. Tracy Drake, Executive Director of CCPA, acknowledged that "trains slipping off the tracks along the route are not uncommon." This directly contradicts Mr. Gane's rebuttal testimony. Since he is the CCPR superintendent and responsible for maintenance of CCPR track, it would appear that his statement is intended to minimize continuing derailment problems.

13. The balance of Mr. Gane's testimony and particularly those assertions set forth in Paragraphs 27 through 31 criticize my analysis of the documentation provided by CCPR and CCPA. In my analysis, I noted the fragmentary and incomplete nature CCPR's documentation. As a consequence, Mr. Gane now attempts to use his failure to provide adequate documentation as a basis for challenging my credibility in attempting to analyze and assess the information which he did provide. CCPR and CCPA had the obligation to provide full disclosure and documentation from which a thorough review

and analysis of the track repairs paid from the escrow account could be made. They did not do so. Furthermore, it was Mr. Gane who was personally responsible for administering, supervising and preserving appropriate documentation to justify escrow account expenditures. His claim that such documentation exists but was not submitted or that the administrative burdens associated with compiling and presenting this information were beyond the capabilities of CCPR miss the point. I could only review the information which CCPR provided. Since these documents were incomplete and the information they provided inadequate, the fault for that rests with Mr. Gane and not with my analysis of his incomplete information. Again, given the failure of Mr. Gane to provide the necessary information to account for CCPR's expenditure, it's not my credibility which is to be questioned, it is Mr. Gane's.

14. Mr. Grane's statement attempt to present an optimistic picture of CCPR operations, but this is not accurate. Because CCPA/CCPR have not made necessary capital improvements to the track (many of which were identified in my prior inspection reports) to prevent recurring derailments, CCPR has experienced service problems and is reported to be losing money on this venture. This is a matter of significant concern to ORDC because state funding was predicated on improved service and traffic commitments by CCPR and CCPA. I also understand that negotiations have occurred with other regional carriers to replace CCPR as operator of this line and/or to purchase the line from CCPA. It, therefore, appears that future viability of this line is still very much in doubt.

15. In conclusion, Mr. Gane's rebuttal statement is little more than an attempt on his part to discredit my testimony by selectively attacking minor points while

ignoring that, with only one exception, none of the CCPA payments from the escrow account complied with STB requirements. I believe the Board will fully comprehend that Mr. Gane's statement is no more than an attempt to "shoot the messenger" because my April 3, 2003 statement is both accurate and damning.

Columbiana, Tenn.'s
Largest Daily Newspaper



MORNING JOURNAL

Neighbors
track
train
troubles

*From
Bryce Weber*

Monday August 11, 2003

www.MorningJournal.com

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Classifieds

Calendar

Crossword

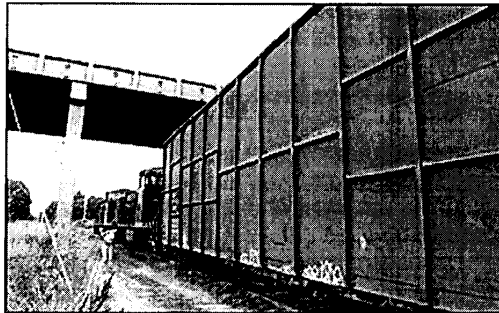
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Neighbors track train troubles

By GERALD
BENSON, Journal
Staff Writer

7/21/2003

A Central Columbiana and
Pennsylvania Railroad train
is back on the tracks in
Columbiana.

Morning Journal/Aaron Rudolph

COLUMBIANA - A train derailment has some Columbiana residents wondering about the safety of railroad tracks running through the city.

Wayne Sitler, who lives in the Jamestown Trace development, watched from his backyard Thursday night as crews from the Central Columbiana and Pennsylvania Railroad worked to get an engine and part of its payload up and running after a train slipped off the tracks.

Sitler said at least four derailments have occurred along the tracks in the past three weeks.

"I went and looked at those tracks the other day, and I said it would take three more runs before they cracked. Wouldn't you know it, on the third train I've seen come through it came off," Sitler said.

Crews were still working at the derailment site into early Friday

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afternoon, according to Sitler.

Sitler said there are many noticeable deficiencies with the railroad tracks, noting warped railroad ties and tracks about to crack as the most troublesome.

