

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

218919



STB Docket No. AB-1001X

CHILLICOTHE-BRUNSWICK RAIL MAINTENANCE AUTHORITY
-DISCONTINUANCE EXEMPTION-
IN LIVINGSTON, LINN AND CHARITON COUNTIES, MO

ENTERED
Office of Proceedings

REPLY
OF

JOHN RUPP, JR., STEVE WAITS, JIM DAUGHERITY,
JOHN FOSTER, KEVIN FOSTER, WAYNE FOSTER,
R & H SANDERS FARMS, INC., LEONARD T. STEPHENS,
STEVE WINKEY, JIM WAITS, MARY KENNEY AND GERALD SOWERS

John Rupp, Jr., and Steve Waits of Chillicothe, MO, Jim Daugherity, John Foster, Kevin Foster and Wayne Foster of Sumner, MO, R & H Sanders Farms, Inc., and Leonard Stephens of Triplett, MO, Steve Winkey of Aplington, IA, Jim Waits of Meadville, MO, Mary Kenney of Roeland Park, KS, and Gerald Sowers of Brunswick, MO ("Petitioners"), pursuant to 49 C.F.R. 1104.13, reply in opposition to the Motion to Strike or for Leave to Reply of Vandalia Railroad Company ("VRRRC"), dated March 28, 2007.

VRRRC contends that the Petitioners have failed to allege any real interest in this proceeding. Petitioners respectfully disagree. Petitioners, in their Petition and Reply, dated March 27, 2007, a copy of which is attached for the convenience of the Board, adequately disclosed their interests in seeking leave to intervene in this proceeding. They declared that they were owners of property adjacent to the right-of-way over which the Chillicothe-Brunswick Rail

Maintenance Authority (“Authority”) formerly had operated. The premise of the Notice of Exemption which the Authority had filed with the Board was that no service had been rendered on the railroad line in more than two years’ time. Indeed, as noted in the Board’s Environmental Assessment, served February 27, 2007, the line was abandoned by the Norfolk & Western Railway Company (“NW”) in 1984 pursuant to the Decision of the Interstate Commerce Commission (“ICC”) in Docket No. AB-10 (Sub-No. 27) Norfolk & Western Railway Co., et al.–Abandonment, etc.–in Chariton et al. Counties, served November 10, 1983. NW sold the line to Green Hills Rural Development, Inc., and it in turn sold it to the City of Chillicothe. Neither one acquired the property as a common carrier railroad, and their purchases required no approval by the ICC or the Board. Both entities agreed to lease the line or portions of it to, first, the Wabash & Grand River Railway and then to Motive Rail, Inc., d/b/a Missouri North Central Railroad and the Authority, but obviously the lessees were unable to operate the railroad line with any measure of success. Petitioners are concerned that the attempted resumption of rail service by VRRRC’s impermissible use of the Board’s OFA procedures would disrupt their quiet enjoyment of their properties to their detriment and discomfiture.

Significantly, VRRRC does not allege that allowing Petitioners’ intervention would prolong the proceeding or broaden the issues. Petitioners’ intervention, accordingly, would accord with the precedents of the Board and, before it, the ICC. As the ICC declared in Jamestown Chamber of Commerce v. P. R. R. Co., 139 I.C.C. 491, 492-93 (1928)(“We believe it desirable and in harmony with the more modern rule adopted by the courts of permitting all parties interested in the subject matter to become parties to the litigation and so far as possible settle the entire controversy in one proceeding, to permit the intervention of parties situated as

were the interveners in this case.” See, STB Docket No. AB-563 (Sub-No. 1X), Kansas Eastern Railroad, Inc.–Abandonment Exemption–In Butler and Greenwood Counties, KS, served June 2, 2006 (“Mr. Murfin’s petition to intervene will be granted, as Mr. Murfin has a demonstrated interest in the proceeding and his intervention will not unduly broaden the issues.”); STB Docket No. 42084, CF Industries, Inc. v Kanab Pipe Line Partnership, L.P. and Kanab Pipe Line Operating Partnership, L. P., served October 13, 2004 (“While allowing Dyno to intervene may affect the schedule here, it would not be unduly disruptive. In addition, Dyno’s intervention would neither unnecessarily complicate this proceeding nor broaden the issues”); STB Docket No. AB-124 (Sub-No. 2), Waterloo Railway Company–Adverse Abandonment–Lines of Bangor and Aroostook Railroad Company and Van Buren Bridge Company in Aroostook County, Maine, served September 25, 2003 (“[I]ntervention will neither disrupt, nor broaden the scope of, these proceedings.”); STB Finance Docket No. 33697, National Railroad Passenger Corporation–Petition for Declaratory Order–Weight of Rail, served May 10, 2002 (“It has demonstrated an interest in the proceeding and its intervention will neither unduly disrupt the procedural schedule nor unduly broaden the issues raised.”); River Raisin Paper Co. v. Chicago, B. & Q. R. Co., 210 I.C.C. 459, 461 (1935) (“The petition does not unduly broaden the issues.”); West Virginia Brick Co. v. Hocking Valley Ry. Co., 173 I.C.C. 743, 744 (1931)(“The petition herein does not unduly broaden the issues.”)¹

