

209008

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September 23, 2003

Re: Railroad Ventures, Inc. - Abandonment Exemption - Between Youngstown, OH and
Darlington, PA in Mahoning and Columbiana Counties, OH and Beaver County, PA

Docket No: AB-556 (Sub No 2X)

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



Dear Mr. Williams:

Enclosed for filing please find Reply of Railroad Ventures, Inc. to Motion to Strike.

Copies of this Reply of Railroad Ventures, Inc. to Motion to Strike have been served on all parties of record. Please date stamp and return to the undersigned the additional copy of this letter in the self addressed, stamped envelope provided.

Very truly yours,

VUONO & GRAY, LLC

Richard R. Wilson
Attorney for Railroad Ventures, Inc

RRW/bab

Enclosure

xc: Railroad Ventures, Inc.
All Parties of Record

ENTERED
Office of Proceedings
SEP 29 2003
Part of
Public Record

209008

Before the
SURFACE TRANSPORTATION BOARD
Washington, D.C.



STB 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

REPLY OF RAILROAD VENTURES, INC.
TO MOTION TO STRIKE

RICHARD R. WILSON, ESQ.
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Dated: September 23, 2003

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Before the
SURFACE TRANSPORTATION BOARD



STB 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

REPLY OF RAILROAD VENTURES, INC.
TO MOTION TO STRIKE

On September 16, 2003, Central Columbiana & Pennsylvania Railway, Inc. ("CCPR"), filed a Motion to Strike portions of RVI's responsive testimony submitted to the Surface Transportation Board in compliance with the Board's Order of July 30, 2003. CCPR complains that the testimony of RVI's expert consultant, Mr. George Wehner, contains inadmissible hearsay that should be stricken from the record. For the following reasons, the CCPA Motion to Strike should be denied.

The hearsay testimony offered by Mr. Wehner is based on statements made to him by FRA Inspector Chet Rhodes and is directly responsive to the CCPR's inaccurate characterization of Mr. Rhodes' inspection reports. These reports were submitted by CCPR without supporting testimony from Mr. Rhodes and were sought to be used by CCPR's witness, Mr. Gain, as corroborative hearsay testimony in support of Mr. Gain's assertions regarding track conditions and derailments on the CCPR rail line. Thus, RVI's use of Mr. Rhodes' subsequent hearsay statements fall squarely within Federal Rule of Evidence 806 which permits the use of inconsistent hearsay statements to impeach Mr.

Rhodes' prior statements offered by Mr. Gain. Having ascribed various factual assertions regarding CCPA track conditions to Mr. Rhodes' inspection reports, CCPR can hardly complain that RVI has used hearsay statements from Mr. Rhodes to impeach those characterizations and to correct that record.

Furthermore, the STB is an administrative agency, not a court of law. It is therefore within the Board's discretion to accept hearsay statement and accord those statements such weight as the Board deems appropriate. Petition for Declaratory Order – Nancy Hall v. Aloha International Moving Services, Inc., et. al., STB Docket No. 42048, 2001, STB Lexis 252 (March 9, 2001); Mountain Laurel Railroad Company- Acquisition and Operation Exemption – Consolidated Rail Corporation, Finance Docket No. 31974, 1998 STB Lexis 131 (May 13, 1998); Bennett v. National Transportation Safety Board, 55 F 3d, 495 (10th Cir. 1995).

Accordingly, CCPR's Motion to Strike should be denied and the Board should accord Mr. Wehner's hearsay testimony such weight as it deems appropriate.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard R. Wilson", with a long horizontal flourish extending to the right.

Richard R. Wilson, Esq.
Attorney for Railroad Ventures, Inc.

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CERTIFICATE OF SERVICE

Richard R. Wilson, Esq., hereby certifies that on the 23rd day of September, 2003, he did serve a true and correct copy of the foregoing Reply of Railroad Ventures, Inc. Motion to Strike upon the following counsel of record, by first class mail, postage prepaid, at their offices as set forth below:

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