

WEINER BRODSKY SIDMAN KIDER PC

1300 NINETEENTH STREET NW
FIFTH FLOOR
WASHINGTON DC 20036 1609
TEL 202 628 2000
FAX 202 628 2011

216 181

April 4, 2006



BY HAND DELIVERY

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington DC 20423

Office of the
Public Hearing

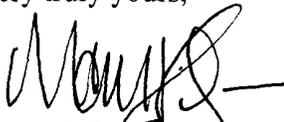
Re: STB Ex Parte No. 647, Class Exemption for Expedited Abandonment Procedure for Class II and Class III Railroads

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding are an original and 10 copies of the Reply of Allegheny & Eastern Railroad, Inc., *et al.* to Comments, with respect to the Advanced Notice of Proposed Rulemaking served in this proceeding on January 19, 2006.

Please acknowledge receipt of this letter by date-stamping the enclosed acknowledgment copy and returning it to our messenger.

Very truly yours,


Mark H. Sidman

Enclosures

216181

BEFORE THE
SURFACE TRANSPORTATION BOARD



PETITION FOR RULEMAKING

STB EX PARTE NO. 647

ALLEGHENY & EASTERN RAILROAD, INC., *ET AL.* -
CLASS EXEMPTION FOR EXPEDITED ABANDONMENT
PROCEDURE FOR CLASS II AND CLASS III RAILROADS

REPLY TO COMMENTS

RECEIVED
Office of Public Affairs
Public Affairs

Mark H. Sidman
Jo A. DeRoche
Rose-Michele Nardi
Weiner Brodsky Sidman Kider PC
1300 19th Street NW, Fifth Floor
Washington, DC 20036-1609
(202) 628-2000

Dated: April 4, 2006

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

PETITION FOR RULEMAKING

STB EX PARTE NO. 647

**ALLEGHENY & EASTERN RAILROAD, INC., *ET AL.* –
CLASS EXEMPTION FOR EXPEDITED ABANDONMENT
PROCEDURE FOR CLASS II AND CLASS III RAILROADS**

REPLY TO COMMENTS

In its Advance Notice of Proposed Rulemaking, 71 Fed. Reg. 3030 (January 19, 2006) (the “ANPR”), the Surface Transportation Board (“Board”) requested comments from interested parties concerning the proposal of 62 Class II and Class III carriers¹ that the Board adopt a new notice of exemption procedure that would expedite the abandonment of rail lines by small railroads (the “Proposed Rule”). The Proposed Rule is widely supported by railroads, large and small. In response to the ANPR, the American Short Line and Regional Railroad Association (“ASLRRA”), the Association of American Railroads (“AAR”), 18 individual Class II and Class III railroads and one Class I railroad expressed support for Petitioners’ proposal.²

The Proposed Rule also is supported by shippers. In its comments, the National Industrial Transportation League (“NITL”), the nation’s largest shipper group, reiterated its

¹ Since the Petitioners’ original filing in this docket on May 15, 2003, three of the original 65 petitioners were merged into one of the other petitioners, thus reducing the number of petitioning carriers to 62.

² RailAmerica, Inc., a short line holding company, indicated that it would not likely utilize the Proposed Rule, if adopted, but did not oppose the proposal. RailAmerica Comments at 3. One short line railroad group, Pioneer Railcorp, filed comments in 2004 opposing the Proposed Rule. Pioneer did not submit comments in response to the ANPR.

position that a “simplification of the regulatory process for Class II and Class III carriers that permits abandonments and offers of financial assistance to proceed before rail infrastructure deteriorates will strengthen the rail network” and that the Proposed Rule had “fundamental merit.” NITL Comments at 1. No individual shipper or shipper group opposed the Proposed Rule. The absence of *any* shipper opposition to the Proposed Rule underscores the fact that the public – shippers, communities and rail labor – will be the ultimate beneficiaries of a new regulatory procedure that allows small railroads efficiently to re-deploy capital from markets that do not support rail service to those that do.

