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Before the

SURFACE TRANSPORTATION BOARD

STB Docket No. FD 35316

**ALLIED ERECTING AND DISMANTLING, INC.
AND ALLIED INDUSTRIAL DEVELOPMENT CORPORATION
- PETITION FOR DECLARATORY ORDER -
RAIL EASEMENTS IN MAHONING COUNTY, OHIO**

REPLY OF RESPONDENTS TO

MOTION TO WAIVE REQUIREMENTS OF 1104.13

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Attorneys for Respondents

Dated: April 3, 2014

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The Board issued a final decision in this proceeding on December 20, 2013 (the “*December Decision*”). On February 20, 2014, after filing an appeal with the United States Court of Appeals for the Sixth Circuit, Allied Erecting and Dismantling Co., Inc. and Allied Industrial Development Corporation (collectively, “Allied”) filed with the Board a Petition to Reopen and Supplement the Record (the “Petition”) under 49 U.S.C. §722(c) and 49 C.F.R. §1115.4. Respondents¹ timely filed a Reply to the Petition to Reopen on March 12, 2014. Allied now has filed a Motion seeking leave to file a reply to the Reply of Respondents. For the reasons set forth herein, Allied’s Motion should be denied.

¹ The original Allied state court complaint named six railroad members of the “Ohio Central Railroad System” as defendants, those being: Ohio & Pennsylvania Railroad Company (“OHPA”), Mahoning Valley Railway Company (“MVRV”), Ohio Central Railroad, Inc., Warren & Trumbull Railroad Company, Youngstown & Austintown Railroad, Inc. and Youngstown Belt Railroad Company (the “Railroad Respondents”). In the subsequent Petition for Declaratory Order in this proceeding, Allied also named Railroad Respondents’ direct and indirect corporate parents, Summit View, Inc. (“Summit View”) and Genesee & Wyoming Inc. (“GWI”), as respondents. The *December Decision* dismissed Summit View and GWI as respondents. Although Allied has not challenged the dismissals in the Petition, in an abundance of caution, “Respondents” herein shall include the Railroad Respondents, Summit View and GWI.

Discussion

Allied's Motion acknowledges that under the Board's regulations a "reply to a reply is not permitted.." 49 CFR §1104.13(c). Accordingly, it has filed a Motion to allow the filing of the impermissible reply. The Motion seems to include the proposed reply to reply, although it is not separately delineated. The Board's regulations are meant to control its docket, and to establish an end to filings so that a decision can be issued. *Waterloo Railway Company – Adverse Abandonment – Lines of Bangor and Aroostook Railroad Company and Van Buren Bridge Company in Aroostook County, Maine ("Waterloo Railway")*, STB Docket No. AB-124 (Sub-No. 2) (served May 6, 2003), slip op. at 3 ("the pleading process ends with the reply, and replies to replies are not permitted"). While the Board will allow additional replies, and sur-replies if necessary, for "good cause" or when additional information is necessary to provide a complete factual record, *id.*, Allied's proposed reply adds nothing to the record – it merely rehashed and reargues the Petition to Reopen. More importantly it suggests no new facts to contradict Respondents' contention that Allied has not submitted any "new evidence," nor shown any material error that would justify reopening this proceeding. *See Peter Pan Bus Lines, Inc. – Pooling – Greyhound Lines, Inc.*, STB Docket Nos. MC-F-20904, *et al* (served April 20, 2011), slip op. at 3 (record not incomplete based on representations / alleged misstatements in other party's reply; repetition of same arguments made in Petition rejected). *See also Waterloo Railway, supra.*

First, it should be noted that most of the proposed reply to reply concerns the property that is the subject of another proceeding before the Board. *See* Allied Motion at 1, fn 1 (procedural status of the proceeding in STB Docket No. FD 35277); at 5-8 (arguing whether tracks on the Gearmar property may or could have been abandoned by MVRVY without Board

approval, all of which are the subject of the proceeding in STB Docket No. 35277, and not this proceeding in which the question is whether storage and staging of cars is permissible); at 9-12 (discussing the impact of the sewer repairs and removal of track by Allied on the Gearmar property which is the subject of the proceeding in STB Docket No. 35277).

Allied also argues that Respondents should have responded to the factual assertions that Allied made in its Petition to Reopen. However, Board has not yet determined if it will reopen the proceeding (over the objections of Respondents) to allow those assertions to be placed in the record. If it were to do so, it would be appropriate for the Board at that time to establish a procedural schedule to provide for the orderly presentation of additional facts and argument.

Conclusion

Because the proposed reply to reply is merely a rehash of argument and facts previously presented in the Petition to Reopen, and which largely does not relate to this proceeding, it would not serve to create a more complete record. Accordingly, Allied's Motion should be denied, and its reply to Respondents' Reply to Petition to Reopen should not be admitted into the record.

Respectfully submitted,



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Attorneys for Respondents

Dated: April 3, 2014

CERTIFICATE OF SERVICE

I hereby certify that on April 3, 2014, a copy of the foregoing Reply of Respondents to Petition to Reopen was served upon the following persons by email:

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