

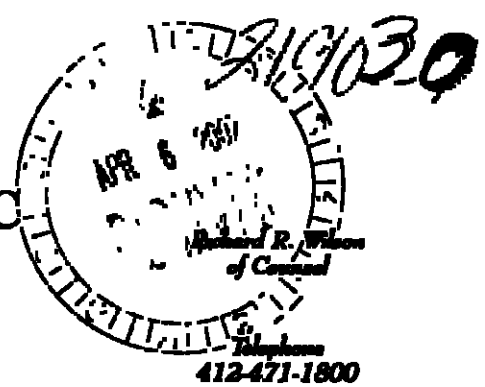
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April 5, 2007

**Re: Railroad Ventures, Inc. – Abandonment Exemption Between Youngstown, OH and
Darlington, PA in Mahoning and Columbiana Counties, OH and Beaver County, PA,
STB Docket No. AB 556 (Sub No. 2X)**

**Vernon A. Williams, Secretary
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001**

SENT VIA FEDERAL EXPRESS

Dear Sir

Enclosed for filing please find the original and ten copies of the Response of Railroad Ventures, Inc. to STB Decision of February 13, 2007 Regarding ORDC Crossing Signal Expenditures in the above captioned proceeding.

Please date stamp and return the additional copy of this pleading in the enclosed self addressed, stamped envelope provided for that purpose. Copies of this Petition have been served on all parties of record.

Very truly yours,

VUONO & GRAY, LLC

Richard R. Wilson, Esq.

RRW/bab

Enclosure

**xc: All Parties of Record
Railroad Ventures, Inc
John A. Vuono, Esq.**

**ENTERED
Office of Proceedings**

APR 06 2007

**Part of
Public Record**

Before the
SURFACE TRANSPORTATION BOARD

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

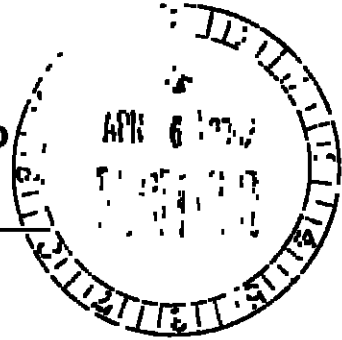
RESPONSE OF RAILROAD VENTURES, INC. TO
STB DECISION OF FEBRUARY 13, 2007
REGARDING ORDC CROSSING SIGNAL EXPENDITURES

RICHARD R. WILSON, ESQ.
Attorney for Railroad Ventures, Inc.
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APR 6 2007
ENTERED
Office of Proceedings
APR 06 2007
Part of
Public Record

Dated: April 5, 2007

Before the
SURFACE TRANSPORTATION BOARD



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**

**RESPONSE OF RAILROAD VENTURES, INC. TO
STB DECISION OF FEBRUARY 13, 2007
REGARDING ORDC CROSSING SIGNAL EXPENDITURES**

INTRODUCTION

By its decision dated February 13, 2007, the Board addressed the disposition of the \$375,000 escrow fund which was set aside from RVI's proceeds of the forced sale of the rail line at issue in the above captioned proceeding. In the Board's decisions of December 15, 2005 and December 13, 2004, the Board concluded that CCPA/CCPR had failed to provide adequate documentary and accounting justification for expenditures from RVI's escrow fund and ordered CCPA to refund \$208,751 plus interest to RVI. However, in its decision of December 2005, the Board tentatively ordered that the refund be reduced by an additional \$149,872 resulting in a possible reduced refund of \$58,879. The Board provided RVI with an opportunity to contest the tentative \$149,872 reduction, and after considering RVI's January 19, 2006 response, in its February 13, 2007 decision, the Board concluded that the \$149,872 reduction was not a proper matter for reconsideration and accordingly disallowed that reduction. As a result, the refund of \$208,751 plus interest would have been payable to RVI under the Board's prior decisions.

Nonetheless, in an effort to circumvent its prior factual and legal findings in the December 2004 and 2005 decisions, the Board vacated those decisions for "material error" and at the behest of the Ohio Rail Development Commission ("ORDC") considered further offsets against the RVI escrow fund arising from \$759,437 spent by ORDC to replace crossing signals at crossings which RVI had allegedly allowed to deteriorate. Based on these additional expenditures, the Board tentatively concluded that RVI was entitled to absolutely no refund of its escrowed monies.

Thus, after more than three years of litigation, the February 13, 2007 decision vacated two prior STB decisions, denied RVI any refund of its escrowed monies, adopted an entirely different reason for denying RVI a refund and obviated the accounting procedures and protections which the Board itself imposed when RVI's escrow fund was initially established. In effect, what the Board has done is change the rules of the game in the ninth inning after concluding that CCPA was unable to justify, account for or corroborate sufficient expenditures to consume all \$375,000 of RVI's escrowed monies.

SUPPORTING TESTIMONY

However, the Board has provided RVI with a further opportunity to submit an additional pleading to address the propriety of offsetting the ORDC crossing signal expenditures against RVI's escrow account and by order of March 5, 2007 permitted RVI limited discovery to determine the extent to which the new signals at nine specified crossings had been paid for by ORDC in whole or in part with federal funds. On March 6, 2007, RVI served interrogatories and document production requests on CCPA, CCPR and the ORDC¹. On March 14, 2007 the ORDC provided RVI with a Verified Statement of

¹ CCPA and CCPR responded to RVI's interrogatories stating that they had no knowledge of federal funds expended for the nine crossings.

Michael D. Forte' (Exhibit A) which establishes that \$854,443 in federal funds were used for crossing signal improvements at all of the nine crossings identified in the February 13, 2007 decision and RVI's discovery requests.

In addition to the Verified Statement of Michael D. Forte', RVI also submits for the Board's consideration the Verified Statement of Mr. William Strawn, President of the Ohio Central System. (Exhibit B) As indicated in Mr. Strawn's Verified Statement, Ohio & Pennsylvania Railroad Company ("O&P") was the operating carrier which provided service on the Youngstown & Southern line prior to its acquisition by RVI and then during the period of RVI ownership when the line was not embargoed due to washouts and defective track conditions. Mr. Strawn's statement establishes that the Y&S signals at the various crossings were already in a degraded and inoperative condition due to the long period of deferred maintenance while the Youngstown & Southern line was owned by the Pittsburgh & Lake Erie Railroad Company. Mr. Strawn's testimony confirms the evidence and testimony of RVI witness George Wehner whose two Verified Statements are already of record in this proceeding. RVI hereby incorporates Mr. Wehner's Verified Statements in this response by reference. RVI requests the Board to carefully consider the first hand, eyewitness testimony of Mr. Strawn and Mr. Wehner which establish that RVI was not responsible for the deterioration of the crossing signals during its period of ownership. Based on this testimony, RVI respectfully requests that the Board reconsider its conclusion that RVI had allowed these signals to deteriorate, in light of the personal knowledge of these witnesses which establish that the deteriorated condition of Y&S signals occurred prior to RVI's ownership of the line.

LEGAL ARGUMENTS

1. **The ORDC crossing signal expenditures are improperly considered at this late date because they could have been submitted by CCPA or ORDC for reimbursement in 2004 but were not.**

The ORDC signal restoration expenditures should be disallowed and denied for reimbursement for the same reasons that the Board rejected the \$149,822 in CCPA expenditures in its 2007 decision, i.e. because these expenditures could have been submitted by CCPA and ORDC for Board consideration as part of the 2004 initial submission for reimbursement. However ORDC and CCPA apparently decided not to submit these federal expenditures so that other nonfederally funded expenses incurred by CCPA/CCPR could be charged to RVI's escrow fund. Accordingly, the Board's February 2007 decision proposes to treat these ORDC signal restoration expenditures in a manner that is totally inconsistent with its treatment of the \$149,822 in untimely submitted line expenditures which were disallowed for reimbursement from RVI's escrowed funds. The Board's February 2007 proposal regarding ORDC signal restoration expenses is therefore completely unwarranted and would improperly deny RVI due process of law and deprive RVI of any reimbursement of its escrowed funds.