The fact that shippers support the Proposed Rule, which is susceptible to being mischaracterized as a “pro-railroad” initiative, belies the claims by rail labor and two state departments of transportation that the Proposed Rule would harm shippers and communities. Shippers apparently understand that the rail network is weakened when small railroads are forced to remain in markets long after those markets have ceased to use rail service at levels that justify the cost of providing that service. The shippers also appear to recognize that, in a largely deregulated transportation market, a railroad cannot be “forced” to provide competitive service when its own analysis indicates that providing such service is not in its economic self-interest. Moreover, the shippers appear to understand that there is no reason to believe that, if small railroads are permitted to abandon lines through an expedited, notice of exemption process, those carriers would choose to abandon profitable lines at the risk of having to sell those lines in an offer of financial assistance (“OFA”) proceeding for net liquidation value. The NITL obviously does not fear that small railroads would embark on that type of irrational course of action.

Three labor organizations – Rail Labor Division of the Transportation Trades Department (AFL-CIO) (“Rail Labor Division”), United Transportation Union – General Committee of

Adjustment and The Rail Conference, International Brotherhood of Teamsters – filed comments in response to the ANPR. These organizations do not raise any new issues in this round of filings. Instead, the unions defend the regulatory *status quo* without explaining how the current procedures confer benefits on small railroad employees or anyone else, and pose rhetorical questions that suggest that the organizations do not take a real-world view of the issues presented in this proceeding.

For example, Rail Labor Division notes that:

Significantly, neither in their written testimony, nor in response to questions from the Board members at the August 31, 2004 hearing, were Petitioners able to explain how the abandonment balancing test prevented Class II and Class II carriers from selling lines they no longer wish to operate without first purposely planning their deterioration. There is no regulation that would limit such sales for the NLV or any other price. In short, Petitioners' request for a class exemption is not supported either by facts or a theory that can withstand common sense scrutiny.

Rail Labor Division Comments at 3.³

It is ironic that the Rail Labor Division would call for a standard of common sense. As common sense dictates, and as Petitioners made clear in their September 15, 2004, filing with the Board⁴, small railroads will always sell a line for a going concern value rather than abandon it, if such a sale is possible. Petitioners' filing, dated September 15, 2004, at 1-2. However, when a small railroad has failed to build a sustaining traffic base on a line, it is highly unlikely that another entrepreneur will acquire the line for continued rail use because the likelihood that a potential acquirer will identify opportunities missed by the current owner is small.

³ The Washington State Department of Transportation and the Washington Utilities Commission in their Comments make a similar argument.

⁴ This filing responded to written questions by then-Commissioner Buttrey, who had been unable to attend the August 31, 2004, hearing in this proceeding.

Most small railroads were created following the passage of the Staggers Act in 1980, and consist of light density lines that formerly were owned by Class I railroads. Many of these lines were abandonment candidates prior to their sale to short line entrepreneurs. The purchasers of these lines work hard to identify potential shippers and build traffic by providing the type of service that local customers rarely received when the lines were owned by Class I carriers. When a small railroad entrepreneur has concluded that a line cannot be operated profitably, the overwhelming likelihood is that no one will conclude otherwise.

Potential purchasers of a failing small railroad line are reluctant to purchase it for continued rail use because the cost of motive power, maintenance of way equipment, insurance, fuel, operating employees, maintenance and administration will result in large losses where there is little traffic. *See* Appendix A, Verified Statement of Christopher J. Burger (“VS Burger”) at ¶ 6. The capital investment necessary to support even a small line segment is simply overwhelming absent a critical mass of regular traffic. In addition, the investment costs must be incurred by the Purchaser at the outset before the purchaser has a chance to test the line’s viability. *Id.* Moreover, a potential buyer of the line will be saddled with the obligation to abandon the line if it cannot be revived, which means that the buyer’s capital will be tied up for years. Even local governments tend to wait until a rail line has been abandoned so that they can try to use the OFA process to their advantage.⁵ Under these circumstances, it is extremely unlikely that an entrepreneur would be willing to pay a premium above net liquidation value for

⁵ Under the existing OFA regulations, an offeror can request the Board to set terms, argue for a low price and then decide whether or not to consummate the transaction *after* the Board establishes the price. This “free look” is very attractive to potential buyers of lines with little or no traffic. *See also* VS Burger at ¶ 8. Even with this benefit, however, few rail lines are sold through the OFA process. In the Board’s FY 2002-2004 Report, the Board identifies only nine abandonments that were dismissed on account of an OFA out of 257 abandonments granted in the three-year period under review. This is a rate of just 3.5 percent.

the privilege of trying to generate sustaining levels of traffic on a line identified by another small railroad operator as a losing proposition.

