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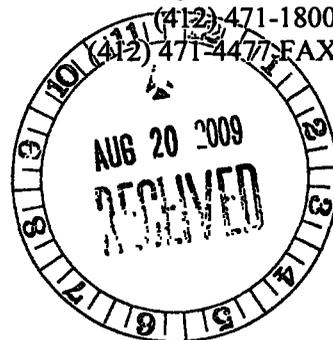
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August 13, 2009

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AUG 20 2009

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The Honorable Anne Quinlan, Acting Secretary

Surface Transportation Board

395 E. Street, SW

Washington, DC 20423-0001

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

Dear Acting Secretary Quinlan:

Enclosed please find an original and ten copies of the Reply of Allegheny Valley Railroad Company to The Buncher Company's Motion to File Supplemental Evidence in the above captioned matter. Copies of the Reply have been served on all parties of record.

Please time stamp the copy of this letter as proof of filing and return it to the undersigned in the prepaid, self addressed stamped envelope provided. If there are any questions please contact the undersigned.

Very truly yours,

RICHARD R. WILSON, P.C.

A handwritten signature in cursive script that reads "Richard R. Wilson".

Richard R. Wilson, Esq.

Attorney for Allegheny Valley Railroad Company

RRW/bab

Enclosure

xc: Allegheny Valley Railroad Company

All Parties of Record

Before the
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO: 35239

ALLEGHENY VALLEY RAILROAD COMPANY-
PETITION FOR DECLARATORY ORDER



REPLY OF ALLEGHENY VALLEY RAILROAD COMPANY TO THE BUNCHER
COMPANY'S MOTION TO FILE SUPPLEMENTAL EVIDENCE

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Dated: August 13, 2009

Before the
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO: 35239

ALLEGHENY VALLEY RAILROAD COMPANY-
PETITION FOR DECLARATORY ORDER

REPLY OF ALLEGHENY VALLEY RAILROAD COMPANY TO THE BUNCHER
COMPANY'S MOTION TO FILE SUPPLEMENTAL EVIDENCE

Allegheny Valley Railroad Company ("AVRR") files this Reply to The Buncher Company's ("Buncher") Motion to File Supplemental Evidence and requests that the Board deny Buncher's transparent attempt to file a reply to AVRR's July 15, 2009 Reply to Buncher's Motion to File Surrebuttal Testimony. As the Board is well aware, replies to replies are not permitted under the Board's Rules of Practice, 49 C.F.R. §114.13(c), and Buncher has now stretched that rule to the breaking point.

While the Board has broad discretion to manage the scope of evidence admissible in its administrative proceedings, supplemental evidentiary filings are generally requested by the Board from the parties to address specific issues which the Board deems important or germane to the disposition of a particular proceeding. See Norfolk Southern Railroad Company – Abandonment Exemption in Fulton County, GA, AB 290 (Sub No. 210X)(January 21, 2009); Entergy Arkansas, Inc. and Entergy Services, Inc. v. Union Pacific Railroad Company and Missouri and Northern Arkansas Railroad Company, Inc., STB Docket No. 42104 (June 25, 2009). In this Declaratory Order proceeding, the Board has made no such request and Bucher has already submitted two substantive filings in

which the legal arguments and testimony contained in its Motion to File Supplemental Evidence were presented to the Board.

Buncher provides no explanation or justification as to why its “supplemental evidence” was not presented in its two previous filings in this proceeding. Certainly, the two documents appended to Mr. Jackovic’s Supplemental Verified Statement were available to Buncher during the preparation of its previous filings and could have been presented as part of its case in chief or in rebuttal if Buncher was genuinely concerned about creating a “complete factual record”.

Rather, it is evident that Buncher is intent on litigating this case in a piecemeal fashion in an effort to have the last word by raising legal arguments it failed to make or has already presented. Indeed the Conrail map submitted by Mr. Jackovic merely confirms the identification of Track 8 as the Valley Industrial Track for which Conrail retained the permanent rail easement as depicted of AVRR’s Petition for Declaratory Order Exhibit F-1. Moreover, as indicated by Mr. Peterson’s Supporting Verified Statement, the factual assertions and legal positions reargued by Buncher are contrary to Board policy and precedent and have no merit.

