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SEC

SERVICE DATE – NOVEMBER 20, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34869

HONEY CREEK RAILROAD, INC.–PETITION FOR DECLARATORY ORDER

Decided: November 17, 2006

On April 21, 2006, Honey Creek Railroad, Inc. (HCR) filed a petition for declaratory order pursuant to an order of the Circuit Court of Henry County, Indiana,<sup>1</sup> referring a jurisdictional question to the Board involving whether HCR had abandoned a 5.9-mile rail line between Sulphur Springs and New Castle, in Henry County, IN. HCR instituted the court proceeding against Gary L. Roberts, et al. (Roberts) seeking injunctive relief and damages in connection with the removal of certain railroad track materials from HCR's rail line. Roberts filed an answer claiming that HCR's rail line was abandoned and that title had vested in Roberts as a result of the abandonment. The court referred the matter to the Board and stayed its proceedings pending Board action on the referral.

By decision served on May 12, 2006, the Board granted Roberts a 30-day extension of time for filing his reply, from May 11, 2006, to June 12, 2006. On June 8, 2006, the Board issued a decision granting Roberts a further 30-day extension of time for filing his reply, from June 12, 2006, to July 12, 2006. By decision served on July 10, 2006, the Board granted Roberts an extension of time for filing his reply, from July 12, 2006, to August 28, 2006, in order to provide time for Roberts to conduct discovery.

By decision served on July 20, 2006, the Board denied HCR's motion for protective order to quash the notices of deposition served by Roberts on July 14, 2006. The Board directed the parties to cooperate with each other and to find a mutually agreeable time and place for the depositions. On August 3, 2006, the Board granted Roberts' unopposed request to extend the due date of his reply, from August 28, 2006, to September 18, 2006, to permit the parties to find acceptable dates for the depositions. By decision served on September 19, 2006, the Board granted Roberts a further extension of time for filing his reply, from September 18, 2006, to November 20, 2006, to allow the parties to continue to coordinate acceptable dates for the depositions.

On November 16, 2006, Roberts filed a request for an additional extension of time for filing his reply to January 18, 2007. Roberts states that the parties are involved in ongoing settlement discussions and discovery and that the extension will permit the parties to conclude these efforts. Roberts also indicates that HCR does not oppose this extension.

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<sup>1</sup> Case No. 33C01-0506-CT-0019, Honey Creek Railroad, Inc. v. Gary L. Roberts et al.

It is the Board's policy to encourage privately negotiated solutions to disputes. Accordingly, Roberts' request will be granted. Roberts' reply to HCR's petition will be due on or before January 18, 2007.

It is ordered:

1. Roberts' extension request is granted, and his reply is due on or before January 18, 2007.
2. This decision is effective on its date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams  
Secretary