Nevertheless, in any case in which a small railroad can sell an abandonment candidate, it will. No small railroad would choose to go through a multi-year regulatory process seeking permission to sell a line for scrap value if it could sell the line in the near term at a premium for continued rail use. *See* VS Burger at ¶ 8. The notion that small railroads would rather abandon lines than sell them has no basis in logic or reality.

Washington State Department of Transportation and the Washington Utilities and Transportation Commission (together, “Washington”), in comments endorsed by the Oregon Department of Transportation (“Oregon”), also argue in favor of the regulatory *status quo*. Washington urges that “[t]he Board should not adopt exemptions that favor railroads to the detriment of communities and shippers, but should make sure that public convenience and necessity standard is the guiding principle behind its decisions.” Washington Comments at 2. As noted in Petitioners’ Comments, Petitioners are not seeking to eliminate the public convenience and necessity (“PC&N”) standard, but rather have demonstrated that the Proposed Rule is compatible with the PC&N standard because expedited abandonment by small railroads promotes the collective interests of carriers, shippers and communities. In addition, Petitioners, in their Comments, offered a detailed analysis of how the Proposed Rule satisfied the exemption criteria of section 10502(a).

Although Washington stresses the importance of the PC&N test, it fails to explain how communities and shippers benefit from the current abandonment process. With or without the Proposed Rule, the Board’s data demonstrate that railroads routinely obtain abandonment

authority when they seek it.⁶ However, the current regulations encourage small carriers to let all abandonment candidates go into a multi-year death spiral that increases the likelihood of obtaining abandonment authority (either through a notice of exemption for out-of-service lines or through a petition for exemption), but does nothing to preserve meaningful levels of service pending abandonment. Instead, by delaying the redeployment of scarce capital on unprofitable lines, the current process hinders the ability of small railroads to make investments in other parts of their systems that would have direct benefits for communities and shippers, such as investments in environmentally friendly locomotives, investments in infrastructure capable of handling 286,000 pound cars, and other infrastructure investments resulting in faster, safer and more reliable rail service. *See* VS Burger at ¶ 7.

Washington challenges Petitioners' "assumption that short-lines and regional carriers are 'small' businesses for which the current regulations are unreasonably burdensome." Washington Comments at 6-7. It then notes that there are some railroads in Washington that are considerably longer than the average small railroad and that some are owned by or affiliated with holding companies.⁷ Oregon makes a similar argument. Oregon Comments at 3-4.

Petitioners readily acknowledge that there are small railroads that are considerably larger than the average length of carriers in that group (in its Comments, ASLRRRA notes that the average small railroad is 87 miles long, ASLRRRA Comments at 2), and that some are subsidiaries of holding companies. However, the fact that a small railroad is a few hundred miles long or that it is affiliated with a holding company does not change the fundamental

⁶ The Board's FY 2002-2004 Report showed that abandonments by Class I, II and III railroads were granted in 97.4 percent of the cases.

⁷ Washington Comments at 7-8.

characteristics of the typical small railroad; *i.e.*, these are companies that serve limited geographic markets, focus on local service and marketing, operate light density lines, interchange traffic with connecting Class I carriers, have limited access to capital⁸ and have limited commercial opportunities to expand their businesses. *See* VS Burger at ¶ 4. This is in marked contrast to Class I carriers, which have an average system size of 24,130 miles (2004), generate from \$636 million to \$12.2 billion in annual freight revenues (2004), have high traffic density on their core lines and have a sizable branch line system of varying traffic density. Thus, whether a small railroad is a few hundred miles long (as is the Palouse River and Coulee City Railroad (“PCC”) in Washington State) or 8.5 miles long (as is the Columbia & Cowlitz Railway Co., also in Washington State), it has virtually nothing in common with Class I carriers insofar as the decision making process for lines that cannot support rail service.⁹ Petitioners’ fundamental arguments in favor of the Proposed Rule are as true for the 10-mile short line as they are for a 300-mile small railroad:

- Small carriers do not walk away from even marginally profitable parts of their system.
- Once a small railroad decides that a line cannot sustain rail service, the carrier will take rational steps that will lead to the eventual abandonment of the line.
- Neither shippers nor communities benefit from a death spiral period during which little service is provided, traffic dries up and rail infrastructure deteriorates.
- Shipper and communities will benefit from a regulatory process that allows a small railroad to redeploy capital from markets that do not support rail service to those that do.

