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BY E-FILING

November 20, 2009

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, NW
Washington, DC 20024

RE: Allied Erecting and Dismantling, et al. v. Ohio Central Railroad, Inc.,
STB Finance Docket No. 35316

Dear Ms. Brown:

On behalf of Youngstown & Southern Railway Company, I am e-filing its Motion for Leave to Intervene in the above-captioned proceedings.

Sincerely yours,



John D. Heffner

Enclosure:

cc: All Parties
R. Powell Felix

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ALLIED ERECTING AND)	
DISMANTLING, INC. and ALLIED)	
INDUSTRIAL DEVELOPMENT)	
CORPORATION,)	
)	STB Finance Docket
Petitioners)	No. 35316
)	
v.)	
)	
OHIO CENTRAL RAILROAD, INC.))	
OHIO & PENNSYLVANIA)	
RAILROAD COMPANY, et al,)	
)	
Respondents)	

**MOTION FOR LEAVE TO INTERVENE
OF
YOUNGSTOWN & SOUTHEASTERN RAILWAY COMPANY**

Respectfully submitted,

John D. Heffner
John D. Heffner, PLLC
1750 K Street, N.W.
Suite 200
Washington, D.C. 20006
(202) 296-3334

Dated: November 20, 2009

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ALLIED ERECTING AND)	
DISMANTLING, INC. and ALLIED)	
INDUSTRIAL DEVELOPMENT)	
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)	STB Finance Docket
Petitioners)	No. 35316
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Respondents)	

**MOTION FOR LEAVE TO INTERVENE
OF
YOUNGSTOWN & SOUTHEASTERN RAILWAY COMPANY**

Pursuant to 49 CFR 1104.13 of the Board’s Rules of Practice, the Youngstown & Southeastern Railway Company (“Y&S”) submits this motion to intervene in the instant declaratory relief proceeding filed with the Board by Allied Erecting & Dismantling, Inc., and Allied Industrial Development Corporation (collectively “Allied”). As directed by the Court of Common Pleas of Mahoning County, OH, Allied seeks a Board ruling whether its jurisdiction over railroad operations performed by Defendant Ohio Central Railroad, Inc., and its affiliates and subsidiary railroads

(collectively “Ohio Central” or “OC”) over an easement across Allied’s property preempts the Ohio court’s jurisdiction to consider whether defendants’ alleged use of that property violates the terms of that easement and, if so, the damages available to Allied.

Y&S seeks to participate in this proceeding because it is the successor-in-interest to the original easement holder, Pittsburgh & Lake Erie Properties, Inc. (“P&LE”), and Ohio Central subsidiary, the Ohio & Pennsylvania Railroad Company (“O&P”) as well as certain intermediate property owners. Should the Board initiate a declaratory relief proceeding and set a procedural schedule, Y&S would have standing to participate in such a proceeding and would participate appropriate to its interest.

BACKGROUND

The subject dispute involves two railroad easements between LTV Steel Company, Inc., and Allied (“the LTV easement”) and between P&LE and Allied (“the P&LE easement”). Y&S only has an interest in the P&LE easement and would limit its participation in this proceeding only to that easement.

In 1993, P&LE, as successor to the former Pittsburgh & Lake Erie Railroad Company, sold a portion of its main line railroad right of way to Allied, reserving unto itself a 1.93 mile long easement for railroad

operations between Survey Station 45+00 ± and the connection to the former Youngstown & Southern Railway at Survey Station 146+00 ±. A copy of that Easement Agreement is attached hereto as Exhibit A. The facts relating to the use and operation of that easement are complicated but are relevant here to the Board's understanding of this dispute. The subject easement formed a small part of the main line railroad right of way of the Youngstown & Southern Railway, a short line railroad subsidiary of the P&LE and was acquired in 1997 by an entity known as Railroad Ventures, Inc. ("RVI"). After RVI sought and obtained authority to abandon the entire Y&S main line, the Columbia County Port Authority ("CCPA") purchased the entire line through the Board's offer of financial assistance procedures.¹ Between 1997 and 2006, the line was operated at various times by the Central Columbiana & Pennsylvania Railway, Inc. ("CQPA") and O&P.² On November 29, 2006, Eastern States Railroad, LLC ("ES"), acquired CQPA's lease and operating rights over the line from the CQPA estate.³ ES then

¹ The history of RVI's acquisition and operation and subsequent abandonment of this line and eventual acquisition by CCPA is discussed at length in the Board's decision, Railroad Ventures, Inc.—Aban. Exem.—Youngstown, OH & Darlington, PA, 5 S.T.B. 283, 297 (2000),

² Initially, O&P provided service over the line during the period of RVI's ownership. After CCPA acquired the line, it engaged CQPA to provide the service. O&P resumed providing rail service after CQPA went bankrupt.

³ Eastern States Railroad, LLC—Acquisition Exemption—Central Columbiana & Pennsylvania Railway, Inc. and Columbiana County Port Authority, STB Finance Docket No. 34934, served Dec. 21, 2006.

engaged Y&S to operate the entire line as its contract operator as of the date of its acquisition closing, replacing the service formerly provided by O&P.⁴ Y&S' operation over the rail line and the P&LE easement commenced December 1, 2006.