2. **Reimbursement of ORDC crossing signal expenditures from RVI's escrow account would retroactively impose an unconstitutional burden on RVI's interstate rail operations**

The Board's February 2007 decision indicates that it has not adequately considered Mr. Wehner's unrefuted testimony which establishes that RVI was not responsible for the deteriorated condition of the crossing signal equipment which occurred prior to RVI's

acquisition of the rail line. Mr. Wehner's testimony is confirmed by the Verified Statement of Mr. Strawn which is attached as Exhibit B. This testimony also demonstrates that not only was RVI not responsible for the deteriorated condition of the crossing signals, but that given the impossibility of safe or profitable rail operations on a line with millions of dollars of deferred maintenance, RVI, as a regulated rail carrier, had no common carrier or statutory obligation to provide rail service on the Y&S line at a loss.

Well established legal authority limits the operating and maintenance obligations of common carrier railroads for lines which are not profitable. See cases cited in Response of Railroad Ventures, Inc. to the CCPA/CCPR Claim for Reimbursement in the Amount of \$149,782 filed January 19, 2006, Legal Argument p. 8-9; See also, In Re: Penn Central Transp. Co., 382 F. Supp. 856 (E.D. Pa. 1974) (when rail carrier's operations are not profitable, it is unconstitutional to require their continuance.); New York, N.H. & H.R. Co. v. U.S., 289 F. Supp. 418 (S.D.N.Y. 1968) (railroad operating at a deficit had a constitutional right to cease operation notwithstanding statute requiring ICC's consent to abandonment or the Bankruptcy Act) as well as Mississippi R.R. Commission v. Mobile & Ohio R.R. Co., 244 U.S. 388, 37 S.Ct. 602, 61 L.Ed. 1216 (1917); New Haven Inclusion Case, (399 U.S. 392, 491, 90 S.Ct. 2054 (1990); Matter of Penn Central Transportation Co., 494 F.2d 270 (3 Cir. 1974), and In re Boston & Maine Corp., 484 F.2d 369 (1st Cir. 1973)

Thus it appears that the Board has disregarded the law and the facts to reach a result oriented decision that is intended to penalize RVI for insisting that the STB establish adequate accounting procedures for its escrowed funds which CCPA then failed to follow and which the Board now attempts to evade. As a consequence, the Board's decision of

February 13, 2007 improperly expropriates RVI's escrowed funds in violation of the Board's own escrow fund accounting requirements, federal law and RVI's constitutional right to due process.

3. The Board's February 2007 decision improperly imposes the cost of ORDC's federally funded crossing signal expenditures on RVI in violation of 23 C.F.R. §646.210.

Where federal funds have been used to fund crossing improvements, under 23 C.F.R. §646.210 it is the responsibility of the state, and not the railroad to improve the railroad crossing. "[The] language [of 23 C.F.R. § 646.210(a)] could not be more clear. It means, very simply, that once a state or local government agrees to the federal funding of a railroad crossing construction or reconstruction project, it cannot seek to impose the cost of that project upon the railroad." CSX Transp. Inc. v. Mayor & City Council of Baltimore, 759 F. Supp. 281, 284 (D.C. Md. 1991) aff'd per curiam 979 F. 2d 356 (4th Cir. 1992) (Emphasis added) In other words, a state does not subject itself to federal preemption until it applies for and accepts federal funding for the specific crossing project in question. The interpretation of 23 C.F.R. §646.210 in CSX Transportation, in addition to the interpretation of that regulation in Consolidated Rail Corp. v. Pennsylvania Public Utility Commission, 557 A.2d 832 (Pa. Commw. Ct. 1989) (stating that 23 C.F.R. §646.210 "explicitly expresses the federal government's intent to preempt a state law allowing allocation of costs to a railroad in a federal aid project"), is consistent with the permissive language of 23 U.S.C. §§130(a) and 144(d), which gives a state the option to participate in the Federal-Aid Highway program. CSXT v. Delaware DOT, 2003 WL 22953195.

Based on the foregoing cases, RVI contends that the Board has no jurisdiction to interfere with the administration of federal highway crossing funds by the Federal Highway Administration. RVI's position is based on the federal statutory and regulatory framework which governs the respective jurisdictions of the STB, the Federal Highway Administration ("FHWA") and the Federal Railroad Administration ("FRA"). This federal scheme allocates authority for rail highway crossing safety to FHWA and FRA and not to the STB.

A. Jurisdiction over rail/highway crossing safety projects and the expenditures of federal funds on such projects resides in the Federal Highway Administration and the Federal Railroad Administration.

In 1966, the U.S. Department of Transportation was created and virtually all of the ICC's rail safety oversight functions were transferred to the new agency. See S. Rep. No. 104-176, at 5-6 (1995), 1995 WL 701522. In 1970, Congress confirmed its intent to grant the Department of Transportation primary authority to regulate rail safety by enacting the Federal Railroad Safety Act ("FRSA") which directs the Secretary to "promote safety in every area of railroad operations and to reduce railroad-related accidents and incidents." 49 U.S.C. §20101. Accordingly, the FRSA vests the Secretary of Transportation with primary responsibility for railroad safety in the country, conferring on the Secretary broad authority to "prescribe regulations and issue orders for every area of railroad safety." 49 U.S.C. §20103(a). The Secretary has delegated the authority to promulgate railroad safety regulations to the FRA, 49 C.F.R. 1.49(m), and the authority to promulgate regulations pertaining to highway safety, including rail/highway crossing safety to the FHWA, 49 C.F.R. 1.48(o), 1.49(m). See also CSX Transp., Inc. v. Easterwood, 507 U.S. 658, 663 n. 4 (1993).

The FRSA specifically addresses the relationship between federal and state regulation of railroad safety providing that a "state may adopt or continue in force a law, a regulation, or order related to railroad safety. . until the Secretary of Transportation... prescribes a regulation or issues an order covering the subject matter of the state requirement." 49 U.S.C. §20106. Even after the Secretary issues such a regulation, state law may remain in force if it is "necessary to eliminate or reduce and essentially local safety hazard," "is not incompatible with" federal law, and "does not unreasonably burden interstate commerce " Ibid See also Union Pacific R.R. v. California Pub. Utils. Comm'n., 346 F.3d 851, 858 (9th Cir. 2003).

The jurisdiction and regulations of the FHWA are also directly relevant for FRSA purposes since as noted above, the Secretary has delegated FRSA authority to FHWA in the context of rail/highway crossings, which include the nine signal crossing facilities at issue in this proceeding. As the Supreme Court has noted, FHWA has currently preempted state laws only in the context of railroad/highway crossings that are part of federally-funded highway projects. See CSX, Inc. v. Easterwood, 507 U.S. 658, 665-67, 671 (1993). See also Rail-Highway Crossing Programs, 23 U.S.C. §130 (1994 & Supp. 3 1997), mandated by the Highway Safety Act of 1973, Pub. L. No. 93-87, 87 Stat. 282, Section 203. As is clearly admitted by the Verified Statement of Michael D. Forte', federal funds were expended by ORDC for crossing signal facilities in each of the nine crossings which the Board addressed in its February 2007 decision.

As indicated on Exhibit A, Exhibit B, Exhibit U, Exhibit V, and Exhibit W of Mr Forte''s Verified Statement, the Federal Highway Administration federal aid project agreement with the State of Ohio for these nine crossings specifies that the State of Ohio

and its highway agency (i.e. ORDC) agrees to comply with the applicable terms and conditions set forth in Title 23 U.S. Code, Highways, and the regulations issued pursuant thereto and the policies and procedures promulgated by the Federal Highway Administration relative to the designated crossing projects. As a consequence, the June 15, 2005, Petition to Intervene filed by ORDC with the STB requesting the Board to utilize RVI's escrowed monies to offset crossing reconstruction and signal replacement costs paid for in whole or in part by ORDC with federal funds directly contravenes the terms and conditions under which those federal monies were provided by FHWA for these ORDC crossing projects. Accordingly, the Board's decision of February 2007 offsetting these federally funded signal expenses against RVI's escrow fund and denying RVI a refund of its escrow account in the amount of \$208,751 directly violates federal law¹. Under 23 C.F.R. §646.210 an attempt by ORDC or CCPA to obtain credit for federally funded signal replacement costs from RVI (a rail common carrier), is illegal, and the Board may not do on behalf of these state agencies what they could not do for themselves.

The Board must recognize the limitations of its own regulatory jurisdiction under ICCTA and accord appropriate deference to the primary jurisdiction of the FHWA and the FRA under the FRSA to administer and enforce the policies prescribed in connection with federally funded state rail highway crossing safety facilities. As noted previously with regard to railroad safety, Congress in 1967 transferred the ICC's regulatory powers related to rail crossing safety to the newly created Department of Transportation. Congress confirmed its intent to grant the Department of Transportation primary authority to regulate railroad safety by enacting the FRSA in 1970 which expressly authorized the secretary to

¹ The ORDC Petition to Intervene made no mention of the limitations imposed on federal crossing funds provided by FHWA to ORDC for these crossing projects.

