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SURFACE TRANSPORTATION BOARD

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April 30, 2013

Cynthia T. Brown, Chief
Section of Administration Office, of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20024

Re. STB Finance Docket No. 35239 - Allegheny Valley Railroad Company Petition for Declaratory Order - Petition of Allegheny Valley Railroad Company for Reconsideration (Expedited Consideration Requested)

Dear Ms. Brown

Pursuant to the Board's appellate procedures at 49 C.F.R. §1115.3 enclosed are an original and 11 copies of Allegheny Valley Railroad Company's Petition for Reconsideration in connection with the Board's decision of April 19, 2013 in the above captioned proceeding. Expedited consideration of this Petition is respectfully requested.

Please acknowledge receipt and filing of this Petition for Reconsideration by date stamping the attached copy of this letter and return it to the undersigned in the enclosed self-addressed, stamped envelope provided for that purpose.

Very truly yours,

RICHARD R. WILSON, P.C.

Richard R. Wilson, Esq.

RRW/bab
Enclosure
xc: Allegheny Valley Railroad Company
All Parties of Record

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**SURFACE
TRANSPORTATION BOARD**

Before the
SURFACE TRANSPORTATION BOARD

234141

FINANCE DOCKET NO. 35239

ALLEGHENY VALLEY RAILROAD COMPANY-
PETITION FOR DECLARATORY ORDER

PETITION OF ALLEGHENY VALLEY RAILROAD COMPANY
FOR RECONSIDERATION
(EXPEDITED CONSIDERATION REQUESTED)



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Dated April 30, 2013

Before the
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35239

ALLEGHENY VALLEY RAILROAD COMPANY-
PETITION FOR DECLARATORY ORDER

PETITION OF ALLEGHENY VALLEY RAILROAD COMPANY
FOR RECONSIDERATION
(EXPEDITED CONSIDERATION REQUESTED)

Pursuant to 49 U.S.C. §722(c) and 49 C.F.R. 1115.3(b), Allegheny Valley Railroad Company ("AVRC") files this Petition for Reconsideration with respect to the finding by the Board in its April 19, 2013 decision that "Conrail had no railroad easement interest to convey to AVRC in 1995.. " April 19, 2013 Decision Part C, p. 14, line 6. It is well established that the Board will grant a Petition for Reconsideration upon a showing that the prior action: (1) will be affected materially because of new evidence or changed circumstances; or (2) involves material error. Oregon International Port of Coos Bay – Feeder Line Application – Coos Bay Line of the Central Oregon & Pacific Railroad, Inc., STB Finance Docket No. 35160 (Decided March 12, 2009); Middletown & New Jersey Railroad, LLC – Lease and Operation Exemption – Norfolk Southern Railway Company, F.D. 35412 (Decided May 2, 2012). For the reasons hereinafter set forth, this finding by the Board involves a clear material error of law.

On April 19, 2013, the Surface Transportation Board issued a decision which reversed its June 15, 2012 decision in this proceeding and found that Consolidated Rail Corporation ("Conrail") had abandoned its Valley Industrial Track ("VIT") including portions thereof between 16th and 21st Street in the Pittsburgh Strip District in Docket No.

AB167 (Sub No. 558N). The Board also found that prior to 1995, Conrail had consummated the abandonment authorization issued by the Interstate Commerce Commission in that abandonment docket. Based on this finding, the STB concluded that its June 15, 2012 decision in which it found that the AVRC rail easement over the Buncher property remained an active rail line should be vacated and reversed.

In reaching its decision that the disputed 16th to 21st Street segment of the Valley Industrial Track had been abandoned by Conrail prior to 1995, the Board made a detailed analysis of the evidence of record and based on that analysis reached its conclusion regarding the abandoned status of the line under 49 U.S.C. §10903 for purposes of federal regulatory law. In reaching its decision, the Board made no examination or analysis of the 1983 permanent rail easement retained by Conrail under Pennsylvania law when it sold the underlying property between 16th and 21st Street to Buncher. The absence of any Board analysis with regard to the property rights and interests retained by Conrail in 1983 and conveyed to AVRC in 1995 is appropriate and consistent with prior holdings of the Board that proof of ownership cannot be inferred from Board approval to acquire or abandon a rail line. Since Board approval to acquire or abandon a rail line is permissive, not mandatory, such regulatory approval cannot be viewed as conveying property rights or terminating property rights with regard to the parties involved. Property ownership rights are determined by state law, not by the STB. See MVC Transportation, LLC – Acquisition Exemption – P&LE Properties, Inc., FD 34462 et al, slip op. at 6 (STB served October 20, 2004) cited in Allegheny Valley Railroad Company – Petition for Declaratory Order – William Fiore, Finance Docket No. 35388, slip op. at 4 (STB served April 25, 2011), City of Milwaukee – Petition for Declaratory Order, 2013 WL 1221975

