

216917

Before the
SURFACE TRANSPORTATION BOARD



FINANCE DOCKET NO: 34869

HONEY CREEK RAILROAD, INC.
PETITION FOR DECLARARY ORDER

ROBERTS SUPPLEMENTAL PETITION FOR
FURTHER EXTENTIONS OF TIME

ENTERED
Office of Proceedings

JUL 03 2006

Part of
Public Record

Kathleen Clubb Kauffman
Ackerson Kauffman Fex, PC
1250 H Street, NW
Suite 850
Washington, DC 20005
DC Bar # 323212
(202) 833-8833
Attorney for Gary L. Roberts,
Roberts Pipeline Construction
Company, Inc.,
Roberts Construction, Inc.

Dated: June 30, 2006

CERTIFICATE OF SERVICE

I hereby certify that I have this 30th day of June, 2006 served a copy of the Supplemental Petition for Further Extensions of Time upon the following via first class United States Mail, postage prepaid:

Richard R. Wilson, Esq.
Pa. I.D. #25661
127 Lexington Avenue, Suite 100
Altoona, PA 16601

William B. Keaton, Esq.
KEATON AND KEATON, P.C.
126 West Second Street
Rushville, IN 46173

John H. Brooke, Esq.
Brooke-Mawhorr Attorneys at Law
P.O. Box
112 E. Gilbert Street
Muncie, IN 47308-1071

Kathleen Clubb Kauffman / YG

Kathleen Clubb Kauffman
Attorney for Gary L. Roberts,
Roberts Pipeline Construction
Company, Inc.,
Roberts Construction, Inc.

Before the
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO: 34869

HONEY CREEK RAILROAD, INC.
PETITION FOR DECLARATORY ORDER

**ROBERTS SUPPLEMENTAL PETITION FOR
FURTHER EXTENTIONS OF TIME**

Gary L. Roberts, Roberts Pipeline Construction Company, Inc., and Roberts Construction, Inc. ("Roberts") file this Supplemental Petition for Further Extension of Time in connection with Roberts' reply to the Honey Creek Railroad, Inc. ("HCR") Petition for Declaratory Order. On June 12, 2006, the Surface Transportation Board ("Board") granted a 30-day extension for Roberts to file a reply, which is currently due on July 12, 2006. In its order granting the extension, the Board stated: "Roberts states that he has now retained additional counsel, and counsel needs more time to investigate facts and to determine whether discovery will be necessary before filing a reply."

Undersigned counsel has undertaken an investigation of the facts, relevant to this proceeding and has concluded that discovery will be necessary before filing a reply. This case presents important issues as to whether *de facto* or *de jure* abandonment occurred prior to HCR's 2004 request for abandonment authority or before the actions at issue and the underlying state proceeding occurred. The Board and courts have recognized that determining whether a railroad has abandoned a line turns on the railroad's "objective intent," and further that there is no rigid formula for determining intent. The Board examines a broad spectrum of facts in each case. *See, e.g., Becker v. Surface Transp. Bd.*, 132 F.3d 60 (D.C. Cir. 1997); *RLTD Ry. Corp. v. Surface Transp. Bd.*, 166 F.3d 808 (6th Cir. 1999). As a party to this proceeding, Roberts has the right to discovery without

obtaining prior Board approval, but the Board does need to grant this extension of time so that the discovery can be undertaken. 49CFR § 1114.21(b). Roberts requests a 90-day extension of his reply date so he that he may conduct necessary discovery.

The requested extension will not prejudice HCR. HCR has itself requested multiple extensions of its abandonment consummation date for its own purposes. The further 90-day extension requested by Roberts is reasonable and the minimum amount of time in which a party could be expected to develop a factual record that satisfies the Board's requirements. In addition, whichever party prevails before the Board, the other party is likely to appeal the decision to the Circuit Court. An appeal will proceed more efficiently if the factual record is fully developed before the Board.

WHEREFORE, Roberts respectfully requests that the Board expeditiously grant a further 90-day extension of time so that discovery can be served and completed prior to filing the reply.

Respectfully submitted,

Ackerson Kauffman Fex, PC

Dated June 30, 2006

By: Kathleen Clubb Kauffman /YG
Kathleen Clubb Kauffman
Attorney for Gary L. Roberts, *et al.*

Ackerson Kauffman Fex, PC
1250 H Street, NW
Suite 850
Washington, DC 20005
(202) 833-8833