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Before the
Surface Transportation Board

STB Ex Parte No. 690

TWENTY-FIVE YEARS OF RAIL BANKING: A REVIEW AND LOOK AHEAD

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VERIFIED STATEMENT OF E.B. ABEL, JR. ON BEHALF OF RESOURCE RECOVERY, LLC.

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VERIFIED STATEMENT OF E.B. ABEL, JR. ON BEHALF OF
RESOURCE RECOVERY, LLC.

My name is E.B. Abel, Jr. and I am President of Resource Recovery, LLC ("RRLLC"). As the Board is aware, RRLLC has proposed to locate a landfill and associated industrial facilities as part of an industrial park to be developed in Rush Township, Centre County, Pennsylvania. RRLLC is a supporting shipper for the RJ Corman Railroad Company/Pennsylvania Lines construction and operation exemption in STB Finance Docket No. 35116 to which the Board referred in its May 21, 2009 Notice of Public Hearing. RRLLC has filed various statements and evidence with the Board in Finance Docket 35116 and it is not our purpose to address those matters in this proceeding. Rather, based on our experience in Finance Docket 35116, RRLLC wishes to provide the Board with comments responding to the questions posed by the Board in its May 21, 2009 Notice from the unique perspective of a shipper seeking the reestablishment of common carrier rail service over a railbanked right of way. RRLLC does not seek to speak at the July 8, 2009 public hearing.

As a general matter, RRLLC recognizes that only a small number of rail banked rights of way will likely be restored to active rail service. However, the ability or potential for restoring rail service along a railbanked right of way is one of the important

considerations companies such as RRLLC take into account in arriving at decisions to locate a plant or other facility in communities or regions that no longer have active rail service. From the inception of RRLLC's landfill project we knew that rail access to a potential landfill site would enable the site to process volumes of material which could not be efficiently transported by trucks. We plan to have the RRLLC landfill initially served primarily by motor carriers, but with future growth of traffic volumes, rail transportation provides an attractive alternative to mitigate truck traffic and provide competitively priced transportation. Accordingly, the availability of the rail banked Snow Shoe line was one of the criteria which we evaluated in selecting the Rush Township site in Centre County, Pennsylvania. Moreover, rail offers the most fuel efficient, lowest cost and least polluting mode of transport. Rail transportation involves far less environmental impact than motor carriers. The preservation of rail banked rights of way throughout the country thereby increase the number of communities and locations which can benefit from future economic development projects. This is precisely the infrastructure preservation rationale behind the rail banking provisions of the National Trail Systems Act – and the basis for preventing railroad easements from being lost to the underlying fee owners along the rights of way.

For railroads, the immediate benefit of railbanking is to salvage the track and sell the right of way without the loss of the rail corridor which can be preserved for future rail use. Railroads propose abandonment of their lines because of a lack of business and obviously, they don't anticipate rail traffic in the near future. Thus, railbanking enables railroads to redeploy assets to more productive uses while permitting those rights of way to be used for recreational purposes on an interim basis by local communities.

However, local communities don't always remember that on a rail banked right of way, a trail is an interim use only. RRLLC has unfortunately become all too aware that trail users and nearby communities often become so attached to "their" trails that local political opposition to restoring rail service can be extreme. We have also become aware that the degree of local opposition can dictate the nature and scope of the STB environmental review of the proposed service restoration. Trail users and environmental advocates have discovered that they can dramatically delay and increase the cost of restoring rail service with the objective of saving "their" trail from the rail service restoration intended by Congress.

As a consequence of local opposition, including the abuse of the STB environmental review process, the Rails to Trails Act is being undermined. The rail lines that have been rail banked were so devoid of traffic that abandonment was warranted. Those same lines are unlikely to encounter any sudden rush of industrial development activity that would bring numerous new shippers to seek reactivation at the same time. No single railroad or small industry will advance the funds necessary to study the environment for several years without any assurance that the line will ever be restored. Even with the project I am pursuing, the cost and uncertainty of the Board's environmental review process has been crushing.

It is undeniable that public support for using railbanked rights of way for recreational trail purposes far surpasses the popularity of using those rights of way for railroad purposes, so reactivating rail service will never be "popular." If rail reactivation decisions are to be based on public support or local opposition, very few trails will ever be reactivated, and a primary incentive for railroads to rail bank uneconomic lines will be

eliminated. Where a rail banked right of way is identified for resumption of rail service, the Board should not permit local community groups to obstruct or abuse its administrative proceedings by unduly broadening and delaying the Board's review. Moreover, since the Board's rail jurisdiction over rail banked rights of way is ministerial only, questions regarding reimbursement of public trail development funds and restoration costs for structures and improvements for recreational use are beyond the Board's regulatory authority. Thus, any effort by the Board to undertake regulatory consideration of these matters, however well intentioned, will inevitably create regulatory anomalies and unintended consequences that will impede or further delay the potential resumption of rail service on rail banked rights of way.

As the Board is well aware, restoration of rail service on a railbanked right of way, just like its preceding rail abandonment, is a market driven process which, to have any value, parties must be able to invoke promptly and predictably. The Board successfully administers expedited rail abandonment proceedings to permit railroads to redeploy their assets to more productive use. It should also employ similar expedition and consistency to ensure new market opportunities for restored rail service on a railbanked right of way are not lost in a protracted regulatory review that can defeat the very purposes for which railbanking was created.

VERIFICATION

I, E. B. Abel, Jr., verify under penalty of perjury state that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing Verified Statement.

E. B. Abel, Jr., President
Resource Recovery, LLC