⁸ As the ASLRRRA noted in its Comments at 2, 410 of the approximately 518 shortline railroads currently operating have revenues under \$5 million. In addition, the ASLRRRA points out in its Comments that almost 80 percent of the small railroads are privately held companies that cannot turn to the financial markets to fulfill its capital needs. *Id.*

⁹ As noted in the Burger VS at ¶ 5, when compared to a Class I railroad, Class II and Class III carriers have much smaller properties to work with to expand their businesses. Thus, a small railroad’s abandonment of a line segment has a proportionally greater impact on reducing its commercial opportunities than such an abandonment would have on a Class I carrier. *Id.*

- No small railroad would spend several years abandoning a line for net liquidation value if it could sell the line today at a going concern value for continued rail use.
- The enhanced OFA procedures contained in the Proposed Rule will provide shippers and communities with the best possible chance that low-density lines will be purchased for continued rail use.

Washington appears to imply that the principles stated above do not apply to “larger” small railroads or those railroads that are subsidiaries of holding companies. To that end, Washington points to the PCC, which previously advised Washington of the potential abandonment of three of its branch lines (the P&L, the PV Hooper and the CW lines), totaling a few hundred miles of its rail system. However, a closer look at the PCC branch lines demonstrates that the situation faced by PCC, and the actions taken by Washington with respect to the branch lines, argue in favor of the adoption of the Proposed Rule.

PCC bought its rail lines from BNSF in 1996. *See* Appendix B, Verified Statement of Arthur E. McKechnie, III (“VS McKechnie”), at ¶ 2. The P&L, PV Hooper and CW lines were light density lines, with aggregate car densities of just 15.5 cars/mile in 2005. *Id.* Although Washington alludes to a study that characterized the PCC as “an important commercial corridor in eastern Washington,” Washington Comments at 7, the traffic volumes on the P&L, PV Hooper and CW lines suggest otherwise. Shippers in these markets consistently used truck and inland waterway transportation for their goods, and traffic levels reflected that fact. *Id.*

Moreover, the lines had endured deferred maintenance in the hands of their prior owner and required substantial rehabilitation. *Id.* at ¶ 3. At the traffic levels on the lines, PCC simply could not afford to perform normalized maintenance and make necessary capital expenditures. *Id.* PCC determined that, in light of the maintenance and capital spending requirements for the branch lines, it could not operate those lines profitably and advised Washington that it planned to abandon the lines. *Id.* at ¶ 6.

In 2004, Washington purchased the PV Hooper and P&L lines and granted PCC a leasehold interest in them. In addition, PCC retained a freight easement over the two branch lines, and PCC continues to operate them. Under the lease between PCC and Washington, the state has agreed to pay for certain track rehabilitation. *Id.*; Washington Comments at 9, n.19. These lines are marginal with the subsidization of these capital costs by Washington; they would be unprofitable if the operator had to incur these costs. *Id.* at ¶ 7. In short, the lines in question do not support continued rail service absent a decision by Washington to use public funds to keep these lines in service. In private hands these lines are classic abandonment candidates.

Washington's actions with respect to the PCC branch lines are consistent with the objectives of the Proposed Rule. Faced with the possibility of a future abandonment of lines that a small railroad was struggling to sustain, the state stepped in, acquired the P&L and PV Hooper lines and leased them back to the former owner. By acquiring the rail lines while there was still traffic moving over them and before the assets had fully deteriorated, Washington has the best opportunity to preserve the rail line for continued rail service. This would not be the case if Washington had done nothing and PCC had let the traffic dry up and the assets lie fallow for years before seeking abandonment authority from the Board. The situation with PCC is not a cautionary tale insofar as the Proposed Rule is concerned; to the contrary, it underscores the value of a policy that eliminates any incentive for a carrier to allow a line to go into a death spiral in anticipation of an abandonment proceeding.

Ironically, Washington goes out of its way in its Comments to include statistics from the Board's FY 2002-2004 Report (the "Report"). Those data show that, in the three-year period reviewed, 257 abandonments were approved, with just six denied.¹⁰ Two-thirds of the granted

¹⁰ These statistics included Class I abandonment proceedings as well as small railroad abandonments.

abandonments – 170 of 257 – were progressed under the out-of-service notice of exemption procedure.

