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Of Counsel to:

Vuono & Gray LLC
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June 7, 2006

ENTERED
Office of Proceedings

JUN 7 2 006

Part of
Public Record

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

Re: Petition of Honey Creek Railroad, Inc. for Declaratory Order
Finance Docket No. 34869

Dear Sir:

Enclosed for filing in the above captioned proceeding, please find the original and ten copies of Reply of Honey Creek Railroad, Inc.- to The Supplemental Petition of Respondent for Further Extensions of Time.

Please time stamp the additional copy of this letter and return it to the undersigned in the enclosed self addressed, stamped envelope. Copies of this Reply have been served on all parties of record.

Very truly yours,

RICHARD R. WILSON, P.C.



Richard R. Wilson, Esq.
Attorney for Honey Creek Railroad Company

RRW/bab
Enclosures

xc: Honey Creek Railroad, Inc.
All Parties of Record

Before the
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO: 34869

HONEY CREEK RAILROAD, INC. -.
PETITION FOR DECLARATORY ORDER

2/6938



**REPLY OF HONEY CREEK RAILROAD, INC. TO THE
SUPPLEMENTAL PETITION OF RESPONDENT FOR FURTHER
EXTENSIONS OF TIME**

ENTERED
Office of Proceedings

JUN 12 2006

Part of
Public Record

RICHARD R. WILSON, ESQ.
Attorney for Honey Creek Railroad, Inc.
Pa. I.D. #25661
127 Lexington Avenue, Suite 100
Altoona, PA 16601
(814) 944-5302
(814) 944-6978 fax

Dated: June 7, 2006

Before the
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO: 34869

HONEY CREEK RAILROAD, INC.
PETITION FOR DECLARATORY ORDER

**REPLY OF HONEY CREEK RAILROAD, INC. TO THE
SUPPLEMENTAL PETITION OF RESPONDENT FOR FURTHER
EXTENSIONS OF TIME**

Honey Creek Railroad Company, Inc. ("HCR"), files this reply to the Supplemental Petition for Further Extension of Time submitted on behalf of Respondent on June 2, 2006. HCR has no objection to affording new counsel the professional courtesy of a 30 day extension of time in which to file a substantive reply to HCR's Petition for Declaratory Order, but it takes strong exception to a 30 day extension of time so that counsel can investigate facts and determine whether discovery will be necessary before filing a reply. This matter has been in litigation in the Indiana courts for over a year. The issue of referral to the Surface Transportation Board was before the Court for over six months before disposition and respondent and his local counsel were therefore clearly on notice of the possibility that referral to the STB might occur and yet they failed to take action to obtain assistance of regulatory counsel until after the Court granted referral and HCR filed its Petition for Declaratory Order with the Board. Thus delays in obtaining knowledgeable counsel or the adequacy of time for responding to HCR's Petition for Declaratory Order are entirely of respondents own making. His attempts to seek further delay of

the Board's consideration of HCR's Petition for Declaratory Order is therefore unwarranted and meritless.

The issue presented in HCR's Petition for Declaratory Order is a question of law concerning the application of the STB's abandonment regulations with regard to Indiana statutory provisions and does not present any disputed issues of fact. The HCR abandonment proceeding has been concluded with the exception of filing a notice of consummation which has been postponed with consent of the Board as a consequence of the pending state court litigation. Moreover, the evidentiary record in the HCR abandonment proceeding is closed but available on the STB's website. That record could have been reviewed by Mr. Roberts' local counsel at any time and can be reviewed by Mr. Roberts' new counsel with more than adequate time in which to file a reply to HCR's Petition for Declaratory Order within 30 days.

Moreover, respondent has already initiated discovery in the Indiana court proceeding where relevant facts concerning state property law issues can be ascertained after this referral is returned to the court. (Exhibit A)

Accordingly, HCR does not object to an additional 30 day extension within which respondent can file a reply to HCR's Petition for Declaratory Order. However, to string this proceeding out for 30 days to afford opposing counsel a period to investigate and then to determine whether further discovery (and delay) is necessary is an open ended, speculative abuse of the Board's procedures and is prejudicial to HCR's entitlement to a speedy administrative

determination of its Petition so that this case can be resubmitted to the Indiana court for final resolution.

Respectfully submitted,

RICHARD R. WILSON, P.C.

By: 
Richard R. Wilson, Esq.
Attorney for Honey Creek Railroad, Inc.

