

ENTERED
Office of Proceedings
September 30, 2014
Part of
Public Record

Before the
SURFACE TRANSPORTATION BOARD

Finance Docket No. 35316

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

MOTION OF ALLIED ERECTING AND
DISMANTLING, INC. AND ALLIED INDUSTRIAL
DEVELOPMENT CORPORATION FOR LEAVE TO FILE
COMMENTS TO SUPPLEMENTAL REPLY OF RESPONDENTS
TO PETITION TO REOPEN AND SUPPLEMENT THE RECORD

By Petition filed February 20, 2014, Allied Erecting and Dismantling Co., Inc. and Allied Industrial Development Corporation (collectively "Allied"), by and through counsel, requested the Board to reopen the Board's decision served December 20, 2013 in this proceeding ("*December Decision*"). As noted in counsel's transmittal letter, a Petition for Review has been docketed before the United States Court of Appeals for the Sixth Circuit as Case No. 14-3094, *Allied Erecting, et al v. STB, et al.* That case has been held in abeyance awaiting the Board's decision whether to reopen.

In reply to Allied's Petition to Reopen, Respondents filed a partial response and reserved the right to supplement. By Decision served August 6, 2014, the Board, acting through the Director, Office of Proceedings, recognized that "[t]he unique circumstances of this proceeding warrant a substantive response to Allied's arguments to aid the Board in determining whether

reopening is appropriate in this case.” In order to develop the record, Respondents¹ were directed to complete their reply to Allied’s arguments. On September 15, 2014, Respondents filed a “Supplemental Reply of Respondents to Petition to Reopen and Supplement the Record” (hereinafter “Supplemental Reply”).

As demonstrated in Allied’s Comments that are concurrently filed herewith, Respondents’ Supplemental Reply is replete with facts that are wrong or incomplete, leading the Respondents to articulate conclusions and arguments that are erroneous or misleading. In fact, Respondents have even mischaracterized the primary issue in this proceeding, which is whether the Board inadvertently committed material error in the course of interpreting the geographic scope of the Certificate of Public Convenience the Interstate Commerce Commission granted to Mahoning Valley Railroad Company by Decision served January 13, 1982.

Given the fact that this proceeding, which has been pending before the Board since November 2, 2009, presents some novel issues of fact and law, it is critical that Allied be able to file, and that the Board accept the tendered Comments. Accepting Allied’s Comments as part of the record will not expand

¹ Respondents consist of the six railroad members of the “Ohio Central Railroad System,” namely Mahoning Valley Railway Company (MVRV), Ohio & Pennsylvania Railroad Company (OHPA) Ohio Central Railroad, Inc. (Ohio Central), Warren & Trumbull Railroad Company, Youngstown & Austintown Railroad, Inc. and Youngstown Belt Railroad Company, along with the railroads’ direct and indirect corporate parents, Summit View, Inc. (Summit View) and Genesee & Wyoming Inc. (GWI).

the scope of the issues before the Board in this proceeding. Furthermore, because no shippers are located on Allied's private tracks, no shipper will be impacted by the Board's consideration of Allied's Supplemental Comments in reaching a final decision that will terminate this long running proceeding.

Respectfully submitted,

/s/ Richard H. Streeter

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Dated: September 30, 2014

Certificate of Service

I hereby certify that on September 30, 2014, a copy of the foregoing Motion was served upon the following persons by Email:

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/s/ Richard H. Streeter

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