“promote safety in every area of railroad operations and to reduce rail-related accidents and incidents.” In this regard, Congress spoke directly to the question of preemption of state actions and regulation relating to railroad safety in the text of the FRSA, expressly providing that states “may adopt or continue to enforce a law, regulation or order related to railroad safety, until the Secretary of Transportation prescribes the regulation or issues and order covering the subject matter of the state requirement.” 49 U.S.C. §2106. By issuing its regulations at 23 C.F.R. 646.210, denying states the ability to charge federally funded crossing safety signal expenditures to railroads, the FHWA has preempted ORDC’s attempt to have federally funded crossing safety signal replacement expenditures offset against RVI’s escrow account.

B. The Board has no jurisdiction to override or ignore the rail safety funding regulations of the FHWA.

In 1995, 25 years after passage of the FRSA, Congress enacted the ICCTA, 49 U.S.C. §§10101 et seq. in an effort to limit the regulation of railroads as well as other modes of transportation. The Act defines the scope of the STB’s jurisdiction over rail transportation, track construction, acquisition, operation, mergers, abandonment or discontinuance and makes that jurisdiction exclusive 49 U.S.C. §10501(b). ICCTA extends to the STB “all regulatory power over the economic affairs and the nonsafety operating practices of railroads. Petition of Paducah & Louisville Railway, Inc., No. FRA-1999-6138, at 6-7 (January 13, 2000). See also S. Rep. No. 104-176, at 5-6 (1995), 195 WL 701522. Section 10501 itself is found in Part A (Rail) of Subtitle IV of Title 49; and the remainder of Part A makes clear that the STB’s jurisdiction extends to rates (Chapter 107), licensing (Chapter 109), operations (Chapter 111), and finance (Chapter 113).

Section 10501's use of the phrase "remedies provided under this part" is illuminated by considering Congress' explanation of those remedies elsewhere in the statute. Those remedies (§§11701-11707, 11901-11908) do not pertain to rail crossing safety on their face and evidence no Congressional intent to supplant remedies specifically designated to address rail highway crossing safety under the FRSA.

Moreover, Congress did not grant the STB authority to supplement DOT's primary jurisdiction over rail crossing safety. Instead, to address rail safety issues, Congress enacted an extensive rail safety regulatory scheme in the very next subtitle of Title 49 (Subtitle 5); 49 U.S.C. §§20101-21311, which is administered by the FRA. See 49 U.S.C. §103; 49 C.F.R. §1.49. Congress also gave the FHWA responsibility for rail safety in the context of federally funded railroad/highway crossings. See 23 U.S.C. §130.

C. 49 U.S.C. §10501(b) does not preempt the FRSA or FHWA jurisdiction over federal funding of the ORDC rail/highway crossing projects in this proceeding.

Although a literal reading of §10501(b) might suggest that it preempts all other federal law, the STB and federal courts have rejected that reading as overbroad and unworkable. Indeed, when it comes to other federal statutes, those statutes must be harmonized to the extent possible. See, e.g., Tyrell v. Norfolk Southern Ry., 248 F.3d 517, 523 (6th Cir. 2001) (there is no "positive repugnancy" between the two statutory schemes: §10501(b) does not preempt the FRSA), Boston and Maine Corp. v. STB, 364 F.3d 318, 321 (D.C. Cir. 2004) (noting that "primary jurisdiction over railroad safety belongs to the FRA, not the STB"). See also Blanchette v. Connecticut General Insurance Corp., 419 U.S.

102, 133-34 (1974) (if two federal statutes are capable of coexistence, they should be harmonized).

Under 49 U.S.C. §10501(b), the ICC Termination Act of 1995 ("ICCTA") also provides a broadly worded federal preemption of state law which gives the Board's exclusive jurisdiction over transportation by rail carriers and remedies provided under ICCTA. However, it is equally well established that §10501(b) does not completely preempt all state jurisdiction and that states retain their historic police power so long as state actions do not constitute economic regulation of railroads or unreasonably interfere with interstate commerce. See H.R. Rep. No. 104th Cong., 1st Sess. at 95-96 (1995), reprinted in 1995 U.S.C.C.A.N. 793, 807-08. See Atchison, Topeka and S.F. Ry. v. California, 346 U.S. 346, 352 (1953), Wheeling & Lake Erie Railway v. PaPub Utility Commission, 778 A.2d 785 (Pa. Commonwealth Court 2001). Thus, a state's ability to act with respect to railroad/highway crossings, remains undisturbed by ICCTA so long as state action does not unreasonably interfere with railroad operations or interstate commerce and does not constitute regulation of the railroad's operation. See Iowa Chicago & Eastern Railroad Corp. v. Washington County Iowa, 384 F.3d 557 (8th Cir. 2004); Home of Economy v. BNSF, 694 N.W.2d 840 (ND Sup. Ct. 2005). Since the nine ORDC crossing projects do not regulate the operation of the line's rail carrier, but promote safe interstate rail operations on the line, the STB's preemptive regulatory jurisdiction is not implicated.

Since the Board has no preemptive regulatory jurisdiction over ORDC's rail/highway crossing safety projects and must recognize the Department of Transportation's primary authority to regulate federal funding of state crossing projects, the Board's 2007 proposal strays well beyond its regulatory jurisdiction by trying to assign the

costs of federally funded ORDC rail/highway crossing safety projects to RVI in violation of 23 C.F.R. §646.210

As demonstrated by the Verified Statement of Michael D. Forte', \$854,443 in federal monies have been used by ORDC to not just repair but to replace and upgrade each of the crossing signals at the nine crossings identified in the Board's February 2007 decision. Accordingly, it would be inappropriate and illegal for the Board to offset those federally funded expenses against monies due to RVI from its escrowed funds. The Board's February 2007 decision proposes that RVI, long after the fact, pay the cost of federally funded crossing signal improvements in violation of 23 C.F.R. §646.210. Where crossing improvements are funded in whole or in part by federal dollars under the FRSA, it is the responsibility of the state, and not the railroad companies, to improve the safety of rail-highway crossings and Congress provided funding to the states, and not to railroad companies for that purpose.

Moreover, the Secretary of Transportation promulgated regulations expressly stating that grade crossing improvement projects "are deemed to be of no assertionable net benefit to the railroads and there shall be no required railroad share of the costs" 23 C.F.R. §646.210 Hamilton v. Illinois Central Railroad Co., 894 F. Supp. 1014 (S.D. Miss. 1995). The Board's February 2007 decision flies in the face of the Department of Transportation's federal funding policy for state crossing safety projects and the federal regulations through which that policy is implemented by FHWA. Indeed, these federal funding requirements preclude the fault finding exercise engaged in by the Board (at ORDC's request) when it assigned these signal costs to RVI for its alleged failure to maintain these crossing facilities during its period of ownership. Thus FHWA's federal funding policy also viciates any

concern expressed by the Board about public funding of these ORDC crossing signal improvements.

ICCTA and the FRSA must be construed in pari materia and the Board must accede to the jurisdiction of the FHWA which under FRSA exercises primary authority over federally funded state rail crossing safety projects. Therefore this federal statutory scheme and regulations issued thereunder conclusively establish that the STB does not have regulatory jurisdiction to offset federally funded state crossing signal improvements against RVI's escrowed funds in violation of 23 C.F.R. §646.210.

CONCLUSION

Accordingly, RVI respectfully requests that the Board (1) reinstate its December 2004 and 2005 decisions with respect to RVI's escrow account and the disallowance of expenditures which CCPA failed to document and account for, (2) decline to offset federally funded ORDC crossing signal expenditures referenced in its February 2007 decision against RVI's escrow account and (3) reinstate the \$208,751 escrow refund plus interest which the Board originally directed be paid by CCPA to RVI under its prior decisions.

Respectfully submitted,

VUONO & GRAY, LLC

By:


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

VUONO & GRAY, LLC
2310 Grant Building
Pittsburgh, PA 15219
412-471-1800

Dated. April 5, 2007

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

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

**RESPONSE TO INTERROGATORIES
AND DOCUMENT PRODUCTION REQUESTS
DIRECTED TO THE OHIO RAIL DEVELOPMENT COMMISSION**

VERIFIED STATEMENT OF MICHAEL D. FORTE'

I am employed by the Ohio Rail Development Commission ("ORDC") as a Grade Crossing Specialist in the Safety Section. I have held this position since August of 1990. My duties include identifying projects, making arrangements for funding, authorizing projects, inspecting construction and authorizing payment of invoices. I have been the project manager for all of the Safety Section's projects on the former Youngstown & Southern Railroad line.

