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SEC

SERVICE DATE - MARCH 17, 2003

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 14, 2003

On January 21, 2003, the Columbiana County Port Authority (CCPA) and Central Columbiana and Pennsylvania Railroad Company (CCPR) (collectively referred to as CCPA/CCPR) filed a joint motion seeking final closure of the escrow account that was created by the Board in its decision served on October 4, 2000.¹ By decision served on February 5, 2003, RVI's request for an extension until March 14, 2003, to file a reply was granted.

On March 6, 2003, RVI filed a request for a further extension until April 11, 2003, to file a reply. In support of its extension request, RVI states that, because of delays caused by recent snow storms, additional time is needed for its consultant to conduct a field inspection and incorporate his findings into his audit report. According to RVI, counsel for CCPA does not oppose the request for an extension.

On March 11, 2003, CCPR filed a reply opposing RVI's request for a further extension. CCPR claims that RVI has not sufficiently explained why a field inspection is necessary. Claiming that RVI's consultant is biased, CCPR further states that, should the Board wish to have the repairs confirmed, CCPR would agree to have an inspection performed by the Federal Railroad Administration (FRA), but not by RVI's consultant. CCPR also notes that, even if it did agree to an inspection by RVI's consultant, RVI would first need CCPR's permission for the consultant to enter onto its property. CCPR asserts that it will not grant permission until insurance and indemnification issues regarding liability for any losses, damages, or personal injury suffered by the consultant have been resolved.

¹ The interest-bearing escrow account, maintained by an independent third-party fiduciary, was set up to ensure payments by Railroad Ventures, Inc. (RVI), for restoring paved-over track, covered grade crossings, and reconnecting signal equipment on the line being sold.

On March 11, 2003, RVI responded to CCPR's reply. RVI asserts that a field inspection is required to confirm that the installation of materials and the work performed, which is represented by the invoices submitted with CCPA/CCPR's joint motion to close the escrow account, was properly done. RVI assures the Board that with the exception of the inspection, its consultant has nearly completed his audit of CCPA/CCPR's use of the funds from the escrow account. To meet CCPR's liability concerns, RVI stipulates that the consultant will notify CCPR before entering onto its property and will sign a release or other waiver of liability requested by CCPR.

An inspection by RVI's consultant is necessary for it to prepare a reply to CCPA/CCPR's joint motion seeking closure of the escrow account. Therefore, CCPA/CCPR must grant RVI's consultant access to the property so that the work may be inspected.² The details of how the inspection will be conducted and possible liability issues must be resolved by RVI and CCPA/CCPR.

Finally, CCPR's allegation that RVI's consultant may be biased carries little weight. In this proceeding, as in any adversarial proceeding, the Board will consider the credibility of the evidence submitted by CCPA/CCPR and the evidence submitted by RVI, taking into account the possibility of witness bias.

RVI states that its consultant needs only "minimal additional time" to finish his audit of escrow account expenditures. Three additional weeks should provide RVI sufficient time for its consultant to inspect the work and for its counsel to draft a reply. Therefore, the deadline for replies will be extended until April 4, 2003.

It is ordered:

1. The due date for replies to CCPA/CCPR's joint motion for final closure of the escrow account is extended to April 4, 2003.
2. CCPA/CCPR shall permit an inspection by RVI's consultant, of all property and premises, including but not limited to track and crossings, necessary to evaluate CCPA/CCPR's use of funds from the escrow account.

² Although CCPR suggests that an inspection be permitted only if it is conducted by FRA, the Board has no authority to order FRA to inspect the line.

3. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary