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January 25, 2005

2/3/34

Re: 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

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

ENTERED
Office of Proceedings

JAN 31 2005

Part of
Public Record

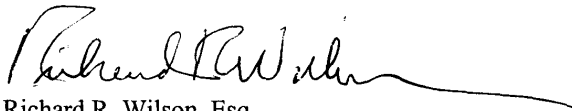


Dear Sir:

Enclosed for filing please find the original and ten copies of the Petition by Railroad Ventures, Inc. for a Bond and Confirmation of Financial Condition submitted in the above captioned proceeding. Copies of this pleading have been served on all parties of record.

Very truly yours,

VUONO & GRAY, LLC


Richard R. Wilson, Esq.

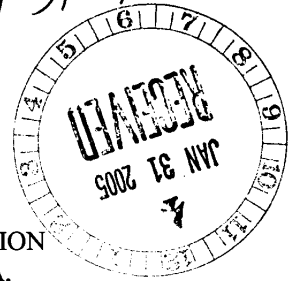
RRW/bab

xc: All Parties of Record
Railroad Ventures, Inc.

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



PETITION FOR BOND AND CONFIRMATION OF FINANCIAL CONDITION

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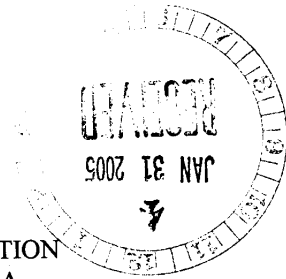
RICHARD R. WILSON, ESQ.
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Vuono & Gray, LLC
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Dated: January 25, 2005

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



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PETITION FOR BOND AND CONFIRMATION OF FINANCIAL CONDITION

Railroad Ventures, Inc. ("RVI") files this Petition For Bond and Confirmation of Financial Condition pursuant to 49 C.F.R. §1117.1 in response to the Board's decision of January 11, 2005 in Docket No. AB 556 (Sub No. 2X) granting the Joint Petition for Stay filed by Columbiana County Port Authority ("CCPA") and Central Columbiana and Pennsylvania Railway ("CCPR"). (Collectively "joint petitioners") In support thereof, RVI states as follows:

By its order of January 11, 2005 in AB 556 (Sub No. 2X), the Board stayed CCPA's and CCPR's obligation to repay RVI \$217,282 plus interest under the Board's December 13, 2004 order. CCPA has represented to the Board that it does not have adequate funds to pay this obligation to RVI and the Board's January 11 order cites that representation as one of the reasons for granting the stay. However, on October 26, 2004 CCPA CEO Tracy Drake recommended that the Port Authority supplement its \$400,000 cash reserve with a \$500,000 line of credit citing losses incurred by CCPA on the Y&S rail line project and the CCPA Board of Directors approved that recommendation. CCPA assets have also increased in the last ten years from \$6 million to \$19 million dollars

(Exhibit A). Thus, it appears that CCPA may have misrepresented its financial condition and ability to pay to the Board in its Petition for Stay.

Furthermore, CCPR is in bankruptcy and did not have sufficient financial resources to continue rail operations on the Youngstown, OH-Darlington, PA rail line on behalf of CCPA. As a consequence, CCPR requested the Bankruptcy Court to relieve it of its operating obligations to CCPA and CCPA agreed to transfer operating authority from CCPR to the Ohio and Pennsylvania Railroad Company (“OPRC”). While RVI is not privy to the OPRC operating agreement with CCPA, RVI understands that CCPA has granted OPRC an option to purchase CCPA’s rail line in 2006 for \$1,000,000 and the assumption of CCPA’s acquisition debt. See STB Finance Docket 34632, the Ohio and Pennsylvania Railroad –Acquisition and Operation Exemption – Rail Lines of Columbiana County Port Authority in Mahoning and Columbiana Counties, Ohio and Beaver County, Pennsylvania.

The escrow fund entrusted to CCPA was withheld from RVI’s proceeds of sale and accordingly the Board has not yet finally determined RVI’s compensation payable by CCPA for acquisition of the line. CCPA’s payment to RVI has been rendered aleatory by the Board’s January 11, 2005 stay of its December 13, 2004 order, and substantial questions exist under 49 USC §10905(f)(4) as to when CCPA can transfer any interest to OPRC or even if there has been a consummation of the RVI-CCPA sale transaction for purposes of the running of the five year prohibition on transfers to third parties under 49 USC §10905(f)(4). RVI believes that the CCPA-OPRC transition was designed solely to circumvent the five year restitution on the sale of OFA lines to third parties and is in direct violation of STB policy against efforts to circumvent its regulatory authority. RVI has

requested a full and careful STB review of the transactional, financial and operational details of CCPA's attempt to transfer the rail line to OPRC in STB Docket Finance Docket No. 34632 given the unique circumstances surrounding that proceeding.

