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VIA E-FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

RE: **STB Finance Docket No. 36016** – Status of Unused Railroad Right of Way in the City
of Montpelier, Vermont

Dear Ms. Brown:

Enclosed herewith please find the Petitioner's Response to the Reply of the State of Vermont and
Washington County Railroad Company in the above-referenced matter, together with a
Certificate of Service with respect to the same. Thank you.

Very truly yours,

Daniel P. O'Rourke

DPO/rb

Enclosures

CC: John K. Dunleavy, Esquire
Eric R. Benson, Esquire

Attorneys and Advisors

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36016

STATUS OF UNUSED RAILROAD RIGHT OF WAY
IN THE CITY OF MONTPELIER, VERMONT

**PETITIONERS' RESPONSE TO THE REPLY OF
THE STATE OF VERMONT AND
WASHINGTON COUNTY RAILROAD COMPANY**

BY
ANGELES A. ZORZI, TRUSTEE
OF THE ANGELES A. ZORZI LIVING TRUST
AND
ANTONIO AJA, JR. AND VIRGINIA C. AJA, TRUSTEES
OF THE ANTONIO AJA, JR. TRUST AND THE VIRGINIA D. AJA TRUST

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Counsel for Petitioners

Dated: June 13, 2016

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET No. 36016

STATUS OF UNUSED RAILROAD RIGHT OF WAY
IN THE CITY OF MONTPELIER, VERMONT

**PETITIONERS' RESPONSE TO THE REPLY OF THE STATE OF VERMONT
AND WASHINGTON COUNTY RAILROAD COMPANY**

In their reply to the Petition for Declaratory Order filed by Angles A. Zorzi, Trustee of the Angles A. Zorzi Living Trust, Antonio Aja, Jr., Trustee of the Antonio Aja Jr. Trust, and Virginia D. Aja, Trustee of the Virginia D. Aja Trust (hereinafter "Zorzi"), neither the State of Vermont nor Washington County Railroad Company dispute a single material fact raised by Zorzi. They did not dispute the fact that the rails which crossed the Zorzi property were removed in the late 1950's. They did not dispute that the Zorzi family has exclusively and continuously used that property since the late 1950's. They did not dispute the fact that Finance Docket No. 19936, in which the Montpelier & Barre Railroad Company obtained a parallel track and which led to the removal of the rails crossing the Zorzi parcel, is missing from the National Archives and Record Administration. They did not dispute that the Montpelier & Barre Railroad did not include the portion of the rail line that crossed the Zorzi parcel when it petitioned the I.C.C. to abandon its

entire line in 1978. Finally, they did not dispute that the State of Vermont did not include the unused right of way crossing the Zorzi parcel in its own appraisal when opposing Montpelier & Barre's abandonment petition.

The facts demonstrate that the unused right of way crossing the Zorzi parcel has been without rails, unimproved and unused for 58 years. The Respondents contend, however, that Zorzi's only option is to seek adverse abandonment of the line. As such, they contend that the Zorzi petition is incomplete as it does not conform to the procedural requirements of an adverse abandonment. Zorzi did not, however, petition for adverse abandonment. Rather, they are seeking relief in the form of a declaratory order.

Pursuant to 5 U.S.C. §554(e) and 49 U.S.C. §721, the Board may issue a declaratory order to terminate a controversy or remove uncertainty. The Board has broad discretion in deciding to issue a declaratory order. *Intercity Transp. Co. v. United States*, 737 F.2d 103 (D.C. Cir. 1984). The Board has, in the past, recognized "unique circumstances" as a basis for issuing a declaratory order. *See e.g., State of Maine – Acquisition of Certain Lines in Maine*, STB Finance Docket No. 35140 (September 16, 2008). Zorzi's petition presents unique circumstances which supports the Board's use of its broad discretion to issue a declaratory order in Zorzi's favor.

The facts specific to this matter present unique circumstances for the Board's consideration. As all parties acknowledge, the rails crossing the Zorzi parcel were removed by Montpelier & Barre Railroad from the Zorzi property approximately 58 years ago. The rails were removed following the ICC authorization for the Montpelier & Barre Railroad to purchase a branch of a line from the Central Vermont Railway, Inc. *Montpelier & Barre R.R. Co. – Purchase*

Barre Branch (Portion) – Central Vermont Ry. Inc., Finance Docket No. 19936 (ICC March 19, 1958). A portion of the Central Vermont branch line ran parallel to Montpelier & Barre's existing line. The March 1958 decision did not, at that time, authorize the abandonment of either parallel line. Finance Docket No. 19936 is, however, missing from the National Archives and Records Administration and is not available for review. (See Exhibit 6 of the Petition.)

Montpelier & Barre Railroad clearly indicated their intent to abandon the line. They removed the rails in the late 1950's. They did not seek to reestablish the line at any time thereafter. From the time of rail removal until they filed for abandonment of the entire line in 1978, they did not disturb or dispute Zorzi's use of the property. Montpelier & Barre Railroad's president, Samuel B. Pinsky, even expressed his belief that the line was abandoned. (See Exhibit 7 of the Petition.)

As set forth in the petition, the unused right of way was readily acknowledged as abandoned. At least five different publications described the abandonment of the line. (See Exhibits 8-12 of the Petition.) The recognition of the line as abandoned was abundantly evident.

Finally, the facts surrounding the 1978 petition to abandon the entire line initiated by Montpelier & Barre Railroad complete the unique circumstances of the Zorzi petition. First, Montpelier & Barre did not include the unused right of way in its petition. They did not assert ownership over the line. Second, the State of Vermont, in its opposition to the abandonment petition, did not include the unused right of way in its valuation appraisal. (See Exhibits 3, 13 and 14 of the Petition.) Neither party to the 1978 abandonment petition referenced the existence of the

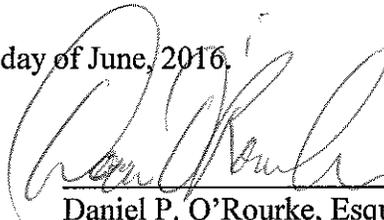
unused right of way. These omissions are consistent with the earlier written belief of Samuel Pinsly that the line had been abandoned. (See Exhibit 7 of the Petition.)

The Respondents also argued that even though the unused right of way is not presently operated, it is available as an alternative to the in-service route. Again, Zorzi is not seeking adverse abandonment. The facts demonstrate that the line has not been improved or used during the State's 36 year ownership or the preceding 22 years by Montpelier & Barre Railroad. The speculative nature of considering the unused right of way for possible future use appears to go beyond rail banking. In any event, it does not address the pre-1980 issues raised by Zorzi.

CONCLUSION

Based upon the unique circumstances presented by the Zorzi Petition, the Petitioners respectfully request that the Board grant the relief as set forth in their Petition.

Respectfully submitted this 13th day of June, 2016.



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Trustee of the Antonio Aja Jr. Trust, and Virginia
D. Aja, Trustee of the Virginia D. Aja Trust*

CERTIFICATE OF SERVICE

I hereby certify that on June 13, 2016, I caused a copy of my letter to the Surface Transportation Board dated June 13, 2016, with attached Petitioner's Response to the Reply of The State of Vermont and Washington County Railroad Company, to be served via email and by United States Mail, first class postage thereon prepaid, upon the following parties:

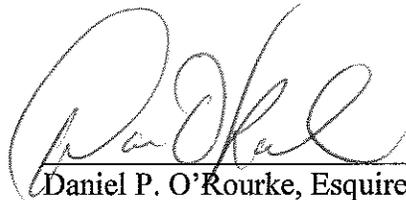
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Dated: June 13, 2016



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