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June 25, 2009

Hand Delivery

The Honorable Anne Quinlan
Acting Secretary
Surface Transportation Board
395 E Street SW
Washington, DC 20423-00001

ENTERED
Office of Proceedings

JUN 25 2009

Part of
Public Record

Re: STB Finance Docket No. 35239, Allegheny Valley
Railroad Company – Petition for Declaratory Order

Dear Acting Secretary Quinlan:

Enclosed for filing in the above-captioned proceeding are the original and ten copies of **The Buncher Company's Motion for Leave to File Response to Allegheny Valley Railroad Company's Rebuttal and The Buncher Company's Response to Allegheny Valley Railroad Company's Rebuttal.**

Please time and date stamp the extra copy of the filing and return it with our messenger. If you have any questions, please contact me.

Respectfully submitted,

Peter W. Denton

Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 35239

ALLEGHENY VALLEY RAILROAD COMPANY –
PETITION FOR DECLARATORY ORDER



**THE BUNCHE COMPANY'S MOTION FOR LEAVE TO FILE RESPONSE TO
ALLEGHENY VALLEY RAILROAD COMPANY'S REBUTTAL**

Edward J. Fishman
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**ATTORNEYS FOR
THE BUNCHE COMPANY**

Dated: June 25, 2009

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 35239

ALLEGHENY VALLEY RAILROAD COMPANY –
PETITION FOR DECLARATORY ORDER

**THE BUNCHEER COMPANY’S MOTION FOR LEAVE TO FILE RESPONSE TO
ALLEGHENY VALLEY RAILROAD COMPANY’S REBUTTAL**

Buncher files this Motion for Leave in order to file the accompanying Response to Allegheny Valley Railroad Company’s Rebuttal in this proceeding. The Response addresses entirely new factual claims and legal arguments made by Allegheny Valley Railroad Company (“AVRR”) in its Rebuttal regarding the Consolidated Rail Corporation (“Conrail”) trackage in the Pittsburgh Produce Yards area.

In its Petition for Declaratory Order (“Petition”), AVRR contended that it owns an easement over a former portion of Conrail’s Valley Industrial Track from milepost 0.3 at 16th Street to milepost 0.6 at 21st Street in the Strip District of Pittsburgh, PA. In Buncher’s Reply to Allegheny Valley Railroad Company’s Petition for Declaratory Order (“Reply”), Buncher submitted evidence that Conrail had filed for and obtained abandonment authority from the ICC in 1984 pursuant to the Northeast Rail Services Act for the portion of the Valley Industrial Track between milepost 0.3 at 16th Street and milepost 0.6 at 21st Street. Buncher also submitted evidence which collectively confirms that Conrail abandoned that portion of its system between 16th Street and 21st Street in the 1980’s.

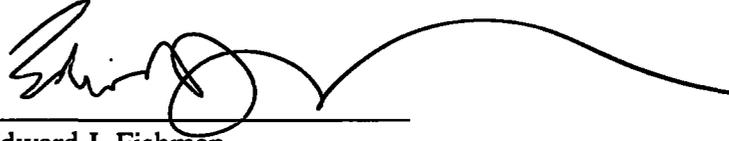
AVRR now claims for the first time in its Rebuttal that two parallel and separate lines of railroad, both allegedly named the “Valley Industrial Track” and both with the same milepost designations, traversed the Strip District between 16th Street and 21st Street. AVRR further alleges that the 1984 Conrail abandonment only applied to the “Valley Industrial Track” running along Smallman Street (also referred to by AVRR as part of the former Allegheny Secondary), and that AVRR’s purported easement rights relate to a different “Valley Industrial Track” extending from Railroad Street (also referred to by AVRR as part of the former Allegheny Branch).

Buncher files this Motion for Leave and the accompanying Response in order to address these new factual assertions and related legal arguments made by AVRR. The Response will show the Board that all available factual evidence leads to the conclusion that only one line of railroad existed between 16th Street and 21st Street, and that Conrail abandoned this line of railroad in 1984, making the parcel of land at issue no longer subject to the Board’s jurisdiction. The filing of Buncher’s Response has been necessitated by the new theory that AVRR espouses in its Rebuttal.

In accordance with precedent, the Response will provide the Board with “clarif[ication] of certain matters, . . . and more fully explain the factual situation; and [will be] filed in time for [the Board] to adequately consider them.” Buffalo & Pittsburgh Railroad, Inc.—Abandonment Exemption—in Erie and Cattaraugus Counties, NY, STB Docket No. AB-369 (Sub-No. 3X) (STB served Sept. 18, 1998) at 2.

For the foregoing reasons, Buncher respectfully requests that the Board accept and consider the accompanying Response in the interest of a more complete record.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Edward J. Fishman', is written over a horizontal line. The signature is stylized and extends to the right of the line.

Edward J. Fishman
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**ATTORNEYS FOR
THE BUNCHER COMPANY**

Dated: June 25, 2009

CERTIFICATE OF SERVICE

I hereby certify that on June 25, 2009, I caused the foregoing **The Buncher Company's Motion for Leave to File Response To Allegheny Valley Railroad Company's Rebuttal** to be served via first class mail, postage prepaid, on the following:

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