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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-1020X

EAST PENN RAILROAD, I.I.C
--ABANDONMENT EXEMPTION--
IN BERKS AND MONTGOMERY COUNTIES, PA

RESPONSE TO MOTION TO STRIKE

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Dated. October 20, 2008

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East Penn Railroad, LLC ("ESPN") hereby briefly responds to the Motion to Strike ("Motion") filed by Berks County ("County"), on October 16, 2008. The background to this proceeding is set forth in ESPN's Motion For Leave To File Response To Protest and Response To Protest ("ESPN Response").

The County has the audacity and impudence to refer to the Board's Cannons of Ethics. The County's counsel should have consulted those Cannons before maligning ESPN management and knowingly submitting distorted and false information. The disparaging remarks about ESPN management and the patently false information contained in the Protest go well beyond responsible and reasonable advocacy.

The County seeks to have stricken the characterization of its Protest by ESPN as "an extremely irritating document." The County finds the comment "gratuitous" but apparently does not take issue with its accuracy. The Protest is what it is and it is an extremely irritating document.

The Protest is riddled with distortions, misleading data and outright false information. Again, the County does not take issue with the substance of ESPN's responses but seeks to have

them stricken as gratuitous and sarcastic. The tone of the responses is more than warranted given the misleading and false nature of the information set forth in the Protest.

The County claims that ESPN mischaracterized certain statements made by Mr. Martin and Mr. Landrio. For example, the County notes that Mr. Martin never specifically asked ESPN to extend its rail line to the rock quarry. But that is the only logical conclusion one could reach since Mr. Martin never explained how his rocks would otherwise find their way onto rail cars located 1.7 miles from the quarry. The County also claims that Mr. Martin did not expressly request rates competitive with trucks. Actually, Mr. Martin requested "suitable financial incentives". ESPN presumes that Mr. Martin is an intelligent businessman and that "suitable financial incentives" means rail rates that are competitive with truck rates. The County apparently believes that Mr. Martin is irrational and will ship by rail even if it is more expensive than truck.

The County also seeks to have stricken ESPN's assertion that Mr. Landrio determined the line to be unprofitable in 2007. According to Mr. Landrio's math, which ESPN concedes is suspect, the Line had an operating loss of \$19,099 in 2007.

Finally, the County seeks to strike certain information contained in the Response on grounds that it should have been contained in the Petition. For example, the County claims that ESPN's detailed explanation of the functions performed by the crew should have been in ESPN's "case-in-chief". The challenged information was provided in direct response to the faulty information contained in Mr. Landrio's verified statement. A party filing an abandonment petition cannot be expected to anticipate and refute in its petition grossly misleading and false information which is subsequently introduced by a protestant. In any event, the information the County seeks to strike is set forth in ESPN's discovery responses which were placed in the

record by the County In other words, the County seeks to have stricken information that it introduced in the record.

The County also seeks to strike certain information refuting the County's calculation of net liquidation value. Again, the information was provided in direct response to the faulty and false information contained in the Protest. For example, the County argues that ESPN should not have assumed that the public would know that a "net bid" is a "net bid" and not a gross bid. ESPN gives the general public more credit than counsel for the County. ESPN's salvage values and real estate appraisal are more than adequately supported in the petition and the additional information supplied in the Response merely further demonstrates the inaccuracies in the County's appraisal

In summary, the Motion is totally baseless and should be summarily denied. If counsel for the County wants to avoid sarcasm he should not disparage the opposing party. If he wants to be treated as a professional, he should act as one and not knowingly introduce misleading, distorted and patently false information.

Respectfully submitted,

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Dated: October 20, 2008

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion and Response to Protest has been served on Counsel for Berks County, PA, by hand delivery this 20th day of October 2008.

Karl Morell