Several inferences can be drawn from the data in the Report. *First*, the Board grants abandonment authority as a matter of course. In cases involving petitions and notices (which include virtually all small railroad filings)¹¹, abandonment authority was forthcoming in 98.8 percent of filings (including 97.4 percent of cases involving petitions for exemption). And, as Petitioners pointed out in their analysis of the Board's 2005 abandonment decisions involving small railroads, most "denials" are based on technical deficiencies in railroad filings; these denials rarely reflect a conclusion by the Board that the line in question can in fact support rail service. See Petitioners' Comments at 5-6. In adopting the class exemption under 49 USC § 10901, the Interstate Commerce Commission noted that "the fact that in the future there may be a few proposals out of hundreds that require an investigation does not preclude us from concluding that regulation of substantially all of these transactions is not necessary to carry out the national transportation policy" and that "[t]his conclusion is completely consistent with the legislative directive concerning the Commission's exemption power." *See Ex Parte No. 392 (Sub-No. 1), Class Exemption for the Acquisition and Operation of Rail Lines Under 49 U.S.C. 10901, 1 I.C.C.2d 810, Dec. 19, 1985.*

Second, the data show that two-thirds of abandonments were progressed under the notice of exemption procedures for out-of-service lines. In these cases, it is likely that no meaningful service was provided on the subject lines for three or four years prior to actual abandonment.

Washington does not explain how the public interest is served by having valuable infrastructure

¹¹ As explained in the Petition, small railroads rarely file applications for abandonment because the existing regulations require data to be submitted in Uniform Systems of Account format and the filing fee is expensive (\$18,700, effective April 19, 2006). Although a small railroad may seek waiver of the troublesome application rules, there is no guarantee that a waiver will be forthcoming.

lie idle for years as small railroads scramble for capital to upgrade their systems. Although there is an understandable tendency for a state department of transportation to focus on the quantity rather than the quality of rail lines in its state – just as it is understandable that shippers who do not use rail service still want the railroad in place to keep truck prices low – there simply is no measurable public benefit to postponing the abandonment of an unprofitable rail line.

Washington takes an “if it ain’t broke, don’t fix it” approach to the regulatory scheme that applies to small railroad abandonments and argues that the statistics in the Report demonstrate that the existing regulations are not burdensome to small carriers. Washington apparently fails to grasp that Petitioners never argued that the existing regulations *prevent* small railroads from obtaining regulatory authority to abandon lines. To the contrary, Petitioners have argued that in *virtually every single case* authority is forthcoming because that is the inevitable result of a managerial determination that a line is not viable. Despite this certainty of result – which Washington does not dispute and the Board’s own statistics confirm – the current regulations result in several years’ worth of delay before a rail line can be taken out of service. And during that time, the small railroad cannot redeploy assets and the rail infrastructure and traffic base deteriorate. Washington does not explain how the delay built into the current system improves the prospects of shipper, communities or the nation’s rail network. Washington’s opposition to the Proposed Rule appears to be based more on nostalgia than on any real benefits that flow to shippers or communities from the existing procedures.

Various commenters in this proceeding have suggested changes to the Board’s existing abandonment regulations. In general, Petitioners support these suggestions to improve the Board’s regulations for abandonments pursued under the existing application, petition for exemption and the notice of exemption (for out-of-service lines) procedures. However, none of

those suggestions should be viewed as an alternative to the Proposed Rule because none of those suggestions address the fundamental problem with the existing regulations: *i.e.*, the multi-year death spiral that occurs prior to a small railroad's seeking regulatory authority to abandon a line. Petitioners urge that the Board go forward with the Proposed Rule as part of a policy that encourages rational and efficient deployment of scarce capital resources and that enhances the likelihood that abandonment candidates will be purchased through an OFA for continued rail use.

**RESPECTFULLY SUBMITTED
ON BEHALF OF PETITIONERS**



Mark H. Sidman
Jo A. DeRoche
Rose-Michele Nardi
Weiner Brodsky Sidman Kider PC
1300 19th Street NW, Fifth Floor
Washington, DC 20036-1609

Dated: April 4, 2006

F:\99990\027\tldt791oth reply to comments5.doc

APPENDIX A

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

PETITION FOR RULEMAKING

STB EX PARTE NO. 647

**ALLEGHENY & EASTERN RAILROAD, INC., *ET AL.* -
CLASS EXEMPTION FOR EXPEDITED ABANDONMENT
PROCEDURE FOR CLASS II AND CLASS III RAILROADS**

APPENDIX A

1. My name is Christopher J Burger. I retired as president and chief executive officer of Central Properties, Inc. (CPI), a short line railroad holding company, when the company was sold in 1998. In that capacity, I also was president of each of its railroad properties, The Central Railroad Co. of Indianapolis and The Central Railroad Co. of Indiana. Both were class III railroads.