Federal-Aid Project Authorization Agreement document dated 05/24/2000 and marked as Exhibit A, authorized \$300,000.00 that was utilized to have warning devices installed and the surface reconstructed at the crossing identified as "c" of the Interrogatories and Document Production Requests, #1.

Federal-Aid Project Authorization/Agreement document dated 04/10/2001 and marked as Exhibit B, authorized \$800,000.00 that was utilized to have warning devices installed at the crossings identified as

"a" Exhibit C authorized \$118,369.00

"a" Exhibit D authorized \$15,063.00

EXHIBIT A

"b" Exhibit E authorized \$95,471.00
"b" Exhibit F authorized \$1,939.00
"b" Exhibit G authorized \$15,063.00
"d" Exhibit H authorized \$1,939.00
"d" Exhibit I authorized \$85,192.00
"e" Exhibit J authorized \$91,276.00
"e" Exhibit K authorized \$1,560.00
"e" Exhibit L authorized \$15,063.00
"f" Exhibit M authorized \$89,737.00
"f" Exhibit N authorized \$1,470.00
"g" Exhibit O authorized \$83,936.00
"g" Exhibit P authorized \$1,939.00
"h" Exhibit Q authorized \$1,470.00
"h" Exhibit R authorized \$105,762.00
"h" Exhibit S authorized \$39,500.00
"i" Exhibit T authorized \$89,694.00

of the Interrogatories and Document Production Requests #1.

Federal-Aid Project Authorization/Agreement document dated 05/09/2000 and marked as Exhibit U, authorized \$70,000.00 that was utilized to have the surface reconstructed at the crossing identified as "e" of the Interrogatories and Document Production Requests #1.

Federal-Aid Project Authorization/Agreement document dated 05/11/2001 and marked as Exhibit V, authorized \$40,000.00 that was utilized to have the surface reconstructed at the crossing identified as "f" of the Interrogatories and Document Production Requests #1.

Federal-Aid Project Authorization/Agreement document dated 11/02/2005 and marked as Exhibit W, authorized \$510,000.00 that was utilized to have the surface reconstructed at the crossing identified as "i" of the Interrogatories and Document Production Requests #1.

VERIFICATION

I declare under penalty of perjury that the foregoing narrative is true and correct.

Michael D. Forti

RECEIVED
ORDC

00 JUN -6 AM 9:50

05/24/2000 USDOT - FEDERAL HIGHWAY ADMINISTRATION PAGE 1
08.31 FEDERAL-AID PROJECT AUTHORIZATION/AGREEMENT

STATE: OHIO PROJECT NO: G000489 STATE PROJ NO: 21680

THE STATE, THROUGH ITS HIGHWAY AGENCY, HAVING COMPLIED, OR HEREBY AGREEING TO COMPLY, WITH THE APPLICABLE TERMS AND CONDITIONS SET FORTH IN (1) TITLE 23, U.S. CODE, HIGHWAYS, (2) THE REGULATIONS ISSUED PURSUANT THERETO AND (3) THE POLICIES AND PROCEDURES PROMULGATED BY THE FEDERAL HIGHWAY ADMINISTRATION RELATIVE TO THE ABOVE DESIGNATED PROJECT, AND THE FEDERAL HIGHWAY ADMINISTRATION HAVING AUTHORIZED CERTAIN WORK TO PROCEED AS EVIDENCED BY THE DATE ENTERED OPPOSITE THE SPECIFIC ITEM OF WORK, FEDERAL FUNDS ARE OBLIGATED FOR THE PROJECT NOT TO EXCEED THE AMOUNT SHOWN HEREIN, THE BALANCE OF THE ESTIMATED TOTAL COST BEING AN OBLIGATION OF THE STATE. SUCH OBLIGATION OF FEDERAL FUNDS EXTENDS ONLY TO PROJECT COSTS INCURRED BY THE STATE AFTER THE FEDERAL HIGHWAY ADMINISTRATION AUTHORIZATION TO PROCEED WITH THE PROJECT INVOLVING SUCH COSTS. THE STATE FURTHER STIPULATES THAT, AS A CONDITION TO PAYMENT OF THE FEDERAL FUNDS OBLIGATED, IT ACCEPTS AND WILL COMPLY WITH THE APPLICABLE PROVISIONS SET FORTH IN 23 CFR PART 630, SUBPART C

PROJECT LOCATION: VARIOUS LOCATIONS IN MAH & COL COUNTIES
CHARACTER OF PROPOSED WORK: INSTALL LIGHTS & GATES
STATE APPL ID NA

CLASSIFICATION OF PHASE OF WORK
TO BE PUT UNDER AGREEMENT EFFECTIVE DATE
OF AUTHORIZATION

HIGHWAY PLANNING & RESEARCH
PRELIMINARY ENGINEERING
RIGHT-OF-WAY
X CONSTRUCTION
OTHER

5/23, 2000

APPR.	URBAN/ WITH	TOTAL COST	FEDERAL SHARE	FEDERAL FUNDS UNDER AGREEMENT	FEDERAL FUNDS NOT UNDER AGREEMENT
QBB		\$60,000	100 00 %	\$60,000 00	\$0.00
QBH		\$240,000	100 00 %	\$240,000 00	\$0.00
TOTAL		\$300,000		\$300,000 00	\$0.00
		ESTIMATED TOTAL COST		\$300,000 00	
		FEDERAL FUNDS UNDER AGREEMENT		\$300,000 00	
		FEDERAL FUNDS NOT UNDER AGREEMENT		\$0.00	
		TOTAL AUTHORIZED FOR PROJECT:		\$300,000 00	

UNIO DEPARTMENT OF TRANSPORTATION
AVAILABLE FUNDS CERTIFIED BY HORACE GILMORE
APPROVAL RECOMMENDED BY: HORACE GILMORE
APPROVED AND AUTHORIZED BY: HORACE GILMORE

FEDERAL HIGHWAY ADMINISTRATION
APPROVAL RECOMMENDED BY: STEVEN BAUMANN
APPROVED AND AUTHORIZED BY: STEVEN BAUMANN
AGREEMENT APPROVED BY: STEVEN BAUMANN

DATE: 5/22/2000
DATE: 5/22/2000
DATE: 5/22/2000

DATE: 5/23/2000
DATE: 5/23/2000
DATE: 5/23/2000

THIS DOCUMENT HAS BEEN ELECTRONICALLY SIGNED -

05/24/2000
08.31

USDOT - FEDERAL HIGHWAY ADMINISTRATION
FEDERAL-AID PROJECT AUTHORIZATION/AGREEMENT

PAGE 2

STATE: OHIO

PROJECT NO. 0000189 STATE PROJ NO 21680

STATE REMARKS.

WE REQUEST RAILROAD FORCE ACCOUNT AUTHORIZATION. THIS IS A STP ANNUAL PROGRAM PROJECT. WE CERTIFY THIS PROJECT MEETS THE REQUIREMENTS OF 23 USC 133. THE CROSSING RECONSTRUCTION PORTION OF THIS PROJECT WILL UTILIZE TOLL REVENUE CREDIT PROVISIONS. FEDERAL FUNDING IS LIMITED TO \$300,000 FOR THE ENTIRE PROJECT.

