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March 21, 2007

VIA FEDEX

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

Re: Finance Docket No. 34943, Beaufort Railroad
Company, Inc. - Modified Rail Certificate

Dear Secretary Williams:

Enclosed please find an original and ten (10) copies of a Petition for Leave to Intervene, Petition to Reconsider, and Petition for an Investigation for filing with the Board in the above-referenced proceeding. Our check for \$200 is also enclosed to cover the filing fee.

In addition, we are including an extra copy of the attached document and would appreciate it if you could date stamp and return it to us in the enclosed stamped, self-addressed envelope.

Respectfully submitted,

A handwritten signature in black ink that reads "John L. Richardson" followed by a stylized flourish or initials in parentheses.

John L. Richardson
Attorney for Petitioners

Enclosures

cc: All parties

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BEFORE THE
SURFACE TRANSPORTATION BOARD



BEAUFORT RAILROAD COMPANY,) FINANCE DOCKET
INC. - MODIFIED RAIL CERTIFICATE) NO. 34943

PETITION FOR LEAVE TO INTERVENE,
PETITION TO RECONSIDER,
AND PETITION FOR AN INVESTIGATION

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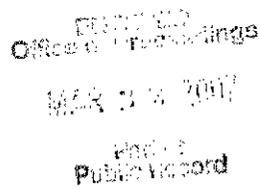
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Dated: March 21, 2007



BEFORE THE
SURFACE TRANSPORTATION BOARD

BEAUFORT RAILROAD COMPANY,) FINANCE DOCKET
INC. - MODIFIED RAIL CERTIFICATE) NO. 34943

**PETITION FOR LEAVE TO INTERVENE,
PETITION TO RECONSIDER,
AND PETITION FOR AN INVESTIGATION**

Pursuant to 49 C.F.R. Parts 1111, 1112 and 1115, Clarendon Farms, LLC; Diane D. Terni; Greedy Children Land, LLC; and Prodigal Son, LLC (hereinafter "Landowners") hereby respectfully petition the Surface Transportation Board for leave to intervene, for reconsideration and for an investigation. In support thereof, Landowners offer the following evidence and argument.

BACKGROUND

This proceeding involves property which had been used as a rail line that extended from Yemassee, South Carolina to Port Royal, South Carolina. Landowners own major properties that adjoin the property which had been used as a rail line, and the rail line was created through the conveyance of an interest in Landowners' properties to a predecessor of the Seaboard System Railroad.

While the properties were in effective rail use for many decades, they have not been operational in any sense of the word since, at the latest, 1985. Although there has been no rail service over the line for over twenty years, the land has been held and controlled by others than

the rightful owners, and those owners have not been permitted to reclaim and reenter their properties.

Landowners were made aware of a Notice for Modified Certificate of Public Convenience and Necessity filed in this docket on December 1, 2006 by the Beaufort Railroad Company, Inc., a subsidiary of the South Carolina Division of Public Railways (hereinafter "the Beaufort Parties").^{1/} In that Notice, the Beaufort Parties asserted, as others have before them, that they intended to restore rail service over the property and assured the Board that they were ready, willing and able to do whatever was necessary to enable the resumption of a full level of interstate rail service over the Landowners' property in a manner fully compliant with Federal Railroad Administration regulations and the laws of the State of South Carolina -- but subject to some conditions and limitations.

Landowners were surprised that any responsible entity would determine that a reinstatement of rail service over this line was practical or economically justifiable. Upon further examination, Landowners became even more skeptical of the bona fides of the Beaufort Parties and their proposal and began to suspect that the true intentions of those interests were something other than what they described in the Notice they filed with the Board. An even closer examination of the Notice gave more than adequate reason to question whether the Beaufort Parties really intended to muster the substantial resources that would be required to undertake the massive program essential to assure a safe, effective and efficient reinstatement of rail service over the line.

^{1/} The Notice was not served on any of the Landowners and, to the knowledge of Landowners, the Beaufort Parties did nothing to make adjoining landowners aware of the Notice.

On December 28, 2006, the Board served its notice in response to the Notice filed by the Beaufort Parties. The Board's notice seems to adopt, without any apparent inquiry or analysis, the Beaufort Parties' assertions and representations, including in particular the representation that "[t]he rail segment qualifies for a modified certificate of public convenience and necessity."

Subsequently, on January 17, 2007, Delores Coberly, Don Edgerly, John Keith, Dartha P. Pierce, Pender Brothers, Inc. and John Scherer (hereinafter "the Coberly Group") filed a Petition to Reopen and/or for Reconsideration of the notice the Board served on December 28, 2006. In their Petition, the Coberly Group asserted that the line at issue had been abandoned by successors in interest to the Seaboard with the approval of the Board and that the Board, therefore, was without jurisdiction to consider the Beaufort Parties' Notice. The Coberly Group supported their position with what appeared to be substantial evidence and compelling legal arguments, and they asked the Board to

"vacate the finding at page 2 of the decision that the rail segment qualifies for a modified certificate of public convenience and necessity. The Board is urged to find instead that it lacks jurisdiction to issue a Modified Certificate because: (1) the rail segment under consideration was fully abandoned over three years ago; and (2) BRC does not propose to provide transportation of freight to or from the rail segment in interstate commerce. Based on those findings, the Board is urged to vacate the decision served December 28, 2006 for lack of jurisdiction to have issued a Modified Certificate as to the involved rail segment."