2. Following my retirement, I established a consulting practice to assist short line railroads, industries, local government entities and non-profit organizations in addressing railroad issues. These activities have included safety, operational start-ups, "Best Practice" analyses, trusteeship, operational and financial studies and analyses, feasibility studies and other activities in the US and overseas.

3. Before joining CPI in 1994, I was general manager of the Central Vermont Railway, a class II railroad that was a wholly owned subsidiary of the Grand Trunk Corp., which in turn was a wholly owned subsidiary of the Canadian National Railway.

Prior to that, I spent twenty-two years with the Chicago & North Western Railroad in positions from trainmaster to vice president. My railroad career began in 1959 as a signal helper on the New York Central Railroad in Harmon, NY. I later entered the railroad's management training program. I was trainmaster at Newberry Jct., PA when I left in 1967 to join the C&NW. My military service was with a Railway Operating Battalion of the US Army Transportation Corps. I am a Director of the Center for Railroad Photography & Art and serve on advisory boards of the National Railroad Museum and the Midwest Railroad Research Center.

4. Typical class II and class III railroads share certain fundamental qualities: limited geographic markets that concentrate on local marketing and service; limited available capital; light density lines; limited commercial opportunities for expansion; and interchange with Class I railroads. As noted above, I was President of two class III railroads that were subsidiaries of a non-carrier holding company and general manager of a class II railroad that was a wholly-owned subsidiary of a non-carrier holding company. During my rail career, I have had the opportunity to manage, observe and consult on the operations of small railroads which were subsidiaries of holding companies and which were not. It is my experience that while a holding company may offer advantages such as economies of scale, management depth and better pricing/marketing, these advantages do not fundamentally change the nature of its Class II or III railroads, as compared to those that are "stand-alone" railroads, especially when it comes to unprofitable lines. They are locally managed and focused, and face the same challenges to provide good service and to maintain and upgrade physical plant and equipment with limited financial resources.

5. Because of their small size, class II and III railroads generally do not have many commercial opportunities to expand their business. They must increase traffic from existing customers or attract new customers to a much smaller property than would be the case with a Class I railroad for example. As a result, every piece of line a Class II or III railroad abandons reduces its opportunities for growth (*i.e.*, fewer customers and fewer locations to attract new business) proportionally more than would be the case with a Class I. Therefore, the abandonment of a rail line by a Class II or III railroad is typically viewed as a last resort.

6. In order to purchase even a small rail line for continued use, the purchaser must make substantial capital investments (*e.g.*, acquiring maintenance of way equipment, locomotives and other supplies and tools, fuel, maintenance expenses, administration costs, insurance and operating employees). These investments will cause a purchaser to incur large losses if the line handles little traffic. In addition, the purchaser must incur these costs up front, before it will have the opportunity to test the viability of the line.

7. A class II or class III railroad line with little or no traffic has assets that are being wasted. Steel, ties and other materials all can be used to upgrade other portions of the carrier's system. And an upgraded rail line can mean faster, safer and more reliable service, which in turn makes the use of rail service more competitive. Similarly, by abandoning an unprofitable line, a railroad can free up the capital it was spending on that line. Most class II and III railroads do not have access to sufficient capital to make important improvements or additions to its rail system, such as track and bridges to accommodate today's larger, heavier cars and the purchase of environmentally friendly

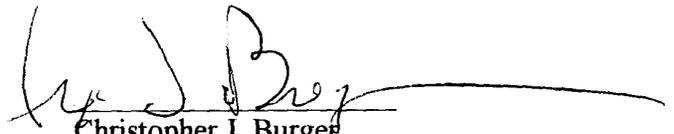
locomotives. By enabling a rail carrier to focus its scarce capital on those lines with a sustaining traffic base, the rail system, as a whole, becomes more valuable to the shippers and the local communities. In addition, the locomotives and personnel used on an unprofitable line can be better utilized to upgrade service on more viable lines.

