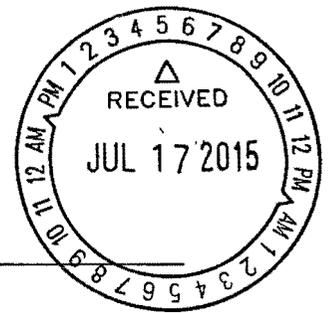


Before the
SURFACE TRANSPORTATION BOARD



DOCKET NO. AB-1233X

238847

**ALLEGHENY VALLEY RAILROAD COMPANY –
ABANDONMENT EXEMPTION –
ALLEGHENY COUNTY, PENNSYLVANIA**

ENTERED
Office of Proceedings
July 17, 2015
Part of
Public Record

REPLY OF ALLEGHENY VALLEY RAILROAD COMPANY

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July 15, 2015

Before the
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-1233X

**ALLEGHENY VALLEY RAILROAD COMPANY –
ABANDONMENT EXEMPTION –
ALLEGHENY COUNTY, PENNSYLVANIA**

REPLY OF ALLEGHENY VALLEY RAILROAD COMPANY

Allegheny Valley Railroad Company (“AVRC”) files this Reply to the Board’s Decision of July 7, 2015 in the above captioned proceeding to inform the Board that this proceeding involves the same railroad right of way that the Board concluded was previously abandoned by Conrail in 1984 and to explain why subsequent Board authorization for AVRC to abandon this right of way is now required.

The right of way for which AVRC requests abandonment authorization is the same right of way which was the subject of the Board’s July 16, 2013 decision in Allegheny Valley Railroad – Petition for Declaratory Order, FD 35239. In that decision, the Board only determined that Conrail had obtained ICC abandonment authority in 1984 for this right of way and other rail lines in the Pittsburgh Strip District and that rail service over the line between 16th and 21st Street had been terminated prior to Conrail’s conveyance of its permanent railroad easement to AVRC in 1995. In the Board’s decision, there is language which appears to suggest that AVRC never acquired a permanent railroad easement from 16th to 21st Street from Conrail in 1995 due to the 1984 abandonment decision.

However, the issue of the validity of Conrail's permanent rail easement and its conveyance to AVRC for common carrier railroad purposes under Pennsylvania property law was not before the Board. In its July 16, 2013 decision, the Board did not examine or interpret the provisions of the 1983 deed between Conrail and the Buncher Company in which Conrail retained the permanent rail easement between 16th to 21st Street and the Board did not examine or interpret Conrail's 1995 deed conveying that permanent rail easement and other rail properties to AVRC¹. Nor would an examination or interpretation of those property interests been appropriate because the issue of the continuing legal validity of the permanent rail easement after the Board's 1984 abandonment authorization was solely a question of Pennsylvania property law for a state court to decide. It is well established in Pennsylvania law that in order to show an abandonment of a right of way or easement created by deed, the evidence must clearly show some conduct on the ground by the holder of the right of way which manifests that he intended to abandon and give up permanently his right to use it. Such conduct must consist of some affirmative act on his part which renders use of the easement impossible, or of some physical obstruction of it by him in a manner that is inconsistent with its further enjoyment. Thompson v. Maryland & Pennsylvania RR Pres. Soc., 417 Pa. Super. 216, 612 A2d 450 (1992) As the Board is well aware, federal regulatory abandonment authorization and the consummation of that authority by a railroad does not necessarily terminate a railroad's ownership interest in its abandoned rail lines under state property law. It is also well settled that the interpretation of deeds and the determination of who owns good title are issues of State law that are outside the expertise and jurisdiction of this Board. See Hayfield Northern, 487 U.S. at 634; Presault, 494 U.S. at 8; Kansas City

¹ Copies of both deeds were part of the record in Finance Docket No. 35239.

Pub. Ser. Frgt. Operation – Exempt – Aban., 7 I.C.C. 2d 216, 225-26 (1990) (issues of real property rights are within the exclusive jurisdiction of the State).