09744-0 11227

THIS DOCUMENT HAS BEEN ELECTRONICALLY SIGNED

04/10/2001
07.45USDOT - FEDERAL HIGHWAY ADMINISTRATION
FEDERAL-AID PROJECT AUTHORIZATION/AGREEMENT

PAGE 1

STATE OHIO PROJECT NO G010349 STATE PROJ NO 23200

THE STATE, THROUGH ITS HIGHWAY AGENCY, HAVING COMPLIED, OF HEREBY AGREEING TO COMPLY, WITH THE APPLICABLE TERMS AND CONDITIONS SET FORTH IN (1) TITLE 23, U.S. CODE, HIGHWAYS, (2) THE REGULATIONS ISSUED PURSUANT THERETO AND (3) THE POLICIES AND PROCEDURES PROMULGATED BY THE FEDERAL HIGHWAY ADMINISTRATION RELATIVE TO THE ABOVE DESIGNATED PROJECT, AND THE FEDERAL HIGHWAY ADMINISTRATION HAVING AUTHORIZED CERTAIN WORK TO PROCEED AS EVIDENCED BY THE DATE ENTERED OPPOSITE THE SPECIFIC ITEM OF WORK, FEDERAL FUNDS ARE OBLIGATED FOR THE PROJECT NOT TO EXCEED THE AMOUNT SHOWN HEREIN, THE BALANCE OF THE ESTIMATED TOTAL COST BEING AN OBLIGATION OF THE STATE. SUCH OBLIGATION OF FEDERAL FUNDS EXTENDING ONLY TO PROJECT COSTS INCURRED BY THE STATE AFTER THE FEDERAL HIGHWAY ADMINISTRATION AUTHORIZATION TO PROCEED WITH THE PROJECT INVOLVING SUCH COSTS. THE STATE FURTHER STIPULATES THAT, AS A CONDITION TO PAYMENT OF THE FEDERAL FUNDS OBLIGATED, IT ACCEPTS AND WILL COMPLY WITH THE APPLICABLE PROVISIONS SET FORTH IN 23 CFR PART 630, SUBPART C.

PROJECT LOCATION, CENTRAL COLUMBIANA & PENNSYLVANIA RR CORPIL OF
CHARACTER OF PROPOSED WORK MODERATE WARNING DEVICES
STATE APPL ID NA

CLASSIFICATION OF PHASE OF WORK
TO BE PUT UNDER AGREEMENT
HIGHWAY PLANNING & RESEARCH
PRELIMINARY ENGINEERING
RIGHT-OF-WAY
CONSTRUCTION
OTHER

EFFECTIVE DATE
OF OBLIGATION

4/04/2001

APPR	UPRAN/ WITH	TOTAL COST	FEDERAL SHARE	FEDERAL FUND UNDER AGREEMENT	FEDERAL FUNDS NOT UNDER AGREEMENT
DEM		5800 000	100 000	5700 000 00	00 00
TOTAL		5800 000		5700 000 00	00 00

ESTIMATED TOTAL COST	5800 000 00
FEDERAL FUNDS UNDER AGREEMENT	5700 000 00
FEDERAL FUNDS NOT UNDER AGREEMENT	00 00
TOTAL AUTHORIZED FOR PROJECT	5700 000 00

OHIO DEPARTMENT OF TRANSPORTATION

AVAILABLE FUNDS CERTIFIED BY	-CRACE GILMORE	DATE	4/09/2001
APPROVAL RECOMMENDED BY	-CRACE GILMORE	DATE	4/09/2001
APPROVED AND AUTHORIZED BY	-CRACE GILMORE	DATE	4/09/2001

FEDERAL HIGHWAY ADMINISTRATION

APPROVAL RECOMMENDED BY	-TIM WALLRAVEN	DATE	4/04/2001
APPROVED AND AUTHORIZED BY	-TIM WALLRAVEN	DATE	4/04/2001
AGREEMENT APPROVED BY	-TIM WALLRAVEN	DATE	4/09/2001

STATE REMARKS

WE REQUEST RAILROAD FORCE ACCOUNT AUTHORIZATION FOR THIS PROJECT. THIS IS A
STP ANNUAL PROGRAM PROJECT. WE CERTIFY THIS PROJECT MEETS THE REQUIREMENTS
OF 23 USC 103

THIS DOCUMENT HAS BEEN ELECTRONICALLY SIGNED

Ohio Department of Transportation

Railroad Bill Summary and Payable Invoice

Exhibit C

AL-10
Rev. 12-99

Railroad name: Central Columbiana & Pennsylvania Railway
Tax ID 73-1583331

Report #: _____
Date: _____
Cty/R/Sec. _____
Project #: _____
F A P #: _____
State Job #: _____
PID #: _____
R.R. Enc #: _____
R R. Bill #: _____
R R. W.O. #: _____

1 & Partial
04/25/02
MAH-Indianola Rd
Agreement No 0008-A
TE21-G010-000-349
446290
23200
555948
28-IN
0

PAYMENT ITEM	Estimated Cost	Previously Transmitted	Total Cost to Date	Transmitted Herewith
1 Preliminary Engineering	0.00	0.00	0.00	0.00
2 Construction	118,369.00	0.00	118,369.00	118,369.00
3. Totals	118,369.00	0.00	118,369.00	118,369.00
4 Less Railroad Share 0.0%	0.00	0.00	0.00	0.00
5. Net Amount Due R.R.	118,369.00	0.00	118,369.00	118,369.00

M. Forte
Grade Crossing Specialist
04/25/02
Date

W. J. Blum
Manager Safety Section
04/25/02
Date

Ohio Department of Transportation

Railroad Bill Summary and Payable Invoice

Exhibit D

ALL TO
PO- 12799

Railroad name: Central Columbiana & Pennsylvania Railway
Tax I.D. 73-1583331

Report #: 2 & Partial
Date: 10/09/03
City/RUSec.: MAH Indiana Rd
Project #: Agreement No 0008-A
F.A.P. #: TE21-G010-000-349
State Job #: 446290
PID #: 23200
R.R. Enc #: 555948
R.R. Bill #: 40-IN
R.R W O #: 0

PAYMENT ITEM	Estimated Cost	Previously Transmitted	Total Cost to Date	Transmitted Herewith
1 Preliminary Engineering	0 00	0 00	0 00	0 00
2 Construction	133 500 00	118 369 00	133,432 00	15,063 00
3 Totals	133,500 00	118,369 00	133,432.00	15,063.00
4 Less Railroad Share 0 0%	0 00	0 00	0 00	0 00
5. Net Amount Due R.R.	133,500.00	118,369 00	133,432 00	15,063.00

Michael P Forte 10 09/03
Grade Crossing Specialist Date

A Rickland (MDF) 10/09/03
Manager, Safety Section Date

Report #.	1 & Partial
Date:	03/19/02
Cty/RU/Sec	MAH CR 101, Meadowbrook Ave
Project #:	Agreement No 0008-A
F.A.P. #.	TE21 G010-000-349
State Job #:	446290
PID #:	23200
R.R.Enc #	555948
R.R.Bill #:	15/1-IN
R.R.W.O. #:	0

5. Net Amount Due R R.	95,471.00
<i>M Forti</i>	03/19/02
Grade Crossing Specialist	Date
<i>James J. J. J. J.</i>	03/19/02
Manager Safety Section	Date

Report #.
Date.
Cty/RUSec:
Project #:
F.A.P. #:
State Job #:
PID #.
R.R. Enc. #:
R R Bill #.
R R W O #.

Net Amount Due R.R.	95,471 00	04/25/02	Date
<i>W. Forté</i>			
Grade Crossing Specialist			
<i>Sam J. Kilduff</i>	NOF	04/25/02	Date
Manager, Safety Section			

Ohio Department of Transportation

Railroad Bill Summary and Payable Invoice

Exhibit G

AU 10
Rev 12/99

Railroad name: Central Columbiana & Pennsylvania Railway
Tax I.D. 73-1583331

Report #: 3 & Partial
Date: 10/09/03
City/RU/Sec: MAH-CR 101, Meadowbrook Ave
Project #: Agreement No 0008-A
F.A.P. #: TE21-G010-000-349
State Job #: 446290
PID #: 23200
R R Enc #: 555948
R.R Bill #: 41-IN
R R. W.O #: 0

PAYMENT ITEM	Estimated Cost	Previously Transmitted	Total Cost to Date	Transmitted Herewith
1 Preliminary Engineering	0.00	0.00	0.00	0.00
2 Construction	112,500.00	97,410.00	112,473.00	15,063.00
3 Totals	112,500.00	97,410.00	112,473.00	15,063.00
4 Less Railroad Share 0.0%	0.00	0.00	0.00	0.00
5. Net Amount Due R R.	112,500.00	97,410.00	112,473.00	15,063.00

M. J. Jorde
Grade Crossing Specialist
10/09/03
Date

S. Hunkland (MDF)
Manager, Safety Section
10/09/03
Date

Ohio Department of Transportation
Railroad Bill Summary and Payable Invoice

Exhibit II

AU-10
Rev 12/99

Railroad name: Central Columbiana & Pennsylvania Railway
Tax ID 73 1583331

Report #: 1 & Partial
Date: 03/28/02
City/RU/Sec: COL-E Park St
Project #: Agreement No 0008-A
F.A.P #: TE21-G010-000 349
State Job #: 446290
PID #: 23200
R.R. Enc. #: 555948
R.R. Bill #: 0000021-IN
R.R. WO #: 0