As RVI has previously stated in its December 21, 2004 filing in the CCPR bankruptcy proceeding (copy of which was served on the Board), it has no objection to the emergency transfer of current rail operations on the CCPA line to OPRC to preserve rail service but RVI does object to CCPA's transfer and OPRC's acquisition of any present or future interest in the rail line without adequate protection for RVI's receipt of full compensation for that line from CCPA and for its statutory repurchase rights under Section 10905(f)(4). Furthermore, these facts present a case of first impression to the Board on whether there has been a consummation of the RVI-CCPA sale transaction given that the Board has yet to make a final determination as to the amount of compensation to which RVI is due under the terms of the escrow fund established by the Board and entrusted to CCPA in the AB-556 (Sub No. 2X) OFA proceeding.

Given CCPA's representations to the Board regarding its inability to pay RVI \$217,282 on January 13, 2005, less than ninety days after the CCPA Board approved a \$500,000 line of credit to supplement \$400,000 in cash reserves, and given CCPA's \$19 million dollars in assets, RVI asks the Board to direct CCPA to provide a verified financial statement to the Board and RVI confirming CCPA's current financial condition and inability to pay. In the meantime pending receipt of those documents and disposition by CCPA/CCPR's Petition for Reconsideration, RVI requests that the Board direct CCPA to secure its repayment obligation to RVI by posting a bond for \$217,282 plus interest with

10/26/04

Port authority cushions with credit line

By **TOM GIAMBRONI**
Journal Staff Writer

EAST LIVERPOOL — The county Port Authority is running a little low on cash so it decided to borrow \$500,000 should a major economic development opportunity present itself.

The port authority board Monday agreed to obtain a line of credit of up to \$500,000 from First National Community Bank in the event it is needed.

"It's just if something comes along that's big ... we want to be able to jump on it," said port fiscal officer Steve Cooper.

Port Authority Chief Executive Officer Tracy Drake recommended the action because their cash reserve, the seed money used for economic development projects, had dropped to the point where he was concerned they would be unable to take on a major project should one arise.

The port authority originally had \$5 million to work with after selling 20 acres of its land to Waste Technologies Industries in 1993. Drake set about spending the money on

various economic development projects.

"As a board you directed me not to sit on the money but spend it" to create jobs, he said.

Eleven years later, Cooper said the pot of money is down to a little more than \$400,000, which is why Drake recommended they obtain the line of credit.

"We may never draw down on this, but it gives us a comfort level," he said.

The money was used on projects with the expectation it would be recouped in some fashion by way of contractual payments. In a way, Drake said they were a victim of their own success, spreading the money around a number of projects.

The problem is some of the projects funded with the seed money have failed to work out, leaving the port authority without a way to recover its investment.

Drake cited two failed projects in particular. The first was Probex Corp., which was to build an oil recycling business at the port authority's industrial park in Wellsville. Probex eventually filed bankruptcy before

ever breaking ground.

Drake said they spent \$1.2 million on site acquisition and improvements to the industrial park which benefit other tenants, but they were counting on Probex money to help pay for the investment.

The purchase of the old Youngstown & Southern Railroad was another example, he said. The port spent close to \$1 million to purchase the railroad and for improvements, and the company operating the rail line filed bankruptcy earlier this year. Drake expects a new railroad company to step in and assume the operating lease before the end of the year.

The port authority also has many successes over the past 10 years, such as the Mitsubishi Heavy Industries of America Inc. and General Extrusions Inc. plants located at port authority facilities in Leetonia.

During that period port assets have jumped from \$6 million to \$19 million, and Drake said they were able to use the money as leverage to obtain \$15 million in state and federal grants to fund improvements.

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the Board.¹ The posting of a bond or other appropriate security is reasonable and routinely required for the granting of a stay. See e.g. Fed. R.C.P. 62(c).

Accordingly, RVI respectfully requests the Board grant the relief requested therein.

Respectfully submitted,

VUONO & GRAY, LLC

By: 

Richard R. Wilson

Attorney for Railroad Ventures, Inc.

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

Dated: January 25, 2005

¹ If CCPA is unable to obtain a bond or if the Board were to lift the stay and direct payment be made to RVI, RVI will post a bond for those funds with the Board pending its consideration of CCPA's Petition to Reopen.

CERTIFICATE OF SERVICE

I hereby certify that I have this 25th day of January, 2005 served a copy of the Petition for Bond and Confirmation of Financial Condition upon the following by first class United States Mail, postage prepaid:

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