The CCPR was contacted but did not return a phone call.

The Columbiana County Port Authority owns the railway, but has leased it to CCPR since 2001. According to Tracy Drake, director of the port authority, it is the responsibility of CCPR to take care of derailments.

Drake said trains slipping off the tracks along that route are not uncommon, but said it needs to happen less often.

"That line went through many years of neglect," Drake said.

He said the Ohio Rail Commission did \$1 million in improvements in the 1990s, and the port authority did an additional \$1 million of work when it came into possession of the line earlier this decade. Drake said the port is trying to obtain grants to do an additional \$1 million or more in repairs.

Sitler said the trains do not bother him or the other residents he has talked with in Jamestown Trace, but he said they are all concerned about the safety of the rail line.

"I don't know how anyone could let trains run along those tracks," Sitler said. "They're trying to run 100-ton trains on tracks that are breaking, and I can't understand how they're doing it."

Drake said the trains run at a maximum speed of 10 mph. At that speed, Drake said it is "very unlikely" that a train could derail and tip over. He also said the train is not hauling hazardous materials or anything else that constitutes a serious threat to residents along the railway.

"The trains go too slow to create a problem residents need to be concerned with," Drake said. "I think we need to work on becoming better neighbors with the residents by fixing some of these problems and doing some cleanup along the line."

City Manager Keith Chamberlin said although trains have come off the tracks along the CCPR railway, he does not see any major safety concerns for residents. Still, he said there are concerns that need addressed.

"These tracks are undoubtedly old and need work," Chamberlin said. "I believe there are safety concerns, but the trains aren't

going very fast and they aren't carrying hazardous materials. There's a lot less that could happen there than with Norfolk Southern."

Norfolk Southern is the main set of tracks that goes through town and carries many items, including hazardous materials.

Chamberlin said he plans to contact the state and federal rail commissions to see what can be done.

One reason more trains are slipping off the tracks is because there has been an increase in train traffic along the CCPR line. According to Drake, the port board figured on 1,800 cars passing along the line per year. But the line has been carrying 5,000 cars per year, and that has resulted in some additional wear along the tracks.

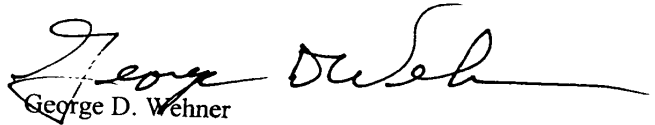
The railway travels 37 miles from Youngstown to Darlington, Pa., and serves several customers, including the Negley landfill. It takes four or more hours for the trains to travel the entire distance, but if the port authority obtains money for repairs, the trains would be allowed to run at 25 mph, cutting the time in half.

Some Columbiana residents have also complained about the weeds growing along the railway. Drake said the matter has been discussed and the CCPR has begun cutting the weeds.

jjbenson@mojonews.com

VERIFICATION

I, George D. Wehner, ASA, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Subrebuttall Verified Statement.


George D. Wehner

LEGAL ARGUMENT

The CCPA/CCPR Rebuttal is based on the Verified Statement filed by Mr. Walter J. Gane attacking the credibility of RVI's witness, Mr. George Wehner. Mr. Wehner has prepared and submits his enclosed Surrebuttal Statement responding to those matters. Although Mr. Gane's statement seeks to discredit Mr. Wehner, it fails to acknowledge Mr. Wehner's professional credentials as track appraiser and project manager with the Ohio Rail Development Commission and his personal knowledge of the history and condition of the subject rail line over an extended period of time. Furthermore, the Rebuttal Statement filed on behalf of CCPA/CCPR mischaracterizes and misrepresents the factual record in this proceeding as well as the documentation which was submitted by Mr. Wehner in connection with his April 3, 2003 testimony. Mr. Wehner's testimony regarding the history and condition of the former Y&S line is certainly relevant and places the actions of CCPR and CCPA in context. His testimony summarizes various documents already of record in this proceeding and provides an explanation of why CCPA/CCPR diverted RVI's escrowed funds to unauthorized purposes and uses.

Mr. Gane's testimony is overtly self-serving. Mr. Gane was the individual who was personally involved in administering and supervising the repairs and expenditures made by CCPR on this rail line. It was he who compiled documentation and sought reimbursement for these expenditures from CCPA. Indeed, Mr. Gane may yet have personal liability for his acts or omissions in connection with CCPR's failure to comply with proper bidding and accounting procedures ordered by the Board. Thus, the credibility of his rebuttal statement must be weighed in that light.