PAYMENT ITEM	Estimated Cost	Previously Transmitted	Total Cost to Date	Transmitted Herewith
1 Preliminary Engineering	0 00	0 00	0 00	0 00
2 Construction	85 192 00	0 00	1 939 00	1,939 00
3 Totals	85,192.00	0.00	1,939 00	1,939.00
4 Less Railroad Share 0.0%	0 00	0 00	0 00	0 00
5. Net Amount Due R.R.	85,192 00	0 00	1,939 00	1,939.00

M. Forie
Grade Crossing Specialist
03/28/02
Date
MDF
03/28/02
Date
Manager, Safety Section

Ohio Department of Transportation

Railroad Bill Summary and Payable Invoice

Exhibit 1

Railroad name: Central Columbiana & Pennsylvania Railway
Tax I.D. 73 1583331

Report #: 2 & Partial
Date: 04/25/02
City/RUSec: COL-E Park St
Project #: Agreement No 0008-A
F.A.P.#: TE21-G010-000-349
State Job #: 446290
PID #: 23200
R R Enc. #: 555948
R,R Bill #: 26-IN
R R W.O.#: 0

PAYMENT ITEM	Estimated Cost	Previously Transmitted	Total Cost to Date	Transmitted Herewith
1 Preliminary Engineering	0 00	0 00	0 00	0 00
2 Construction	85 192 00	1 939 00	87 131 00	85,192 00
3 Totals	85,192 00	1,939 00	87,131 00	85,192.00
4 Less Railroad Share 0 0%	0 00	0 00	0 00	0 00
5 Net Amount Due R.R.	85,192 00	1,939 00	87,131.00	85,192.00

M. J. Forie
Grade Crossing Specialist 04/25/02
Date

Edward J. Wickland
Manager Safety Section 04/25/02
Date

Ohio Department of Transportation

Railroad Bill Summary and Payable Invoice

**ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED**

Railroad name. Central Columbiana & Pennsylvania Railway
Tax I.D. 73-1583331

Report #.

Date:

Cty/Rt/Sec:

Project #

F.A.P.#:

State Job #:

PID #.

R R. Enc #:

R.R. Bill #

R R. W.O. #

1 & Partial
04/25/02
MAH-164-4 34, South Ave
Agreement No 0008-A
TE21-G010-000-349
446290
23200
555946
27-IN
0

PAYMENT ITEM	Estimated Cost	Previously Transmitted	Total Cost to Date	Transmitted Herewith
1 Preliminary Engineering	0 00	0 00	0 00	0 00
2 Construction	91,276 00	0 00	91,276 00	91,276 00
3 Totals	91,276 00	0 00	91,276 00	91,276 00
4 Less Railroad Share 0 0%	0 00	0 00	0 00	0 00
5 Net Amount Due R R	91,276 00	0 00	91,276 00	91,276 00

24. Feb.

Grade Crossing Specialist

04/25/02

Date:

Lucy F. Holland

Manager, Safety Section

2015/02

Date _____

Ohio Department of Transportation

Railroad Bill Summary and Payable Invoice

Exhibit K

AU 10
Rev. 12-99

Railroad name: Central Columbiana & Pennsylvania Railway
Tax I.D. 73-1583331

Report #
Date. 04/25/02
City/RU/Sec: MAH-164-4 34, South Ave
Project #: Agreement No 0008-A
F.A.P. #: TE21-G010-000-349
State Job #: 446290
PID #: 23200
R.R. Enc. #: 555948
R R Bill #: 17-IN
R.R. W.O. #: 0

PAYMENT ITEM	Estimated Cost	Previously Transmitted	Total Cost to Date	Transmitted Herewith
1 Preliminary Engineering	0 00	0 00	0 00	0 00
2 Construction	91,276 00	91 276 00	92,836 00	1,560 00
3 Totals	91,276.00	91,276.00	92,836.00	1,560.00
4 Less Railroad Share 0 0%	0 00	0 00	0 00	0 00
5. Net Amount Due R.R.	91,276 00	91,276 00	92,836 00	1,560.00

M. Forci
Grade Crossing Specialist 04/25/02
Date

Sam J. Kitchard MDF
Manager Safety Section 04/25/02
Date

Ohio Department of Transportation

Railroad Bill Summary and Payable Invoice

Exhibit L

AU-10
Rev. 1/2000

Railroad name: Central Columbiana & Pennsylvania Railway
Tax I.D. 73-1583331

Report #: 3 & Partial
Date: 10/08/03
City/RU/Sec: MAH-164-4 34, South Ave
Project #: Agreement No 0008-A
F.A.P. #: TE21-G010-000-349
State Job #: 446290
PID #: 23200
R.R. Enc. #: 555948
R.R. Bill #: 39-IN
R.R. W.O. #: 0

PAYMENT ITEM	Estimated Cost	Previously Transmitted	Total Cost to Date	Transmitted Herewith
1 Preliminary Engineering	0 00	0 00	0 00	0 00
2 Construction	107,900 00	92,836 00	107,899 00	15,063 00
3 Totals	107,900.00	92,836.00	107,899 00	15,063.00
4 Less Railroad Share 0 0%	0 00	0 00	0 00	0 00
5. Net Amount Due R.R.	107,900 00	92,836.00	107,899.00	15,063.00

M. Forti
Grade Crossing Specialist 10/09/03
Date

S. Kirkland (MAF)
Manager, Safety Section 10/09/03
Date

WWW.FIRSTBUSINESSMAN.COM

Ohio Department of Transportation

Railroad Bill Summary and Payable Invoice

Exhibit N

4/10
Rev. 1, 99

Railroad name: Central Columbiana & Pennsylvania Railway
Tax I.D. 73-1583331

Report #.
Date:
City/RT/Sec:
Project #:
F.A.P. #:
State Job #.
PID #
R.R. Enc #
R.R. Bill #:
R.R. W.O. #

2 & Partial
04/25/02
MAH-7-3 36, Market St
Agreement No 0008-A
TE21-G010-000-349
446290
23200
555848
20-IN
0

PAYMENT ITEM	Estimated Cost	Previously Transmitted	Total Cost to Date	Transmitted Herewith
1 Preliminary Engineering	0.00	0.00	0.00	0.00
2 Construction	89,737.00	89,737.00	91,207.00	1,470.00
3 Totals	89,737.00	89,737.00	91,207.00	1,470.00
4 Less Railroad Share 0.0%	0.00	0.00	0.00	0.00
5. Net Amount Due R.R.	89,737.00	89,737.00	91,207.00	1,470.00

W. Forte 04/25/02
Grade Crossing Specialist Date

Shirley L. Kilduff 04/25/02
Manager, Safety Section Date

Ohio Department of Transportation

Railroad Bill Summary and Payable Invoice

Exhibit O

AU 10
Rev. 12/99

Railroad name: Central Columbiana & Pennsylvania Railway
Tax I.D. 73-1583331

Report #.
Date: 03/19/02
City/RU/Sec: COL-7-20 13
Project #: Agreement No 0008-A
F A P. #: TE21-G010-000-349
State Job #: 446290
PID #: 23200
R.R. Enc #: 555948
R.R. Bill #: 14/1-IN
R R. W O. #: 0

1 & Partial
03/19/02
COL-7-20 13
Agreement No 0008-A
TE21-G010-000-349
446290
23200
555948
14/1-IN
0

PAYMENT ITEM	Estimated Cost	Previously Transmitted	Total Cost to Date	Transmitted Herewith
1 Preliminary Engineering	0 00	0 00	0 00	0 00
2 Construction	83,936 00	0 00	83,936 00	83,936 00
3 Totals	83,936 00	0 00	83,936 00	83,936 00
4 Less Railroad Share 0 0%	0 00	0 00	0 00	0 00
5. Net Amount Due R.R.	83,936.00	0 00	83,936.00	83,936.00

M. Forte
Grade Crossing Specialist
03/19/02
Date

James J. ...
Manager, Safety Section
03/19/02
Date

Ohio Department of Transportation

Railroad Bill Summary and Payable Invoice

Exhibit P

Railroad name. Central Columbiana & Pennsylvania Railway
Tax ID 73-1583331

Report #: 2 & Partial
Date. 04/25/02
City/RU/Sec: COL-7-20 13
Project #: Agreement No 0008-A
F A P #: TE21-G010-000-349
State Job #: 446280
PID #: 23200
R.R. Enc. #: 555948
R R. Bill #: 18-IN
R R W.O. #: 0

PAYMENT ITEM	Estimated Cost	Previously Transmitted	Total Cost to Date	Transmitted Herewith
1 Preliminary Engineering	0.00	0.00	0.00	0.00
2 Construction	83,936.00	83,936.00	85,875.00	1,939.00
3. Totals	83,936.00	83,936.00	85,875.00	1,939.00
4 Less Railroad Share 0.0%	0.00	0.00	0.00	0.00
5. Net Amount Due R R	83,936.00	83,936.00	85,875.00	1,939.00

M. Forti
Grade Crossing Specialist
Date 04/25/02

Shang J. Kildan M.D.F.
Manager, Safety Section
Date 04/25/02

2025年10月10日

Ohio Department of Transportation

Railroad Bill Summary and Payable Invoice

Exhibit R

ALJ 13
Rev 12-99

Railroad name. Central Columbiana & Pennsylvania Railway
Tax I.D. 73-1583331

Report #
Date.
City/Rt/Sec:
Project #.
F.A.P. #.
State Job #.
PID #.
R.R. Enc. #.
R.R. Bill #
R.R. W.O. #.