RICHARD R. WILSON, P.C.
127 Lexington Avenue, Suite 100
Altoona, PA 16601
(814) 944-5302

LAW OFFICES
KEATON AND KEATON, P.C.
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WALTER B. KEATON (1912-1980)
WILLIAM B. KEATON

TELEPHONE (765) 932-3947
FAX (765) 938-2803

June 1, 2006

Honorable Jay L. Toney
Special Judge, Henry Circuit Court
Randolph Circuit Court
Randolph County Court House
100 South Main Street
Winchester, Indiana 47394

Honey Creek Railroad, Inc. v.
Gary L. Roberts, et al.
No. 33CO1-0506-CT-0019

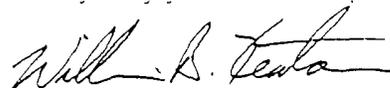
Dear Judge Toney:

Enclosed please find your service copy of my Response To Motion To Shorten Time To Respond To Discovery regarding the above case.

Also enclosed please find the proposed Order Denying Motion To Shorten Time And Directing Compliance With Indiana Trial Rule 26 (A) along with sufficient copies for distribution.

Thank you for your assistance in this matter.

Very truly yours,



William B. Keaton

WBK:ld

cc: Mr. William E. Smith
Mr. Richard R. Wilson
Mr. John H. Brooke
Henry County Clerk

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EXHIBIT A

STATE OF INDIANA) IN THE HENRY CIRCUIT COURT
)SS:
 COUNTY OF HENRY) CAUSE NO. 33CO1-0506-CT-0019

HONEY CREEK RAILROAD, INC.,)
 An Indiana Corporation,)
 Plaintiff,)
 vs.)
 GARY L. ROBERTS,)
 Individually,)
)
 ROBERTS PIPELINE CONSTRUCTION)
 COMPANY, INC.,)
 An Indiana Corporation.)
 ROBERTS CONSTRUCTION, INC.,)
 An Indiana Corporation.)
 Defendants.)

GARY L. ROBERTS.)
 Individually.)
 Counter-Claimant.)
 vs.)
 HONEY CREEK RAILROAD, INC.,)
 An Indiana Corporation.)
 Counter-Defendant)

**RESPONSE TO MOTION TO SHORTEN
 TIME TO RESPOND TO DISCOVERY**

Comes now the plaintiff, by counsel, William B. Keaton, and objects to the motion of the defendant, Gary L. Roberts, to shorten the time to respond to discovery.

In support of this motion, the plaintiff would show the Court as follows:

1. A Stay Order has been entered in this cause pending the determination of the Surface Transportation Board.
2. The defendant, Gary L. Roberts, failed to comply with the provisions of Indiana Trial Rule 26(A) concerning the submission of discovery.

WHEREFORE, the plaintiff prays the Court to deny the Motion To Shorten Time To Respond To Discovery and for all other relief proper in the premises.

KEATON AND KEATON, P.C.

By William B. Keaton
William B. Keaton, #5102-70
Attorney for Plaintiff

KEATON AND KEATON, P.C.
126 West Second Street
Rushville, Indiana 46173
Telephone: (765)932-3947
Fax: (765)938-2803

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing pleading was personally served upon the person or persons listed below or was served by facsimile transmission and/or by United States Mail, postage prepaid and addressed to the person or persons listed below:

Mr. John H. Brooke
Brooke & Mawhorr, P.C.
P. O. Box 1071
Muncie, Indiana 47308-1071

Mr. Richard R. Wilson
Richard R. Wilson, P.C.
127 Lexington Avenue, Suite 100
Altoona, Pennsylvania 16601

Honorable Jay L. Toney
Special Judge, Henry Circuit Court
Randolph Circuit Court
Court House
100 South Main Street
Winchester, Indiana 47394

Dated: June 1, 2006

By William B. Keaton
William B. Keaton

LAW OFFICES
KEATON AND KEATON, P.C.
126 WEST SECOND STREET
RUSHVILLE, INDIANA 46173-1874

WALTER B. KEATON (1912-1980)
WILLIAM B. KEATON

TELEPHONE (765) 932-3947
FAX (765) 938-2803

June 1, 2006

Ms. Patricia A. French
Clerk, Henry Circuit Court
P. O. Box B
New Castle, Indiana 47362

Honey Creek Railroad, Inc. v.
Gary L. Roberts, et al.
No. 33CO1-0506-CT-0019

Dear Ms. French:

Enclosed please find for filing with the Court on behalf of Honey Creek Railroad, Inc., my Response To Motion To Shorten Time To Respond To Discovery. Please note that this pleading were mailed pursuant to T.R.5(F)(3) and should be file marked as the date of mailing.

The proposed Order Denying Motion To Shorten Time And Directing Compliance With Indiana Trial Rule 26 (A) has been forwarded to Special Judge Toney for his consideration.

Please return a file marked copy of this pleading to me in the enclosed reply envelope.

Thank you for your assistance in this matter.

