

41422
DO

SERVICE DATE – FEBRUARY 18, 2011

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35239

ALLEGHENY VALLEY RAILROAD COMPANY—PETITION FOR DECLARATORY
ORDER

Decided: February 18, 2011

On April 23, 2009, Allegheny Valley Railroad Company (AVRC) filed a petition for a declaratory order, asking that the Board find that a rail easement between 16th Street and 21st Street in Pittsburgh, Pa. remains available for use as a line of railroad. The Buncher Company (Buncher), a party whose property is crossed by the alleged rail easement, opposed AVRC's petition. Buncher claimed either that the rail easement had been extinguished or that the trackage was merely spur, and therefore never a line of railroad with an active rail easement. The Board received several rounds of pleadings from the parties and held an oral argument. In a decision served on June 15, 2010, the Board granted the petition for declaratory order and found that the rail easement over Buncher's property remains active.

Buncher appealed the Board's decision to the United States Court of Appeals for the District of Columbia Circuit. During that appeal, Buncher submitted to the court additional evidence – never filed before the Board – that Buncher argued would affect the Board's June 2010 decision. The Board filed a motion for voluntary remand after determining that Buncher's additional evidence could be material to both the June 2010 decision and the proceedings on appeal. The court remanded the case to the Board in an order filed on January 26, 2011.

Accordingly, the declaratory order proceeding is reopened. The parties are directed to confer and to file a procedural schedule. AVRC has indicated in a filing submitted to the Board on February 7 that it wishes to pursue discovery regarding the additional evidence submitted by Buncher. The parties should address the matter of discovery in their schedule. The parties should submit their schedule by March 10, 2011.

It is ordered:

1. This proceeding is reopened.
2. AVRC and Buncher are directed to confer and to file a procedural schedule governing the reopening by March 10, 2011.

3. This decision is effective on the date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.