2 & Partial
04/25/02
MAH-625-5 52, Midlothian Ave
Agreement No 0008-A
TE21-G010-000-348
446290
23200
555948
29-IN
0

PAYMENT ITEM	Estimated Cost	Previously Transmitted	Total Cost to Date	Transmitted Herewith
1 Preliminary Engineering	0.00	0.00	0.00	0.00
2 Construction	105,762.00	1,939.00	107,701.00	105,762.00
3 Totals	105,762.00	1,939.00	107,701.00	105,762.00
4 Less Railroad Share	0.00	0.00	0.00	0.00
5 Net Amount Due R R	105,762.00	1,939.00	107,701.00	105,762.00

M. Forti
Grade Crossing Specialist
Date 04/25/02

Shang J. Kikland MGR
Manager, Safety Section
Date 04/25/02

Report #:	3 & Partial
Date:	08/13/02
City/Rt/Sec:	MAH-625-5 52, Midlothian Ave
Project #:	Agreement No 0008-A
F.A.P. #:	TE21-G010-000-349
State Job #:	446290
PID #:	23200
R.R. Enc #:	555948
R R Bill #:	12 IN
R R. W.O. #:	0

PAYMENT ITEM	Estimated Cost	Previously Transmitted	Total Cost to Date	Transmitted Herewith
1 Preliminary Engineering	0 00	0 00	0 00	0 00
2 Construction	155,762 00	107,701 00	147,201 00	39,500 00
3 Totals	155,762 00	107,701 00	147,201 00	39,500 00
4 Less Railroad Share 0 0%	0 00	0 00	0 00	0 00
5. Net Amount Due R.R.	155,762 00	107,701 00	147,201 00	39,500 00

M. Forti 09/13/02
Grade Crossing Specialist Date

<i>[Signature]</i>	09/13/02
Manager, Safety Section	Date

Ohio Department of Transportation

Railroad Bill Summary and Payable Invoice

Exhibit T |

Railroad name: Central Columbiana & Pennsylvania Railway
Tax ID 73-1583331

Report #:
Date:
City/RT/Sec:
Project #:
F A P #:
State Job #:
PID #:
R R Enc #:
R.R Bill #:
R R W O #:

1 & Partial
03/19/02
MAH-Indianola Ave
Agreement No 0008-A
TE21-G010-000-349
446290
23200
555948
0000025-IN
0

PAYMENT ITEM	Estimated Cost	Previously Transmitted	Total Cost to Date	Transmitted Herewith
1 Preliminary Engineering	0 00	0 00	0 00	0 00
2 Construction	89,694 00	0 00	89,694 00	89,694 00
3 Totals	89,694 00	0 00	89,694 00	89,694 00
4 Less Railroad Share 0 0%	0 00	0 00	0 00	0 00
5 Net Amount Due R.R	89,694 00	0 00	89,694 00	89,694 00

Michael P. Forst
Grade Crossing Special st
Date 03/19/02

James J. Kitzel
Manager, Safety Section
Date 03/19/02

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05/09/2000 USDOT - FEDERAL HIGHWAY ADMINISTRATION PAGE 1
06103 FEDERAL-AID PROJECT AUTHORIZATION/AGREEMENT

STATE: OHIO PROJECT NO: G000441 STATE PROJ NO. 21486

THE STATE, THROUGH ITS HIGHWAY AGENCY, HAVING COMPLIED, OR HEREBY AGREEING TO COMPLY, WITH THE APPLICABLE TERMS AND CONDITIONS SET FORTH IN (1) TITLE 23, U.S. CODE, HIGHWAYS, (2) THE REGULATIONS ISSUED PURSUANT THERETO AND (3) THE POLICIES AND PROCEDURES PROMULGATED BY THE FEDERAL HIGHWAY ADMINISTRATION RELATIVE TO THE ABOVE DESIGNATED PROJECT, AND THE FEDERAL HIGHWAY ADMINISTRATION HAVING AUTHORIZED CERTAIN WORK TO PROCEED AS EVIDENCED BY THE DATE ENTERED OPPOSITE THE SPECIFIC ITEM OF WORK, FEDERAL FUNDS ARE OBLIGATED FOR THE PROJECT NOT TO EXCEED THE AMOUNT SHOWN HEREIN, THE BALANCE OF THE ESTIMATED TOTAL COST BEING AN OBLIGATION OF THE STATE. SUCH OBLIGATION OF FEDERAL FUNDS EXTENDS ONLY TO PROJECT COSTS INCURRED BY THE STATE AFTER THE FEDERAL HIGHWAY ADMINISTRATION AUTHORIZATION TO PROCEED WITH THE PROJECT INVOLVING SUCH COSTS. THE STATE FURTHER STIPULATES THAT, AS A CONDITION TO PAYMENT OF THE FEDERAL FUNDS OBLIGATED, IT ACCEPTS AND WILL COMPLY WITH THE APPLICABLE PROVISIONS SET FORTH IN 23 CFR PART 630, SUBPART C.

PROJECT LOCATION: SR-164 AT CCMR X-ING AAR# 873 470 T
CHARACTER OF PROPOSED WORK: GRADE CROSSING RECONSTRUCTION
STATE APPL. ID: NA

CLASSIFICATION OF PHASE OF WORK EFFECTIVE DATE
TO BE PUT UNDER AGREEMENT OF AUTHORIZATION

HIGHWAY PLANNING & RESEARCH
PRELIMINARY ENGINEERING
RIGHT-OF-WAY
X CONSTRUCTION
OTHER

5/02/2000

APPR.	URBAN/ WITH	TOTAL COST	FEDERAL SHARE	FEDERAL FUNDS UNDER AGREEMENT	FEDERAL FUNDS NOT UNDER AGREEMENT
ONE		\$70,000	100.00 %	\$70,000.00	\$0.00
TOTAL		\$70,000		\$70,000.00	\$0.00
				ESTIMATED TOTAL COST	\$70,000.00
				FEDERAL FUNDS UNDER AGREEMENT.	\$70,000.00
				FEDERAL FUNDS NOT UNDER AGREEMENT.	\$0.00
				TOTAL AUTHORIZED FOR PROJECT	\$70,000.00

OHIO DEPARTMENT OF TRANSPORTATION
AVAILABLE FUNDS CERTIFIED BY: HORACE GILMORE
APPROVAL RECOMMENDED BY: HORACE GILMORE
APPROVED AND AUTHORIZED BY: HORACE GILMORE

DATE: 5/01/2000
DATE: 5/01/2000
DATE: 5/01/2000

FEDERAL HIGHWAY ADMINISTRATION
APPROVAL RECOMMENDED BY: KIM WALRAVEN
APPROVED AND AUTHORIZED BY: KIM WALRAVEN
AGREEMENT APPROVED BY: KIM WALRAVEN

DATE: 5/02/2000
DATE: 5/02/2000
DATE: 5/02/2000

STATE REQUEST:
WE REQUEST RAILROAD FORCE ACCOUNT AUTHORIZATION. THIS PROJECT IS A SIP
ANNUAL PROGRAM PROJECT. WE CERTIFY THIS PROJECT MEETS THE REQUIREMENTS