Very truly yours,



William B. Keaton

WBK:ld

cc: Mr. William E. Smith
Mr. Richard R. Wilson
Mr. John H. Brooke
Honorable Jay L. Toney

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BROOKE ♦ MAWHORR

Attorneys At Law

John H. Brooke
Douglas K. Mawhorr

Leslie M. Horn
Rebecca S. Hartley

May 31, 2006

Clerk, Henry Circuit Court
P. O. Box B
New Castle, Indiana

Re: Honey Creek Railroad, Inc.
v. Gary L. Roberts, et al.
Henry Circuit Court 1
Cause No. 33C01-0506-CT-0019

Dear Clerk:

Please find enclosed one (1) original and four (4) copies of the following document with regard to the above-referenced matter to be filed in your court:

1. Defendant, Gary Roberts, Motion to Shorten Thirty Day Time Allowance for Submission of Plaintiff's Responses to Defendant's First Set of Interrogatories;
2. Order on Motion to Shorten Thirty Day Time Allowance for Submission of Plaintiff's Responses to Defendant's First Set of Interrogatories; and
3. Defendant, Gary Roberts, First Set of Interrogatories to Plaintiff, Honey Creek Railroad, Inc.

Upon filing, please return one (1) file-marked copy of this pleading, I have enclosed a self-addressed stamped envelope for your mailing convenience. As this is filed by certified mail, please show the filing date as the date of mailing, **May 31, 2006**, pursuant to Indiana Trial Rule 5 (F).

Thank you for your cooperation and assistance in this matter.

Sincerely,
BROOKE ♦ MAWHORR, PC



John H. Brooke
Attorney At Law

JHB/llr
Enclosures

STATE OF INDIANA) IN THE HENRY CIRCUIT COURT
)SS:
COUNTY OF HENRY) CAUSE NO: 33C01-0506-CT-0019

HONEY CREEK RAILROAD, INC.,)
An Indiana Corporation,)
Plaintiff.)
vs.)
GARY L. ROBERTS,)
Individually,)
ROBERTS PIPELINE CONSTRUCTION)
COMPANY, INC.,)
An Indiana Corporation.)
ROBERTS CONSTRUCTION, INC.,)
An Indiana Corporation.)
Defendants.)

GARY L. ROBERTS,)
Individually,)
Counter-Claimant.)
vs.)
HONEY CREEK RAILROAD, INC.,)
An Indiana Corporation.)

DEFENDANT, GARY ROBERTS', FIRST SET OF INTERROGATORIES TO
PLAINTIFF, HONEY CREEK RAILROAD, INC.

Comes now the Defendant herein, Gary Roberts, by counsel, John H. Brooke, BROOKE MAWHORR, P.C., and requests the Plaintiff herein to answer the following interrogatories under oath, within thirty (30) days after service hereof pursuant to Trial Rule 33. It is further requested that Plaintiff supplement all responses as required by Trial Rule 26(E). Please number responses as the questions are numbered.

Please note that Trial Rule 33(A) requires that the party to whom these interrogatories are directed furnish all information that is available to the party, and that each interrogatory be answered fully and upon

oath. Trial Rule 37(A)(3) provides that an evasive or incomplete answer is to be treated as a failure to answer.

In responding to these Interrogatories, furnish all information available to you, including information in the possession of your attorneys, or their investigators, and all persons acting in your behalf and not merely such information known of your own personal knowledge. If you cannot respond to discovery in full after exercising due diligence to secure the information, answer to the extent possible, specifying your inability to answer the remainder and state whatever information or knowledge you have concerning the unanswered portions and the efforts you have undertaken to secure the information sought. If the space provided for your answer is inadequate, please continue your answer on a separate sheet, numbering the continuation to correspond with the Interrogatory you are answering.

The Interrogatories which follow are to be considered as continuing, and you are requested to provide, by way of supplementary answers and responses thereto, such additional information as you or any other person acting in your behalf may hereafter obtain which will augment or otherwise modify the responses first given. Such supplementary responses are to be served upon the undersigned counsel within thirty (30) days after receipt of such information.

INTERROGATORY NO. 1

Please state the name, address, telephone number, and position of the person answering these interrogatories on behalf of the Plaintiff, Honey Creek Railroad, Inc.

INTERROGATORY NO. 2

Please state the date Honey Creek Railroad, Inc. was formed.

INTERROGATORY NO. 3

Please state the date Honey Creek Railroad was purchased, as well as the name of the former owner.

INTERROGATORY NO. 4

Please state the dates of operation for Honey Creek Railroad, Inc, and the purpose for which the railroad was used.

INTERROGATORY NO. 5

Has any portion of Honey Creek Railroad become unusable as a railroad on any portion of its line, other than that portion which is the subject of this law suit? If so, please identify those portions and the date upon which they became unusable.

