

SURFACE TRANSPORTATION BOARD

Docket No. AB 1074X

LASSEN VALLEY RAILWAY, LLC
-- ABANDONMENT EXEMPTION --
IN WASHOE COUNTY, NEV. AND LASSEN COUNTY, CAL.

ENTERED
Office of Proceedings

AUG 19 2011

Part of
Public Record

MOTION
OF
LASSEN VALLEY RAILWAY, LLC

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LASSEN VALLEY RAILWAY, LLC

Dated: August 19, 2011

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Lassen Valley Railway, LLC ("LVR"), pursuant to 49 C.F.R. §1104.13(a), moves that the Board, under 49 C.F.R. §1104.10(a), reject or, in the alternative, deny Mr. Robert Alan Kemp's Motion for Extension of Time to File Offer of Financial Assistance and Notice of Intent to File an Offer of Intent to File Offer of Financial Assistance, filed August 18, 2011, and in support thereof LVR states, as follows:

1. The Board's rule, 49 C.F.R. §1194.2(a), in part requires that a pleading's "[t]ext must be double-spaced . . . using type not smaller than 12 point." Mr. Kemp's pleadings were single-spaced, and the type was smaller than 12 point, and, therefore, were not rule compliant.

2. The Board's rule, 49 C.F.R. §1104.3(a), in part declares that, if a pleading is not electronically filed, "An executed original, plus 10 copies of every proper pleading . . . must be furnished for the use of the Board . . ." Mr. Kemp's pleadings state that he faxed to the Board the original of his pleadings and three copies, and, therefore, the filings were not rule compliant.

3. The Board's rule, 49 C.F.R. §1104.4(b), in part provides, "The original of each document not signed by a practitioner or attorney must be: . . . (3) Verified, if it contains allegations of fact, under oath by the person, in whose behalf it is filed . . ." 49 C.F.R. §1104.5(a) states "An affirmation will be accepted in lieu of an oath." It, however, must be submitted "as true under penalty of perjury." Mr. Kemp in his pleading asserts that he "is working to confirm availability of FRA RRIF Financing Guarantees for this acquisition" and that he is in the "process of lawfully Condemning" the HL Powerplant [sic]. His "Verification" claims that "the facts asserted [in his pleadings] are true and accurate as stated to the best of his knowledge, information, and belief." He, however, fails to allege that the statements are true under penalty of perjury, and, therefore, his "Verification" was not rule compliant.

4. The Board's rule, 49 C.F.R. §1104.7(a), in part declares, "A request for extension must be filed not less than 10 days before the due date." 49 C.F.R. §1152.27(b)(2), in part states that when a petition for exemption is filed, as LVR filed its petition for exemption on April 20, 2011, "Offers of financial assistance will be due 120 days after the filing of the petition for exemption or 10 days after service of a Board decision granting the exemption, whichever occurs sooner." The Board's decision approving LVR's petition was served August 8, 2011, and, therefore, the offer of financial assistance was due August 18, 2011. Mr. Kemp's pleadings are out of time having been filed on August 18, 2011, and, therefore, are not rule compliant.

5. The Board's rule, 49 C.F.R. §1104.12(a), in part provides, "every document filed with the Board should include a certificate showing simultaneous service upon all parties to the proceeding. Service on the parties should be by the same method and class

of service used in serving the Board . . ." Mr. Kemp's "Certificate of Service" states that the pleadings which he faxed to the Board were mailed and not faxed to LVR's counsel. The other parties of record, Mr. Jim Chapman, Mr. Darrel Cruz and Mr. Alan Kahn, evidently were not served by Mr. Kemp, even by mail, and, therefore, his "Certificate of Service" was not rule compliant.

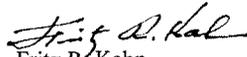
6. Mr. Kemp's claim that he needs the LVR's railroad line authorized to be abandoned "as part of the First HEAVY HIGH SPEED ULTRA-EFFICIENT and ENVORONOMENTALLY [sic] NEUTRAL RAILROAD SYSTEM within the United States" is patently absurd, and his request for a 60-day extension of the due date for the filing of an offer of financial assistance is altogether nonsensical. To delay LVR's abandonment while Mr. Kemp endeavors to "to complete the necessary Private and FRA Financial Applications for submission of a Qualified OFA" is unfair and unreasonable. As the Board well knows, Mr. Kemp has asserted that he would be filing an offer of financial assistance in other proceedings, but in none of them did he actually file an offer of financial assistance. See, e.g., Docket No. AB 33 (Sub-No. 297X), Docket No. AB 1053 (Sub-No. 1X).

WHEREFORE, Lassen Valley Railway, LLC, asks that the Board, pursuant to 49 C.F.R. §1104.10(a), reject the August 18, 2011, pleadings filed by Mr. Robert Alan Kemp or, in the alternative, deny them.

Respectfully submitted,

LASSEN VALLEY RAILWAY, LLC

By its attorney,



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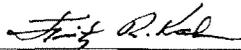
Tel.: (202) 263-4152

Dated: August 19, 2011

CERTIFICATE OF SERVICE

I certify that I this day have served the foregoing Motion of Lassen Valley Railway, LLC upon Mr. Robert Alan Kemp, Mr. Jim Chapman, Mr. Darrel Cruz and Mr. Alan Kahn by mailing them copies by prepaid, first-class mail, as I did not have their e-mail addresses or fax numbers.

Dated at Washington, DC, this 19th day of August 2011.



Fritz R. Kahn