On January 24, 2007, Diane Burnett and Sarah Walker filed a Petition for Leave to Intervene and to join with the Coberly Group in asking the Board to reopen this proceeding and/or reconsider and reverse the findings contained in the notice the Board served on December 28, 2006.

In response, the Beaufort Parties launched an attack on the lawyer representing the Coberly Group and, in the end, argued that the position advocated by that lawyer was without merit and, therefore, the interests the lawyer's clients sought to advance should be rejected. The Beaufort Parties largely ignored the evidence and legal arguments asserted by the Coberly Group, and when the Beaufort Parties did address those arguments, they all but brushed them aside as irrelevant.

STATEMENT OF POSITION

The Landowners agree with the legal position asserted by the Coberly Group and associate themselves with the relief they and the other interveners have requested. Properties taken or conveyed for rail use may not be withheld from their owners forever after the line and rail operations over it have been abandoned. It appears clear to Landowners that the time has long since passed for the properties at issue here to be returned to them and others in the same or similar positions.

If, however, the Board determines that it does have jurisdiction to consider a proposal from an appropriate party contemplating the reinstatement of rail service over the line, Landowners contend that the proposal advanced by the Beaufort Parties is not credible and should not have been accepted by the Board.

Accordingly, Landowners contend that the Board's notice served on December 28, 2006 should be reconsidered, that the Beaufort Parties' Notice should be dismissed for lack of jurisdiction, that, in any event, the Board's notice should be withdrawn as improperly issued, and the Board should declare that it will not do anything to interfere with the efforts of Landowners and other adjoining landowners to reclaim possession and control of the subject properties.

LANDOWNERS' REQUEST

Pursuant to 49 C.F.R. Part 1112.4, Landowners urge the Board to grant Landowners leave to intervene in this proceeding. Landowners have demonstrated a clear interest in the matters at issue in this case, and those interests cannot adequately be represented by any other party. Intervention will permit the Board to develop a more complete record and will not unduly delay completion of the case or unfairly disadvantage any other party.

Second, pursuant to 49 C.F.R. Part 1115.3, Landowners ask the Board to reconsider the notice it served on December 28, 2006 pending further proceedings consistent with the interests of the several parties. From the assertions made by the Landowners as well as those advanced by the Coberly Group, it is clear that the findings included in the Board's December 28 notice should be reconsidered and withdrawn.

Third, pursuant to 49 C.F.R. Part 1115.5, Landowners urge the Board to institute an investigation into the many factual matters at issue here which are in dispute and ultimately to test the basic credibility of the Beaufort Parties' Notice. Through that investigation, the Board can determine whether there is any way for the Board to conclude that it has jurisdiction to consider a Notice filed by the Beaufort Parties and, if it does, whether the Beaufort Parties truly intend to reestablish rail service over the property at issue and whether the instrument they have chosen to reinstitute rail service is in fact ready, willing and able to do so.

Other parties to this proceeding have suggested persuasively that the Beaufort Parties' actual purpose is to achieve a goal which has not been disclosed to the Board, and it is obviously very important that the Board test these contentions to assure that the integrity of its processes is maintained. Charges and suspicions raised by other parties are serious in and of themselves. But there is also much in the Beaufort Parties' Notice itself to suggest that the charges and suspicions

raised by other parties may have merit and that the Beaufort Parties' real interest may, in fact, be to deprive Landowners and others of their right to reassert ownership and control over their property.

The Coberly Group and its allies have raised serious and substantial factual and legal questions and challenges to which the Beaufort Parties must respond and the Board must resolve before the Beaufort Parties' Notice may properly be considered. And the Beaufort Parties' rejoinder to the arguments and contentions advanced by the Coberly Group itself suggests that the Beaufort Parties' real interests may be something other than the reconstruction of a rail line over which interstate traffic will be transported. In fact, from the Beaufort Parties' Reply, it appears virtually certain that the Beaufort Parties' purpose is not to reestablish rail service over the line but to do something else with property they do not own and never have owned.