Buncher has had two full and fair opportunities in this proceeding to present all of its evidence and legal arguments to create a “complete factual record”. Accordingly, its attempt to evade the Board’s rules and again reargue its case in the guise of a Motion to

File Supplemental Evidence should be denied.

Respectfully submitted,

RICHARD R. WILSON, P.C.

By: 

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Attorney for Allegheny Valley Railroad
Company

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Before the
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO: 35239
ALLEGHENY VALLEY RAILROAD COMPANY -
PETITION FOR DECLARATORY ORDER

VERIFIED STATEMENT OF RUSSELL A. PETERSON IN
RESPONSE TO THE BUNCHER COMPANY'S MOTION TO
FILE SUPPLEMENTAL EVIDENCE

My name is Russell A. Peterson and I am Chief Executive Officer of Allegheny Valley Railroad Company, ("AVRR") 519 Cedar Way, Bldg. 1, Ste. 100, Oakmont, PA 15139. I am authorized to make the Verified Statement in support of Allegheny Valley Railroad Company's ("AVRR") Reply to The Buncher Company's ("Buncher") Motion to File Supplemental Evidence.

The evidence which Buncher seeks to submit for consideration by the Board in its latest Motion is the Agreement of Sale between Buncher and Conrail for the retained rail easement and a track diagram of the disputed easement. These documents clearly were available to Buncher when it prepared its previous pleadings in this case and yet Mr. Jackovic provides no explanation or justification for Buncher's failure to present these documents in the earlier phases of this proceeding. In any event, not only do these documents merely duplicate factual evidence already of record in this proceeding, the Conrail Real Estate Department Map No. 500-7028-3-1 provides independent verification of AVRR's Petition for Declaratory Order Exhibit F-1.

Buncher again reargues that the disputed track between 16th and 21st Streets for which Conrail retained the permanent rail easement was merely a yard track over which

the Board has no jurisdiction. However, the evidence that AVRR has submitted to the Board establishes conclusively that from 1856 to 1983, Conrail and its predecessor companies operated the Allegheny Branch (in its various operational configurations) as a main line of railroad through the Produce Yard to provide interstate rail service via the lower deck of the Ft. Wayne Bridge. From 1983 to present, the line between 16th and 21st Streets continued to be used by Conrail and then by AVRR as the western terminus of the line of railroad over which interstate rail shipments were or could again be delivered or originated in the Pittsburgh Strip District long after various Produce Yard tracks were removed.

Buncher now tries to conflate the fact that Conrail's predecessors used alternative operating tracks in the Produce Yard for through train operations as an indication that the track easement retained by Conrail (years later) was for just another yard track. However, that contention ignores the configuration and use of Conrail's Strip District rail facilities after the abandonment of the Smallman Street track and the lower deck of the Ft. Wayne Bridge described in the Verified Statement of Mr. James Streett.

What Buncher refuses to comprehend is that railroad operations and use of track facilities are not static; they are flexible and are reconfigured by the railroad from time to time to respond to market changes, shipper service requirements and network rationalizations. That is why the Board's jurisdiction over a particular segment of track depends on the railroad's intended use and/or potential intended use of the line of railroad at the time of the pertinent regulatory transaction. As applied to this proceeding, both Conrail's and AVRR's intended use and potential intended use of the rail easement between 16th and 21st Street in the Strip District as the western terminus of its Strip

District track for the origination or termination of common carrier interstate rail service confirms that AVRR's rail easement remains subject to STB jurisdiction and regulation.

CERTIFICATE OF SERVICE

I hereby certify that I have this 13th day of August, 2009 served a copy of the Reply of Allegheny Valley Railroad Company to The Buncher Company's Motion to File Supplemental Evidence upon the following by first class United States Mail, postage prepaid:

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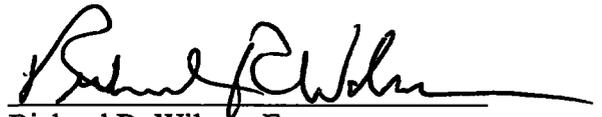
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