8. By the time a railroad files for abandonment authority from the Surface Transportation Board, a class II or class III railroad typically has spent several years trying to sustain the line by deferring maintenance and/or imposing surcharges until the traffic on the line eventually dies. This tends to be a slow and painful process, during which time the rail line generally is operating at a loss, management is spending a disproportionate amount of time dealing with shipper complaints and budget constraints, and valuable rail assets are being wasted, all to the detriment of more viable portions of the railroad. Given this scenario, a rail carrier would always prefer to sell a line for a premium going concern value rather than wait several years to abandon the line for salvage value. Unfortunately, there is little demand among railroad entrepreneurs for a short line's abandonment candidates, and extremely few of these lines can be sold to entrepreneurs for continued rail use. The more likely buyer is a state or local government, but these entities usually prefer to buy a line using the offer of financial assistance procedures in the Board's abandonment regulations.

VERIFICATION

I, Christopher J. Burger, certify under penalty of perjury that the verified statement is true and correct to the best of my knowledge, information and belief.

Further, I certify that I am qualified and authorized to cause this verified statement to be filed.


Christopher J. Burger

Dated: April 4, 2006

APPENDIX B

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

PETITION FOR RULEMAKING

STB EX PARTE NO. 647

**ALLEGHENY & EASTERN RAILROAD, INC., *ET AL.* –
CLASS EXEMPTION FOR EXPEDITED ABANDONMENT
PROCEDURE FOR CLASS II AND CLASS III RAILROADS**

APPENDIX B

1. My name is Arthur E. McKechnie, III. I am currently the Executive Vice President and Assistant Secretary of Palouse River and Coulee City Railroad (PCC). I have held that position for 2 years. In my capacity as Executive Vice President and Assistant Secretary, I was directly involved with the negotiations between PCC and the Washington Department of Transportation (WADOT) to purchase three branch lines of the PCC: the P&L line; the PV Hooper line and the CW line.

2. In 1996, PCC purchased its rail properties from BNSF Railway Company. The P&L, PV Hooper and CW lines account for approximately 318 miles of the 423-mile system that was purchased. In 2005, the three branch lines handled approximately 4,932 carloads of traffic in the aggregate. Shippers located on the P&L, PV Hooper and CW lines utilized consistently truck and inland waterway transportation, thereby reducing the volume shipped by rail on these branch lines.

3. When PCC acquired its properties in 1996, each of the P&L, PV Hooper and CW lines had significant deferred maintenance and required substantial rehabilitation. The traffic levels on the lines did not produce adequate revenue to fund operating expenses, normalized maintenance and capital expenditures. As a result, PCC deferred maintenance on the lines and refrained from making capital expenditures on them.

4. Deferral of maintenance cannot be a permanent solution for lowering rail operating costs. At some point in time, either a railroad can no longer defer additional maintenance and continue to operate safely over the line, or the deferral of maintenance is no longer a sufficient method of reducing operating costs in the face of consistently low revenues. At that point, a railroad must seek other ways to either increase revenue or decrease costs.

5. Faced with low traffic density and inadequate revenues, PCC reached the point where deferred maintenance was no longer sufficient to sustain rail service over the P&L and CW branch lines. Therefore, in the year 2005 and the year 2006, PCC was forced to impose a surcharge on the traffic moving over the P&L branch line and the CW branch line, respectively. These surcharges continue to be in place today. However, the surcharges have resulted in some loss of traffic volume and do not generate sufficient additional revenue to fund normalized maintenance or necessary capital expenditures.

6. PCC reached the conclusion that it could not operate the branch lines profitably, given the lines' capital spending and maintenance requirements. PCC advised WADOT that if it did not want to buy the lines, PCC would abandon them. In 2004, PCC and WADOT entered into an agreement for the sale of the right-of-way and track of

the P&L branch line and the PV Hooper branch line to the State. PCC retained an exclusive freight rail easement over the lines and also was granted a lease-hold interest in the lines. As part of the sale, WADOT agreed to invest certain funds in the lines for track rehabilitation. WADOT was scheduled to invest rehabilitation dollars in the PCC on July 1, 2005, and chose not to, indicating that they wanted additional consultation with the Washington Legislature that was not set to convene for several more months.

7. Although the transactions with WADOT have had a positive impact on rail operations, these lines still do not generate sufficient revenue to fund normalized maintenance and necessary capital expenditures. To the extent these lines remain in service, it will be as a result of subsidy payments by the State of Washington. Absent these infusions of cash, PCC would have to discontinue its operations and abandon the lines.