Landowners therefore encourage the Board to institute an investigation testing both the jurisdictional foundation for the Beaufort Parties' Notice and its credibility. If, contrary to what Landowners believe, the Board does have jurisdiction to consider the Notice, then the Beaufort Parties must show that they have a genuine interest in reestablishing rail service over the long abandoned line. And, if they have that interest, they must have a credible operating plan which will permit them to do so. The only things readily apparent from the operating plan submitted in support of its Notice are that the Beaufort Parties do not intend to handle traffic moving in interstate commerce and that rail service will only be reestablished over the line if a patron shipper wanting such service agrees to pay the full cost of restoring it. It appears that the purported operator of the line does not intend to spend a penny of its own money to allow the reinstatement of service over the line. While the Beaufort Parties assert that they will pay the cost of clearing and maintaining the right of way -- an assertion that must be subject to question given

the current condition of the right of way and the limited funds available to the Beaufort Parties -- all other costs must be borne by the shipper or receiver seeking intrastate rail service over the line. This undertaking is something less than the level of entrepreneurial devotion the Board and its predecessor have expected when an applicant seeks permission to construct a rail line and understandably leads an interested party to wonder if the Beaufort Parties' interests are as they represent in their Notice.

The investigation the Landowners seek will also permit the Board to hear and resolve the mixed questions of law and fact that underlie the Beaufort Parties' basic position that the Board has jurisdiction to consider the Beaufort Parties' Notice. Based on evidence introduced by the Beaufort Parties themselves, it appears that the Board has declared that the subject "line has passed out of our jurisdiction at the time of the abandonment so we no longer have any interest in it." That declaration is certainly consistent with the views of the Landowners and other interveners, and it is completely inconsistent with the Beaufort Parties' underlying position when they filed their Notice in December.

The jurisdictional question turns on a factual inquiry regarding whatever has happened to the line and operations over it since 1985 together with proper consideration of other factual matters -- noted as controlling by the Beaufort Parties themselves -- involving the line and operations over it. Inquiry is necessary, for instance, into whether and to what extent rail operations have been maintained by the Beaufort Parties in recent years; whether track and related facilities have been retained and maintained since 1985; whether the entity responsible for continued operations retained equipment and qualified personnel during the period to assure that service could be maintained; whether the right of way has been properly attended to; and whether tariffs have been published throughout the period of "continued service" since 1985 and,

generally, as noted above, whether the entity the Beaufort Parties have chosen and supported is, in fact, fit, willing and able to act as a rail carrier.

In addition, the investigation would be very helpful in determining whether and to what extent the proposed rail operation would service interstate shipments as the Beaufort Parties now contend and to consider whatever traffic studies the Beaufort Parties have prepared which would permit the Board to evaluate the Beaufort Parties' conflicting statements regarding the accommodation of interstate traffic over the line.

Similarly, the investigation is the only way to determine whether the Beaufort Parties are in fact ready, willing and able to restore the rail line to an acceptable condition and to conduct rail operations over it. And, if they are, how are they going to do it? What are their funding sources? Who is included in their management team?

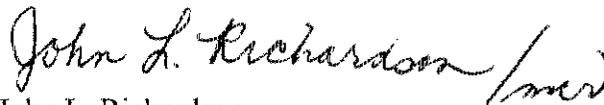
Another goal of the investigation would be to test the bona fides of the Beaufort Parties -- do they really intend to reinstitute rail service over the subject line or are they using the Board's processes to achieve some other, undeclared goal. Obviously, the Board has an overwhelming interest in protecting the integrity of its processes and in assuring that those processes are not used by anyone to achieve something other than what the Board was created to sanction. For all the reasons advanced by the Landowners and the Coberly Group, there is certainly sufficient cause to investigate this question. And it is not inappropriate for an interested party to encourage the Board to undertake such an investigation when there is reason to believe that a petitioner may be using the Board's processes in an abusive way. Indeed, in *New England Transrail, LLC*, Finance Docket No. 34797, a railroad case involving an application for an exemption, the Board is being asked to determine, among other things, whether the applicant is using the Board's processes to avoid state regulation of some of the applicant's activities.

Similarly here, the Landowners are asking the Board to investigate the Beaufort Parties' bona fides and determine whether they are using the Board's processes for the purposes they were intended to be used or for other inappropriate purposes.

All these factual matters and more may only be resolved in a public hearing with sworn testimony considered by a Board officer qualified to act as a decision maker or, at the very least, under the Board's rules regarding modified procedure. To proceed further with so many unresolved factual matters remaining open and unresolved would be irresponsible.

WHEREFORE, for all these reasons, Landowners respectfully request that they be permitted to intervene in this proceeding; that the findings contained in the notice served by the Board on December 28, 2006 be reconsidered; and that pending reconsideration, the Board institute an investigation to determine, *inter alia*, whether the Board has jurisdiction to grant the relief sought by the Beaufort Parties and whether the Beaufort Parties filed their Notice in good faith with the intention of reestablishing rail service over the line or whether the goals of the Beaufort Parties are something other than what they disclosed to the Board.

Respectfully submitted,



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March 21, 2007

CERTIFICATE OF SERVICE

I hereby certify that, on March 21, 2007, I caused a copy of the foregoing document to be served upon the following persons by first-class mail, postage prepaid:

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