(March 20, 2013), Missouri Pacific Railroad Company – Abandonment Exemption in Morrison and Dickinson Counties, KS, 2013 WL 796576 (February 1, 2013); V&S Railway, LLC – Petition for Declaratory Order – Railroad Operations in Hutchinson, KS, 2012 WL 2865884 (July 9, 2012); JIE AO and Zhouf – Petition for Declaratory Order, 2012 WL 2047726 (June 4, 2012); Saratoga and North Creek Railway, LLC – Operation Exemption – Tahawus Line, 2012 WL 1686171 (May 10, 2012) (Arguments related to state property law are not within the Board’s jurisdiction, but instead are appropriate for a state court to address See Allegheny Valley R.R. Co. – Petition for Declaratory Order – William Fiore, FD 35388, slip op. at 3 (STB served April 25, 2011)), Mid-America Locomotive and Car Repair, Inc. – Petition for Declaratory Order, 2005 WL 1326958 (June 6, 2005)

In Central Kansas Railway, Limited Liability Company – Abandonment Exemption – In Marion and McPherson Counties, KS, 1999 WL 11173 (December 2, 1999) the Board stated:

It is well settled that the interpretation of deeds and the determination of who owns good title are issues of State law that are outside the expertise of this Board. See Hayfield Northern, 467 U.S. at 634; Prescault 494 U.S. at 8. (State law governs disposition of reversionary interests subject to the Board’s jurisdiction to regulate abandonments); Kansas City Pub. Ser Frgt. Operation – Exempt – Aban., 7 ICC 2d 216, 225-26 (1990) (issues of real property rights are within exclusive jurisdiction of the State). Under these circumstances, we continue to believe that the most appropriate course of action for us at this point is to direct petitioners to State court to get the underlying State property law issues resolved.

Moreover, since the Board determined that Conrail had consummated its abandonment authorization prior to 1995, it was completely without jurisdiction to opine with regard to

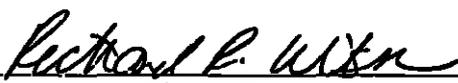
what state law property interests were conveyed by Conrail to AVRC in 1995. Hayfield Northern Railroad Co. v. C&NW Transportation, Co., 476 U.S. 622 (1984)

In view of these legal precedents, AVRC respectfully requests that the STB reconsider its decision on Page 14 with respect to the consummation of the 1984 VIT abandonment. In that discussion, the Board's decision states "Our review of the record on remand leads us to conclude that Conrail had no railroad easement interest to convey to AVRC in 1995 because Conrail received authority from the ICC to abandon the Valley Industrial Track in 1984 and also consummated that abandonment" (Emphasis added). This sentence should be corrected to indicate that Conrail had no active rail line to convey to AVRC in 1995 or the entire sentence should be removed from the Board's decision in as much as this statement (1) is a direct contradiction to the holding in MVC Transportation, LLC, supra, (2) improperly interprets the duration or existence of Conrail's permanent railroad easement in 1995 under Pennsylvania law, (a matter not before the Board for determination) and (3) pertains to a deed conveyance under Pennsylvania law which occurred subsequent to Conrail's abandonment consummation and was therefore beyond the Board's abandonment jurisdiction. Moreover, this finding regarding the status of the permanent rail easement under state property law is unnecessary to the Board's decision regarding Conrail's regulatory consummation of its abandonment authority. It also is inconsistent with the Board's conclusion that Conrail by virtue of its 1995 Quit Claim deed conveyed to AVRC whatever interest it might have had in the property subsequent to consummating its abandonment authority in AB167 (Sub No. 558N). See April 19, 2013 Decision at p. 15.

Accordingly, AVRC respectfully requests that the Board reconsider its decision by correcting or deleting its improper finding on Page 14 of its April 19, 2013 decision regarding the property interest conveyed by Conrail in 1995 to AVRC under Pennsylvania property law.

Respectfully submitted,

RICHARD R. WILSON, P C

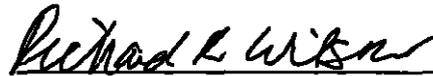
By: 
Richard R. Wilson, Esq.
Attorney for Allegheny Valley Railroad
Company

CERTIFICATE OF SERVICE

I hereby certify that I have this 30th day of April, 2013 served a copy of the Petition of Declaratory Order -- Petition of Allegheny Valley Railroad Company for Clarification upon the following by first class United States Mail, postage prepaid:

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