It should also be noted that despite claims of increased traffic, Mr. Gane submits no verifiable evidence of such traffic and this line continues to be plagued with derailments. Indeed, as Mr. Wehner points out, Mr. Gane's Rebuttal Statement glosses over the fact that he was not employed on this line from 1995 until the line was acquired by CCPR. Moreover, his employment by the Y&S and PL&W was as a locomotive engineer so he was not directly involved in maintenance activities. Thus his personal knowledge concerning the condition of the line or who or what contributed to its continuing deterioration is less than expert or accurate.

CCPR complains that it is being held to requirements "that were not in place at the time the expenditures were made." This assertion completely ignores that the procedures imposed by the STB with respect to the administration of the escrow fund were those which counsel for CCPA proposed on March 16, 2001 to ORDC (See Counsel's Exhibit 2 to RVI Reply to Motion for Final Closure). This proposal was just six weeks after the line sale closed on January 24, 2001 and the only invoices submitted to CCPR which bear an earlier date are the January 31, 2001 invoice for wash out repairs by Rail Works and the March 19, 2001 Ohio Track Invoice #00-0028 for the Boardman Township crossing which was competitively bid in February, 2001. Competitive bidding is widely recognized as a standard good business practice and CCPR provides no explanation as to why it did not continue use of competitive bidding procedures for expenditures charged to the escrow account.

CCPR also complains that it was charged with getting the line in shape as soon as possible and that, given this responsibility, it was justified in using the escrow funds for unauthorized purposes and not competitively bidding or adequately accounting for the

work undertaken. However, if CCPR did not have sufficient financing to handle initial start up costs and operations associated with restoring the line to rail service, it should not have signed an operating agreement with CCPA. If CCPA represented to CCPR that these costs could be drawn from the escrow account, then CCPR either did not read the STB orders or agreed with CCPA to improperly divert funds from that account.

The Rebuttal Statement indicates that CCPA/CCPR did not wait for the Board to resolve administrative issues regarding the escrow account. CCPR acknowledges that it proceeded with non-crossing expenditures on the line without Board guidance as to whether they could be paid from the escrow account. In other words, CCPR proceeded at its own risk. If CCPR needed to move quickly, it should have been prepared to invest its own funds or seek other resources in the form of short term financing until a final resolution of the escrow account requirements had been reached. It should not have tapped escrow funds for uses which had been under dispute with RVI from the very inception of that account. CCPR now contends because it needed the money to start the line, it could ignore STB limitations on use and STB accounting and bidding requirements imposed on that fund.

CCPR did not act in good faith. RVI, from the inception of the escrow account, put CCPR/CCPA on notice that any attempt to use those funds for purposes beyond those established by the Board for crossing restoration and signal reactivation would be challenged and subject to objection. The actions taken by RVI to protect the escrow funds from improper diversion for unauthorized purposes have been characterized by CCPA/CCPR as “harassment”, but those efforts by RVI were attempts to assure that those funds were used and accounted for in a manner consistent with the fiduciary

principles which pertain to an escrow account. Even more telling is the fact that CCPR/CCPA never asked the Board to expand the purposes of the escrow account or to preapprove the expenditures sought to be made from that account to be certain that they were within the purposes for which the fund was established by the Board.

CCPR now concedes that contrary to the STB order it did not competitively bid escrow account expenditures except for the Boardman Township crossing which RVI had previously approved. Nonetheless, CCPR did manage to competitively bid every crossing which was rebuilt with federal funds. CCPR claims that not a single repair was improperly undertaken. That baldface claim has no merit whatsoever. The STB established the escrow account to insure payment of crossing restoration and signal reconstruction costs for which RVI had acknowledged responsibility to local municipalities when it permitted temporary overpaving of crossings and signal disconnections to protect crossing tracks and public safety prior to resumption of rail service should the line be acquired for continued rail operations. CCPR and CCPA have consistently refused to recognize these limitations as well as the fiduciary responsibilities and standards applicable to the administration of this escrow account. Instead CCPR/CCPA viewed the account as a slush fund for any purpose purportedly related to the rail line. Indeed a substantial portion of the costs reimbursed by CCPA to CCPR are overhead and operating costs unrelated to any capital improvements. Despite RVI's repeated expressions of concern regarding this position, CCPR/CCPA proceeded to spend \$359,510 of the escrow account without competitive bidding and for purposes unrelated to the crossing restorations or signal reconnections which were instead rebuilt and funded with federal crossing dollars. Accordingly, the CCPA/CCPR expenditures from the

escrow account were “improperly undertaken” under both state and federal law and without prior approval of the Surface Transportation Board.