THIS DOCUMENT HAS BEEN ELECTRONICALLY SIGNED

05/09/2000
00-03

USEOT - FEDERAL HIGHWAY ADMINISTRATION
FEDERAL-AID PROJECT AUTHORIZATION AGREEMENT

PAGE 2

STATE: OHIO

PROJECT NO: 0000441 STATE PROJ NO: 21486

OF 23 USC 133 THIS PROJECT WILL UTILIZE TOLL REVENUE CREDIT PROVISIONS

THIS DOCUMENT HAS BEEN ELECTRONICALLY SIGNED

PAGE 1

THIS DOCUMENT HAS BEEN ELECTRONICALLY SIGNED

Run Date 11/02/2005
Run Time 14 52 09

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
FEDERAL-AID PROJECT AGREEMENT

Report FMISD05A
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STATE: OHIO

PROJECT NO E060(010)

STATE PROJ NO 75145

THE STATE THROUGH ITS HIGHWAY AGENCY HAVING COMPLIED OR HEREBY AGREEING TO COMPLY WITH THE APPLICABLE TERMS AND CONDITIONS SET FORTH IN (1) TITLE 23 U.S. CODE HIGHWAYS (2) THE REGULATIONS ISSUED PURSUANT THERETO AND (3) THE POLICIES AND PROCEDURES PROMULGATED BY THE FEDERAL HIGHWAY ADMINISTRATION RELATIVE TO THE ABOVE DESIGNATED PROJECT AND THE FEDERAL HIGHWAY ADMINISTRATION HAVING AUTHORIZED CERTAIN WORK TO PROCEED AS EVIDENCED BY THE DATE ENTERED OPPOSITE THE SPECIFIC ITEM OF WORK, FEDERAL FUNDS ARE OBLIGATED FOR THE PROJECT NOT TO EXCEED THE AMOUNT SHOWN HEREIN THE BALANCE OF THE ESTIMATED TOTAL COST BEING AN OBLIGATION OF THE STATE. SUCH OBLIGATION OF FEDERAL FUNDS EXTENDS ONLY TO PROJECT COSTS INCURRED BY THE STATE AFTER THE FEDERAL HIGHWAY ADMINISTRATION AUTHORIZATION TO PROCEED WITH THE PROJECT INVOLVING SUCH COSTS. (N)

PROJECT Ohio Central System within the city of Youngstown in Mahoning County
DESCRIPTION Consolidation project at six grade crossings

DUNS # 80-817-4402

CLASSIFICATION OF PHASE OF WORK
TO BE PUT UNDER AGREEMENT

EFFECTIVE DATE
OF AUTHORIZATION

HIGHWAY PLANNING & RESEARCH
PRELIMINARY ENGINEERING
RIGHT OF WAY
CONSTRUCTION
MCSAP
OTHER

10/27/2005

PROGRAM CODE	URBAN/ WITH	TOTAL COST	FEDERAL SHARE	FEDERAL FUNDS UNDER AGREEMENT	ADVANCED CONST FUNDS
LS40		\$215,000.00			\$205,000.00
LS50		\$305,000.00			\$305,000.00
TOTAL		\$510,000.00		\$0.00	
		ESTIMATED TOTAL COST	\$510,000.00		
		TOTAL AUTHORIZED FOR PROJECT	\$0.00		

OHIO DEPARTMENT OF TRANSPORTATION

AVAILABLE FUNDS CERTIFIED BY	MORACE W GILMORE	DATE	10/26/2005
APPROVED AND AUTHORIZED BY	MORACE W GILMORE	DATE	10/26/2005
AGREEMENT/MODIFY REQUESTED BY	MORACE W GILMORE	DATE	10/26/2005

FEDERAL HIGHWAY ADMINISTRATION

PROJECT INFORMATION REVIEWED BY	KENNETH W HARVEY	DATE	10/27/2005
APPROVAL RECOMMENDED BY	JOSEPH GLINSKI JR	DATE	11/01/2005
APPROVED AND AUTHORIZED BY	JOSEPH GLINSKI JR	DATE	11/01/2005

STATE REMARKS Railroad Force Account Consolidation project Grade Crossings 544 969 P 573 441 H 873-443-W 573 446 S 873 448 F and 873-450 G

DIVISION REMARKS 11/1/05 J Glinski Crossings are all single track with low train volume therefore project is compliant with the provisions of 23 CFR 646 Subpart B Funds are based on the ORDC engineer's estimate

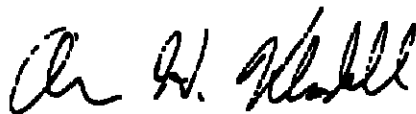
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing was served by regular U.S. Mail this 14th day of March, 2007 upon the following

Richard R. Wilson, Esq.
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Washington, D.C. 20006



Alan H. Klodell, Associate Assistant Attorney General
Counsel For Ohio Rail Development Commission

**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**

VERIFIED STATEMENT OF WILLIAM A. STRAWN, II

Dated: April 4, 2007

**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**

VERIFIED STATEMENT OF WILLIAM A. STRAWN, II

My name is William A. Strawn, II and I am President of the Ohio Central Rail System. In the course of my duties on behalf of the Ohio Central Rail System, I have personally inspected the former Youngstown & Southern railway line between Youngstown, Ohio and Darlington, Pennsylvania on numerous occasions. These inspections first occurred between June 1995 and December 1996 during the period when our subsidiary, the Ohio & Pennsylvania Railroad ("O&P") operated the line on behalf of the Pittsburgh & Lake Erie Railroad Company ("P&LE")¹. At that time, the line had been subject to deferred maintenance by the P&LE since the 1970's and had received virtually no maintenance during the period in which the line was operated by the PL&W Railroad whose lease the O&P assumed. The crossing signal systems, in particular, had been poorly maintained if at all, during the period in which PL&W provided freight services and O&P flagged many of the crossings because the signals were not operational

¹ See FID No. 32711, Ohio & Pennsylvania Railroad Company - Lease and Operation Exemption - P&LE Properties, Inc., (June 14, 1995)

In some cases the crossing signals would short out, activating signal lights when no train was approaching the crossing, creating highway traffic hazards. When this occurred, O&P would disconnect the crossing signals and flag the crossing. During this period traffic levels on the line simply did not generate adequate revenues to enable O&P to repair or replace these signals.

Shortly after the line was acquired by Railroad Ventures, Inc., O&P executed an operating agreement with RVI in an attempt to maintain rail service on the Y&S line but flooding in December 1996 and the winter and spring of 1997 repeatedly washed out sections of the Y&S line requiring the line to be embargoed. Since there was virtually no traffic on the rail line at that time, and the track conditions on the rest of line were so poor after 20 years of deferred maintenance, it was impossible for O&P or RVI to undertake any meaningful maintenance or rehabilitation of the rail line on a cost effective basis.

Indeed, subsequent events have demonstrated that even with ORDC's federally funded replacement of new signal and crossing facilities at various crossings, the track conditions on the rest of the line continue to this day to be very substandard and derailments are a common occurrence on the line. As the Board is aware, O&P again attempted to operate this line on an interim basis in 2005² and carefully examined this line with the thought that it might purchase the line from CCPA out of the CCPR bankruptcy proceeding. However, our examination of the line indicated that subsequent rehabilitation efforts on the part of CCPA and CCPR had not restored the rail line to safe operating condition and that literally millions of additional dollars would be needed to

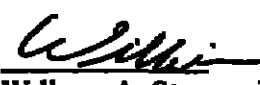
² See Finance Docket No. 34632, The Ohio and Pennsylvania Railroad- Acquisition and Operation Exemption - Rail Lines of Columbiana County Port Authority in Mahoning and Columbiana Counties, OH, and Beaver County, PA

bring this line into safe operating condition. Accordingly, O&P declined to purchase this line and a shipper on the line was compelled to do so.

In summary, based on my first hand, personal knowledge and inspection of the former Y&S line, I can unequivocally state that the crossing signal facilities and the track conditions on the Y&S line were in extremely poor and inoperative condition well before RVI acquired ownership of the line and that these track and signal conditions cannot be fairly or accurately attributed to RVI's period of ownership

VERIFICATION

I, William A. Strawn, II, President of the Ohio Central Rail System declare under penalty of perjury that the foregoing Verified Statement is true and correct.


William A. Strawn, II


G. Strawn

CERTIFICATE OF SERVICE

I hereby certify that I have this 21st day of April, 2007 served a copy of the Response of Railroad Ventures, Inc. to STB Decision of February 13, 2007 Regarding ORDC Crossing Signal Expenditures upon the following by Federal Express

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