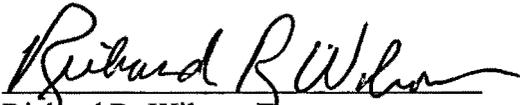
Moreover, in 1995, the Board's authorization in Finance Docket No. 32783 for AVRC to acquire the Conrail lines and property in the Pittsburgh Strip District explicitly included the permanent rail easement right of way between M.P. 0.3 on the northeasterly side of 16th Street and M.P. 0.6 at the center line of 21st Street. While at that time there was no railroad track on this section of the Conrail right of way, that portion of the railroad right of way constituted the western most end of AVRC's main line and was thereby acquired as part of AVRC's common carrier railroad line. The Board has held in any number of cases that abandoned railroad facilities can be reacquired under 49 U.S.C. §10901 and utilized by a subsequent purchasing railroad in common carrier railroad service and thereby again become part of the National Railroad Transportation Network. See e.g. Burlington Northern Railroad Company – Acquisition and Operation Exemption – South Dakota Railroad Authority, STB Docket No. 32017, 1992 W.L. 64511) (Where a line is no longer subject to the Commission's jurisdiction due to its having been abandoned, the acquisition and operation of that line is subject to the prior approval requirements of 49 U.S.C. §10901 instead. Since the line involved here had been abandoned by the Milwaukee, BN has properly invoked the Commission's Notice of Exemption procedures at 49 C.F.R. 1150 Subpart D applicable to §10901 acquisitions and operations to acquire the subject line) Thus, in 1995 AVRC acquired Conrail's abandoned right of way between 16th and 21st Street under §10901 once again subjecting that right of way to STB jurisdiction.

Accordingly, in an abundance of caution and to remove any possible impediment to AVRC's plan to extinguish its permanent rail easement under Pennsylvania property

law by conveyance back to the adjacent land owner, AVRC seeks abandonment authorization for this section of railroad right of way from the Board in this docket.

Respectfully submitted,

RICHARD R. WILSON, P.C.

By: 

Richard R. Wilson, Esq,
Attorney for Allegheny Valley
Railroad Company

Dated: July 15, 2015

VERIFICATION

Russell A. Peterson, being duly sworn, states that he is authorized to verify and file with the Surface Transportation Board the forgoing Reply in Docket No. AB-1233X on behalf of Allegheny Valley Railroad Company; that he has carefully examined all of the statements in the Reply; and that he has knowledge of the facts and matters relied upon in that Reply; and that all representations set forth therein are true and correct to the best of his knowledge, information and belief.


Russell A. Peterson

CERTIFICATE OF SERVICE

Richard R. Wilson hereby certifies that on this 15th day of July, 2015 he did serve a true and correct copy of the foregoing Reply of Allegheny Valley Railroad Company to the Surface Transportation Board's Decision of July 7, 2015 upon the following by first class mail, postage prepaid at the addresses set forth below:

U.S. Army Corps. of Engineers Office
Wanamaker Building
100 Penn Square East
Philadelphia, PA 19107-3390

U.S. Fish & Wildlife Service – Region 5
300 West Gate Center Drive
Hadley, MA 01035-9589

U.S. Environmental Protection Agency-
Region 3
1650 Arch Street
Philadelphia, PA 19103

U.S. National Park Service
Northeast Region
U.S. Custom House
200 Chestnut St., Fifth Floor
Philadelphia, PA 19106

PA Department of Transportation
Bureau of Rail Freight, Ports & Waterways
P.O. Box 2777
Harrisburg, PA 17105

Office of Mayor William Peduto
City of Pittsburgh
512 City County Bldg
414 Grant Street
Pittsburgh, PA 15219

PA Historical & Museum Commission
Bureau for Historic Preservation
300 North Street
Harrisburg, PA 17120

PA Department of Environmental
Protection
400 Market Street
P.O. Box 2063
Harrisburg, PA 17105

Natural Resources Conservation Service
USDA
1 Credit Union Place, Ste. 340
Wildwood Center
Harrisburg, PA 17110

County Executive
Allegheny County Courthouse
436 Grant Street, Room 101
Pittsburgh, PA 15219

NOAA, N/NGS12
National Geodetic Survey SSMC-3, #9202
1315 East-West Highway
Silver Spring, MD 20910-3282

PA Public Utility Commission
400 North Street
Keystone Bldg.
Harrisburg, PA 17120


Richard R. Wilson, Esq.