8. Although PCC has been able to structure transactions with WADOT for PV Hooper and P&L lines, PCC was unable to negotiate a similar agreement with respect to the CW line. Although the PCC welcomed the opportunity to sell the CW line to WADOT for continued rail service, the parties were unable to agree on a sale price for this line. PCC believed that the purchase price offered by WADOT was less than one-half of the net liquidation value of the line. PCC has not yet filed for abandonment authority for this line, but likely will have no choice but to seek abandonment authority if it is unable to work out a satisfactory arrangement with WADOT. The traffic on the CW line is not adequate to support continued rail service.

VERIFICATION

I, Arthur E. McKechnie III, certify under penalty of perjury that the verified statement is true and correct to the best of my knowledge, information and belief.

Further, I certify that I am qualified and authorized to cause this verified statement to be filed.


A.E. McKechnie III

Dated: April 4, 2006

CERTIFICATE OF SERVICE

I hereby certify that on April 4, 2006, a copy of the Reply to Comments of Allegheny & Eastern Railroad, Inc., *et al.*, filed with the Surface Transportation Board in STB Ex Parte No. 647, were sent by first-class mail, postage prepaid, to the parties listed below:

Keith T. Borman
American Short Line and Regional Railroad Association
Suite 7020
50 F Street, NW
Washington, D.C. 20001-1564

Gordon P. MacDougall
1025 Connecticut Avenue, NW
Washington, D.C. 20036

Mitchell M. Kraus
Transportation Communications International Union
3 Research Place
Rockville, MD 20850-3279

Donald F. Griffin
Director of Strategic Coordination and Research
Brotherhood of Maintenance of Way Employes
Division
10 G Street, NE, Suite 460
Washington, D.C. 20002

Sidney Strickland
Sidney Strickland and Associates, PLLC
3050 K Street, NW
Suite 101
Washington, D.C. 20007-5108

Chris W. Sumner, LS
American Congress on Surveying and Mapping
6 Montgomery Village Avenue
Suite 403
Gaithersburg, MD 20879

John D. Heffner
John D. Heffner, PLLC
1920 N Street, NW
Suite 800
Washington, D.C. 20036

Mark S. Lyon
WSBA #12169
Attorney General of Washington
Transportation & Public Construction Division
P.O. Box 4-0113
Olympia, WA 98504-0113

Louis E. Gitomer
Ball Janik LLP
1455 F Street, NW
Suite 225
Washington, D.C. 20005

Kelly C. Taylor
Oregon Department of Transportation
Rail Division
555 13th Street, NE
Suite 3
Salem, OR 97301-4179

Thomas F. McFarland
Thomas F. McFarland, PC
208 South LaSalle Street
Suite 1890
Chicago, IL 606094-1112

Nicholas J. DiMichael
Thompson Hine
1920 N Street, NW
Suite 800
Washington, DC 20036-1600

William Merrigan
Department of the Army
Military Surface Deployment and Distribution Command
HQ SDDC Attn: MTJA
200 Stovall Street
Alexandria, VA 22332-5000

Charles W. Hill
West Virginia Department of Transportation State Rail Authority
120 Water Plant Drive
Moorefield, West Virginia 26836

Robert T. Opal
Union Pacific Railroad
1400 Douglas Street
Stop 1580
Omaha, NE 68179

John Hey
Modal Division
Iowa Department of Transportation
800 Lincoln Way
Ames, Iowa 50010

Andrew P. Goldstein
McCarthy, Sweeney & Harkaway, P.C.
2175 K Street, NW
Suite 600
Washington, D.C. 20037

William M. Tuttle
Canadian Pacific Railway
501 Marquette Avenue S
Suite 800
Minneapolis, MN 55402

Louis P. Warchot
Association of American Railroads
50 F Street, NW
Washington, D.C. 20001

Transportation Trades Department AFL-CIO
888 16th Street, NW
Suite 650
Washington, D.C. 20006

Daniel R. Elliott, III
United Transportation Union
14600 Detroit Avenue
Cleveland, OH 44107-4250

Chris Rose
Washington State Utilities and Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250

Thomas C. Brennan
Brotherhood of Locomotive Engineers and Trainmen
1370 Ontario Street, Mezzanine
Cleveland, OH 44113-1702

Charles M. Delacruz
Counsel for Public Affairs
National Grain and Feed Association
1250 Eye Street, NW
Washington, D.C. 20005

Robert S. Korpanty, P.E.
Senior Civil Engineer
Office of the Special Assistant
for Transportation Engineering
SDDCTEA, ATTN: MTTE-SA
720 Thimble Shoals Boulevard, Suite 130
Newport News, Virginia 23606-2574



Mark H. Sidman