



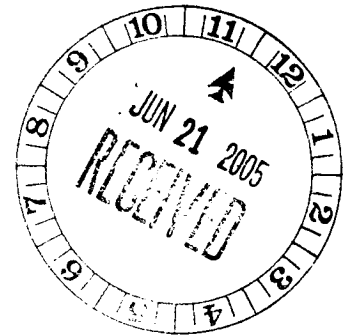
STATE OF OHIO
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June 15, 2005

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



RE: Docket No. AB-556 (Sub No. 2X)-- RAILROAD VENTURES,
INC. ABANDONMENT EXEMPTION BETWEEN YOUNGSTOWN, OHIO
AND DARLINGTON, PA IN MAHONING AND COLUMBIANA COUNTIES,
OHIO AND BEAVER COUNTY, PA

Dear Secretary Williams:

Please find enclosed an original and eleven (11) copies of State of Ohio, Rail Development Commission's Petition to Intervene or, in the Alternative, Appear as Amicus Curiae in Support of the Columbiana County Port Authority. Please file the requisite number of pleadings and return a time-stamped copy to my office in the enclosed self-addressed envelope.

If you have any questions, please do not hesitate to contact my office.

Very truly yours,

Alan H. Klodell
Associate Assistant Attorney General
Transportation Section

Encl.

cc: John A. Vuono, Esq.
Richard H. Streeter, Esq.
Keith G. O'Brien, Esq.
James E. Betts, Chairman, ORDC
James E. Seney, ORDC Executive Director

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Office of Proceedings

JUN 21 2005

Part of
Public Record

Before the
SURFACE TRANSPORTATION BOARD

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

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

PETITION OF THE STATE OF OHIO TO INTERVENE OR, IN THE ALTERNATIVE,
APPEAR AS AMICUS CURIAE IN SUPPORT OF THE
COLUMBIANA COUNTY PORT AUTHORITY

Comes now the State of Ohio, Rail Development Commission (“ORDC”), pursuant to 49 C.F.R. §§ 1113.7 and 1117.1, and respectfully requests permission to intervene for the purpose of requesting the Board to grant the relief sought in the Joint Petition for Reopening and Reconsideration filed by Columbiana County Port Authority (“CCPA”) and the Central Columbiana & Pennsylvania Railroad, Inc. (“CCPR”). ORDC was created in 1994 by the Ohio General Assembly under Ohio Revised Code Chapter 4981 as an independent commission within the Ohio Department of Transportation. ORDC’s mission is “to plan, promote and implement the improved movement of goods and people faster and safer on a rail transportation network connecting Ohio to the nation and the world.” The mission is to be accomplished through “a coordinated freight and passenger rail system which is an integral part of a seamless, intermodal transportation network contributing to Ohio’s quality of life and economic development.”

Through the use of grants and loans, ORDC, among other things, helps rehabilitate light density branch lines on small short-line and regional railroads; assists in the acquisition and continued operation of branch lines; and performs a vital economic development function by assisting businesses locating or expanding in Ohio with rail spurs and other rail infrastructure.

ORDC distributes Federal Highway Administration funds allocated by the Ohio Department of Transportation to fund at-grade safety improvements.

ORDC's interest in this matter stems from its involvement with the preservation and rehabilitation of the line of railroad between Youngstown, Ohio and Darlington, Pennsylvania. Consistent with its legislative mandate, when Railroad Ventures, Inc. ("RVI") temporarily blocked the use of escrow funds between January and November 2001, ORDC advanced several hundred thousand dollars of public funds to pay for repairs to the line.¹

As Lou Jannazo, ORDC's Chief of Planning, has previously explained in an Affidavit submitted earlier in this proceeding:

Because it was impossible to draw down funds from the escrow account to pay for repairs that should have been paid out of the escrow account, ORDC instead funded several of those repairs. During the period between January 24, 2001 and November 9, 2001, ORDC spent \$177,210.38 on various crossing surface repairs and signal upgrades on the CCPA line. In addition, ORDC spent \$66,531.95 on various track repairs during this period. On November 28, 2001, ORDC spent \$83,340.74 to pay for additional track repairs for which CCPA invoiced ORDC before November 9, 2001.