I HEREBY AFFIRM UNDER THE PENALTIES OF PERJURY THAT
THE FOREGOING REPRESENTATIONS ARE TRUE AND ACCURATE.

Printed Name

Title

Signature

Respectfully submitted,

BROOKE MAWHORR, P.C.



John H. Brooke, #4234-18
Attorney for Gary Roberts

CERTIFICATE OF SERVICE

The undersigned attorney certifies that a copy of the foregoing is being served via United States first-class mail, postage prepaid, this ~~25th~~ ^{31st} day of May, 2006, to the following counsel of record:

Richard Wilson
127 Lexington Avenue, Suite 100
Altoona, PA 16601

William Keaton
126 West Second Street
Rushville, IN 46173



John H. Brooke

STATE OF INDIANA) IN THE HENRY CIRCUIT COURT
)SS:
COUNTY OF HENRY) CAUSE NO: 33C01-0506-CT-0019

HONEY CREEK RAILROAD, INC.,)
An Indiana Corporation,)
Plaintiff.)
vs.)
GARY L. ROBERTS,)
Individually.)
ROBERTS PIPELINE CONSTRUCTION)
COMPANY, INC.,)
An Indiana Corporation.)
ROBERTS CONSTRUCTION, INC.,)
An Indiana Corporation.)
Defendants.)

GARY L. ROBERTS,)
Individually.)
Counter-Claimant.)
vs.)
HONEY CREEK RAILROAD, INC.,)
An Indiana Corporation.)

DEFENDANT, GARY ROBERTS', MOTION TO SHORTEN THIRTY DAY
TIME ALLOWANCE FOR SUBMISSION OF PLAINTIFF'S RESPONSES TO
DEFENDANT'S FIRST SET OF INTERROGATORIES

Comes now the Defendant herein, Gary Roberts, by counsel, John H. Brooke, BROOKE MAWHORR, P.C., and files his Motion to Shorten Thirty-Day Time Allowance for Submission of Plaintiff's Responses to Defendant's First Set of Interrogatories, pursuant to Indiana Trial Rule 33 (C). In support of his motion he states and alleges as follows:

1. That Defendant's Response to the Petition for Declaratory Relief of Honey Creek Railroad, Inc., Surface Transportation Board Finance Docket Number 34869, is due to be filed on or before June 12, 2006.

2. That the information requested by Defendant's First Set of Interrogatories to Plaintiff, Honey Creek Railroad, Inc., (attached as Exhibit A) is imperative for Defendant to present a proper response to Plaintiff's Request for Declaratory Relief..
3. That the information requested by Defendant's First Set of Interrogatories to Plaintiff is known to the Plaintiff, and is readily available for Plaintiff to furnish to Defendant.
4. That Defendant's Motion to Shorten the Thirty-Day Time Allowance does not create a hardship for Plaintiff, as this information is easily obtained by Plaintiff.
5. That Defendant requests that the time allowance be reduced to seven (7) days from the date of service on Plaintiff, in order for the information to be accessible to Defendant to aide in his Response to Plaintiff's Motion for Declaratory Relief.

WHEREFORE, Defendant requests that this Court grant its Motion to Shorten the Thirty-Day Time Allowance for Submission of Responses to Defendant's First Set of Interrogatories to seven (7) days from the date of service upon Plaintiff, and all other relief just and proper in the premises.

Respectfully submitted,

BROOKE MAWHORR, P.C.

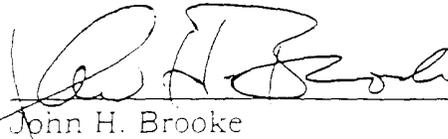

John H. Brooke, #4234-18
Attorney for Gary Roberts

CERTIFICATE OF SERVICE

The undersigned attorney certifies that a copy of the foregoing is being served via United States first-class mail, postage prepaid, this 25th day of May, 2006, to the following counsel of record: 3/5

Richard Wilson
127 Lexington Avenue, Suite 100
Altoona, PA 16601

William Keaton
126 West Second Street
Rushville, IN 46173



John H. Brooke

CERTIFICATE OF SERVICE

I hereby certify that I have this 7th day of June, 2006 served a copy of the Reply of Honey Creek Railroad, Inc. to the Supplemental Petition of Respondent for Further Extensions of Time upon the following by first class United States Mail, postage prepaid:

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 1071
112 E. Gilbert Street
Muncie, Indiana 47308-1071

Kathleen Clubb Kauffman
Ackerson Kaufmann Fex, PC
1250 H Street, NW
Ste. 850
Washington, DC 20005



Richard R. Wilson, Esq.
Attorney for Honey Creek Railroad, Inc.