The Board has already disclaimed before the Sixth Circuit Court of Appeals that CCPA/CCPR’s administration and use of the escrow funds is subject to a “fraud only” standard. That standard, subsequently abandoned by counsel for the STB in oral argument before the Sixth Circuit Court of Appeals, applied only if CCPA/CCPR administered the escrow account in accordance with the competitive bidding requirements and other fiduciary standards imposed by the Board. Clearly this did not occur. Accordingly, the fraud only standard (even if not abandoned by the Board) has no application given the failure of CCPA/CCPR to comply with Board imposed requirements.

Nor does the Board’s refusal to arbitrate the disputed crossing repairs give CCPR/CCPA discretion to do whatever they wanted with the escrow fund. An escrow fund under both federal and state law is subject to strict fiduciary standards of disclosure and accountability. Given the absence of detailed STB guidance on procedures for this account, and in light of RVI’s repeated expressions of concern about unauthorized expenditures, a prudent man standard of care required CCPA/CCPR to seek STB preapproval of any noncrossing expenditures from this fund. CCPA/CCPR claims of broad discretion to utilize funds from this escrow account are legally untenable and without merit under case law cited by RVI in its April 3, 2003 Reply.

It should also be noted that Mr. Gane is the employee of CCPR which was not the escrow agent for this fund. The Board assigned CCPA to be the escrow agent for the fund and there is not a single word of testimony from any CCPA witness regarding these

matters. It was, after all, CCPA which had the responsibility to monitor and exercise fiduciary oversight of the funds which the STB entrusted to it. Nothing in Mr. Gane's testimony or the CCPA/CCPR Rebuttal addresses the complete lack of independent fiduciary oversight of those funds by CCPA.

The legal arguments asserted by CCPA/CCPR in their Rebuttal disregard their noncompliance with the STB orders and procedural safeguards for escrow fund expenditures. They deny any fiduciary duty or accountability on the part of CCPA/CCPR for use of those funds. They attempt to justify CCPA/CCPR's improper expenditures from the funds based on RVI's "harassment" or conduct prior to the abandonment proceeding. This device, however, is readily apparent. The Board has already addressed RVI's conduct in this proceeding. It did so in part by creating the escrow account. That issue has been litigated and determined adversely to RVI's interest. However, those determinations do not excuse the Board from holding CCPA/CCPR to a strict standard of compliance with fiduciary obligations under the STB's orders and decisions. Nothing in the CCPA/CCPR rebuttal refutes the facts of Mr. Wehner's audit which establish that CCPA improperly diverted \$359,510 of escrowed funds to unauthorized purposes without prior disclosure to or permission from the STB in violation of CCPA's fiduciary duties and the STB's orders.

Accordingly, RVI respectfully requests that the Board direct CCPA to repay

\$359,510 of the escrow fund to RVI together with counsel fees and costs related to the recovery of these funds.

Respectfully submitted,

VUONO & GRAY, LLC

By:

A handwritten signature in black ink, appearing to read "Richard R. Wilson", written over a horizontal line.

Richard R. Wilson

Attorney for Railroad Ventures, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have this 18th day of August, 2003 served a copy of the Surrebuttal Testimony and Legal Argument by Rail Ventures, Inc. by First Class United States Mail, postage prepaid:

Keith G. O'Brien, Esq.
Rea, Cross & Auchincloss
Suite 570
1707 L Street, N.W.
Washington, D.C. 20036

Richard H. Streeter, Esq.
Barnes & Thornburg
Franklin Tower, Suite 500
1401 Eye Street, NW
Washington, DC 20005

A handwritten signature in black ink, appearing to read "Richard R. Wilson", written over a horizontal line.

Richard R. Wilson
Attorney for Railroad Ventures, Inc.