Even though each of the projects would have qualified for reimbursement from the escrow account established by the Board, none of these funds were repaid to ORDC out of the escrow. Instead, rather than drawing down funds from the escrow to reimburse ORDC for its payment of the bills for the needed repairs, CCPA and CCPR used the escrowed funds, as well as their own funds, to cover the cost of other repairs essential to restoration of rail service. As a

¹ As part of its deliberate attempt to halt payments from the escrow account, RVI went so far as to file suit in the Northern District of Ohio against CCPA, its Executive Director, CCPR, ORDC, and its Executive Director and Commissioners. By its Complaint, RVI sought to restrain and enjoin Defendants, and all those acting in concert with them, from further asserting, assessing, levying or collecting from Plaintiff any costs associated with, or related to, the restoration of at grade crossings or the reconnection of signal facilities at those at grade crossings in Mahoning County and Columbiana County, Ohio which exceed the restoration or reconnection costs directed by the federal Surface Transportation Board.

This collateral attack on the Board's Orders was ultimately rejected by the District Court in an unpublished opinion dated August 13, 2001. See *Railroad Ventures, Inc. v. Columbiana County Port Authority*, Case No. 4:01 CV 1164, August 13, 2001. By its *November 2001* Decision, the Board also rejected RVI's position as well.

result, ORDC, CCPA and CCPR ended up funding essential, needed repairs costing well in excess of the amount set aside in the escrow account.

Plainly, if the Board were to affirm its *December 2004* Decision, RVI will not be held accountable for any of the repairs that were paid for with public funds, rather than escrowed funds as originally envisioned by the Board. Furthermore, contrary to the public interest, CCPA will be forced to disgorge public funds that are needed to complete the restoration of the line. Indeed, there is a possibility that any funds paid to RVI would indirectly have to be replenished by ORDC through future grants to CCPA.

ORDC also spent \$752,221 on new signals to replace those that RVI allowed to disintegrate. That amount alone would have wiped out the entire escrow account. As the Board is aware, new signals were required because RVI, when it owned the line, failed to maintain them and allowed them to deteriorate. There is no avoiding the conclusion that the Board authorized the use of escrowed funds to pay for signal repairs. In particular, Ordering Paragraph 6 of the *November 2001* Decision expressly states that:

CCPA may withdraw from the escrow account such funds as are necessary to pay for repairs of this rail line at road crossings and the restoration of signaling equipment that occurred as a result of RVI's failure to keep the line of railroad operational, and shall keep account of all funds spent.

If the Board requires CCPA to refund any amount to RVI, the Board will not only harm CCPA, but it will, in effect, unjustly penalize ORDC for advancing public funds to cover the cost of repairs that the Board expressly recognized should have been paid out of the escrow. At the same time, it will unjustly reward RVI for blocking the release of funds contrary to the intent of the Board. Without question, over a million dollars of public funds were spent on making repairs to the line, crossings and signals. Had RVI honored its common carrier obligation instead of deliberately allowing the line to deteriorate, the expenditure of those public funds would not have been necessary. Furthermore, had RVI cooperated with the Board and allowed funds to be

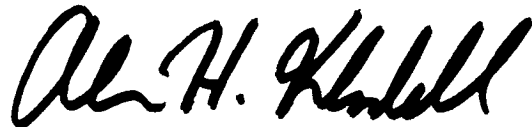
withdrawn from the escrow account between January and November 2001 while the parties waited for the Board to act, the repairs funded by ORDC would have been properly paid with escrowed funds. That being the case, the Board should find that there is no reason to allow RVI to recover any amount from CCPA, but should instead hold RVI fully accountable for its actions which have harmed the public interest.

Conclusion

For all the above-stated reasons, the ORDC respectfully requests that this Board accept this petition to intervene, or in the alternative, appear as amicus curiae in support of the CCPA, and in addition, find that it would be contrary to the public interest to require CCPA to pay any amount to RVI as the use of public funds to pay the repair bills that should have been paid with escrowed funds negates any claim that RVI might have for the escrowed funds.

Respectfully submitted,

JIM PETRO
Attorney General of Ohio

A handwritten signature in black ink, appearing to read "Alan H. Klodell", written in a cursive style.

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Attorney for State of Ohio

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing Petition to Intervene or, in the Alternative, Appear as Amicus Curiae in Support of the Columbiana County Port Authority has been served upon the following parties via regular U.S. mail, postage prepaid, this 15th day of June, 2005.

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A handwritten signature in black ink, reading "Alan H. Klodell". The signature is stylized with a large, looped "A" and "K".

Alan H. Klodell
Associate Assistant Attorney General