Y&S' POSITION

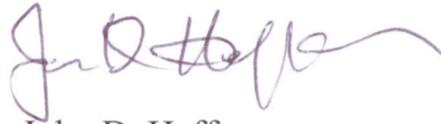
As a successor to P&LE, Y&S believes that it has standing to intervene in this proceeding. Moreover, Y&S' participation will not disrupt or delay the Board's consideration of this matter or broaden the issues for consideration insofar as it has yet to establish a procedural schedule.

Since the underlying suit in the Court of Common Pleas was filed prior to commencement of operations by Y&S, Y&S has not seen a need to participate in that litigation. With the filing of Allied's Petition with the Board, the matter has now broadened to include the issue of which forum has jurisdiction over the activities a federally regulated common carrier railroad can conduct over tracks it must use. As the present operator over the tracks covered under the P&LE easement, Y&S now feels compelled to participate in the matter before the Board as its interest may appear.

⁴ Youngstown & Southeastern Railway Company—Lease and Operation Exemption—Lines of Eastern States Railroad, LLC, STB Finance Docket No. 34962, served Dec. 21, 2006.

Y&S simply seeks to preserve unto its present operation any and all rights permitted to successors-in-interest that flow from the P&LE easement. Y&S does not seek to expand those rights. Conversely, Y&S seeks to ensure those rights are not diminished.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "John D. Heffner", with a stylized flourish at the end.

John D. Heffner
John D. Heffner, PLLC
1750 K Street, N.W.
Suite 200
Washington, D.C. 20006
(202) 296-3334

Dated: November 20, 2009

EXHIBIT A

COPY

EASEMENT AGREEMENT

This EASEMENT AGREEMENT, made this 17 day of SEPTEMBER, 1993, between the ALLIED ERECTING AND DISMANTLING COMPANY, INC., an Ohio Corporation, hereinafter referred to as "Grantor", and PITTSBURGH & LAKE ERIE PROPERTIES, INC., formerly known as The Pittsburgh and Lake Erie Railroad Company, a Delaware Corporation, hereinafter referred to as "Grantee".

NOW THEREFORE, for and in consideration of TEN DOLLARS (\$10.00), payable the first day of each year, does hereby, insofar as Grantor's title permits, grant bargain and convey unto Grantee, its successors and assigns, a perpetual, non-exclusive easement over that portion of the main line acquired by the Grantor herein by Deed bearing the same date as this Easement Agreement, between Survey Station 45+00± to a connection with the former Youngstown & Southern Railway Company in the vicinity of Survey Station 146+00± a distance of approximately 1.913 miles, for the sole purpose of providing railroad operations thereover as a part of the operation of the former Youngstown & Southern Railway system.

The aforesaid easement is granted, delivered and accepted, however, upon the following terms and conditions which, are mutually agreed to by the parties hereto:

1. Railroad operations over and upon the easement shall be conducted by such corporate party or parties to whom Grantee has or may assign the operation of The Youngstown and Southern Railway pursuant to authority granted by the Interstate Commerce Commission. As of the date hereof, said operations are and will be conducted in accordance with the applicable terms of that certain LEASE dated April 19, 1993, between Grantor, The Youngstown and Southern Railway Company and PL&W Railroad, Inc.
2. In the event any conditions exists upon Grantor's property or Grantor's operations adjacent to the easement which adversely affect safe and normal railroad operations over the easement, Grantor shall take steps, after verbal notification followed by written confirmation, with due diligence to make such changes in its property or operations as are necessary to permit safe and normal railroad operations to continue.
3. In the event that Grantor desires to occupy all or any portion of the easement area with its own facilities and/or operations, Grantor shall, give Grantee written notice of the such event, and shall, at Grantor's expense, provide a substitute comparable route and

tracks satisfactory to Grantee and its assigns, at another location upon and over Grantor's property, for the continued operation of a railroad between the beginning and ending points of the easement granted hereinabove. Upon the provision of a substitute easement, the provisions of the aforesaid Lease of April 19, 1993 shall apply to continued railroad operations thereover.

4. Upon any future abandonment of railroad operations over the easement pursuant to authority granted by the Interstate Commerce Commission or other applicable authority, the easement granted herein and this Easement Agreement shall be terminated.
5. The terms and conditions of this Easement Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives and successors and assigns.
6. Grantee agrees to pay all costs and fees in conjunction with filing or recording of this instrument in the office of Public Records of Mahoning County, Ohio.

IN WITNESS WHEREOF, the Grantor and Grantee, intending to be legally bound, have caused this instrument to be duly executed the day and year first above written.

ALLIED ERECTING AND DISMANTLING COMPANY, INC.

ATTEST:

Louise V. Ramon
Secretary

By John R. Ramon
President

PITTSBURGH & LAKE ERIE PROPERTIES, INC.

ATTEST:

Nancy L. Zmencik
Secretary

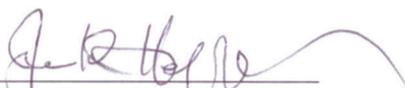
By Gordon E. Henschwiler
President

CERTIFICATE OF SERVICE

I, John D. Heffner, hereby certify that on November 20, 2009 a copy of the Motion for Leave to Intervene of Youngstown & Southeastern Railway Company, was served by first-class mail to the following:

Eric Hockey
Thorp Reed & Armstrong
One Commerce Square
2005 Market Street – Suite 1000
Philadelphia, PA 19103

Richard Streeter
Barnes & Thornburg LLP
750 17th Street, NW – Suite 900
Washington, DC 20006



John D. Heffner