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SEC

SERVICE DATE – MARCH 6, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-556 (Sub-No. 2X)

RAILROAD VENTURES, INC.–ABANDONMENT EXEMPTION–BETWEEN
YOUNGSTOWN, OH, AND DARLINGTON, PA, IN MAHONING AND COLUMBIANA
COUNTIES, OH, AND BEAVER COUNTY, PA

Decided: March 5, 2007

By decision served on February 15, 2007 (February 2007 Decision), the Board tentatively concluded that it had materially erred in the decisions served December 13, 2004, and December 15, 2005, in requiring the Columbiana County Port Authority (CCPA) to remit to Railroad Ventures, Inc. (RVI) any portion of the \$375,000 set-aside fund that was created pursuant to the forced sale of the line at issue in this case.

In reaching its tentative conclusion, the Board determined that it had overlooked clear evidence in the record demonstrating that the expenditures by the Ohio Rail Development Commission (ORDC) to remedy damage to road crossings and signals at crossings significantly exceeded the entire \$375,000 in the set-aside fund. Accordingly, the Board found that requiring CCPA to repay any amount to RVI would undermine the fundamental purpose of the set-aside fund, which was to ensure that RVI (rather than CCPA, ORDC, or anyone else) bear financial responsibility for the damage done by RVI, up to the \$375,000 limit. Before taking any final action, however, the Board provided RVI an opportunity to comment on this tentative conclusion by submitting a pleading no later than March 7, 2007.

On February 23, 2007, RVI filed a petition for extension of time and supplementary discovery. In its petition, RVI argues that, where federal funds have been used to fund crossing improvements, under 23 CFR 646.210 it is the responsibility of the state, and not the railroad, to improve the railroad crossings. Accordingly, RVI asserts that any of the costs of signal repairs identified in the February 2007 Decision that were paid for using federal funds cannot be offset against monies due to RVI from the set-aside fund. Thus, RVI asserts that additional time is needed to determine the extent to which crossing and signal restoration expenses were paid for in whole or in part with federal funds provided by the Federal Highway Administration to the state. RVI therefore requests an additional 60 days to file its pleading in response to the February 2007 Decision. On February 26, 2007, CCPA replied in opposition to RVI's petition for an extension.

Based on a review of the parties' filings, it is not clear whether the information RVI seeks will prove to be relevant, but RVI will be allowed 30 additional days to pursue limited discovery and to make its filing regarding the Board's tentative conclusion. RVI's discovery requests must be narrowly tailored to the specific issue of whether ORDC received federal funds from the

Federal Highway Administration and, if so, whether that money was provided to CCPA or the Central Columbian & Pennsylvania Railway, Inc. (CCPR)¹ for the specific signal improvements that provided the basis for the February 2007 Decision. This decision, in allowing the additional time and an opportunity for discovery, makes no finding as to the merits of RVI's claim that 23 CFR 646.210 is applicable to this proceeding. The Board can address the issue of the relevance of 23 CFR 646.210 after that issue is more fully discussed by the parties in their further pleadings.

While RVI has requested 60 additional days to submit its pleading, obtaining the information it needs from CCPA and ORDC and formulating a response should not be overly burdensome or time-intensive. Therefore, a 30-day extension should be sufficient.

It is ordered:

1. RVI's request for an extension of time to submit its pleading in response to the February 2007 Decision is granted in part, and that pleading is due by April 6, 2007.

2. RVI may pursue discovery that is limited to addressing whether ORDC received federal funds from the Federal Highway Administration and, if so, whether that money was provided to CCPA or CCPR for the specific signal improvements that were the basis for the February 2007 Decision.

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

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

¹ CCPR was hired by CCPA to oversee rehabilitation of the line at issue and to serve as the line's operator.