WHEREFORE, John Rupp, Jr., Steve Waits, Jim Daugherity, John Foster, Kevin Foster, Wayne Foster, R & H Sanders Farms, Inc., Leonard T. Stephens, Steve Winkey, Jim Waits, Mary

¹ Pursuant to section 204(a) of the ICC Termination Act of 1995, decisions of the ICC remain in effect until set aside or revoked by the Board.

Kenney and Gerald Sowers ask that the Motion to Strike or for Leave to Reply of Vandalia Railroad Company, dated March 28, 2007, be denied.

Respectfully submitted,

JOHN RUPP, JR., STEVE WAITS, JIM DAUGHERITY,
JOHN FOSTER, KEVIN FOSTER, WAYNE FOSTER,
R & H SANDERS FARMS, INC., LEONARD T. STEPHENS,
STEVE WINKEY, JIM WAITS, MARY KENNEY AND
GERALD SOWERS

By their attorney,



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Dated: March 29, 2007

CERTIFICATE OF SERVICE

I certify that I this day have served a copy of the foregoing Reply upon counsel for the Vandalia Railroad Company and the Chillicothe-Brunswick Rail Maintenance Authority, by facsimile transmitting and by mailing copies thereof by prepaid first-class mail to their respective attorneys, Daniel A. LaKemper, Esq., and Charles H. Montange, Esq.

Dated at Washington, DC, this 29th day of March 2007.



Fritz R. Kahn

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R & H SANDERS FARMS, INC., LEONARD T. STEPHENS,
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BEFORE THE
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Dated: March 27, 2007

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

STB Docket No. AB-1001X

CHILlicothe-Brunswick Rail Maintenance Authority
-DISCONTINUANCE EXEMPTION-
IN Livingston, Linn and Chariton Counties, MO

PETITION AND REPLY
OF

JOHN RUPP, JR., STEVE WAITS, JIM DAUGHERITY,
JOHN FOSTER, KEVIN FOSTER, WAYNE FOSTER,
R & H SANDERS FARMS, INC., LEONARD T. STEPHENS,
STEVE WINKEY, JIM WAITS, MARY KENNEY AND GERALD SOWERS

Petitioners, John Rupp, Jr., and Steve Waits of Chillicothe, MO, Jim Daugherty, John Foster, Kevin Foster and Wayne Foster of Sumner, MO, R & H Sanders Farms, Inc., and Leonard Stephens of Triplett, MO, Steve Winkey of Aplington, IA, Jim Waits of Meadville, MO, Mary Kenney of Roeland Park, KS, and Gerald Sowers of Brunswick, MO, pursuant to 49 C.F.R. 1117.1, petition for leave to intervene in this proceeding to urge the rejection of the Notice of Intent to File Offer of Financial Assistance of Vandalia Railroad Company, dated March 26, 2007. Petitioners have an interest in the proceeding, because they are owners of property adjacent to the right-of-way over which the Chillicothe-Brunswick Rail Maintenance Authority formerly had operated, and they believe that Vandalia Railroad Company is abusing the Board's authority in noting its intent to file an offer to purchase the Authority's interest to their detriment and discomfiture. Allowing their intervention will not prolong the proceeding or adversely

affect the interests of any of the parties.

Intervenors, pursuant to 49 C.F.R. 1104.13, submit that the intent of an offer of financial assistance, pursuant to 49 U.S.C. 10904 and 49 C.F.R. 1152.27, is to continue existing rail service. The Board's Notice of Exemption, served February 25, 2007, however, was premised on the representation of the Chillicothe-Brunswick Rail Maintenance Authority that no traffic has moved over the 37.44-mile railroad line in question for at least two years' time. There is no existing rail service to be continued.

Moreover, in its Notice of Intent to File Offer of Financial Assistance, Vandalia Railroad Company declares that its proposal would be to purchase the interests of the Chillicothe-Brunswick Rail Maintenance Authority. The Board, however, consistently has held that an offer to purchase is inappropriate in discontinuance proceedings and that the Board only will entertain an offer to subsidize the operation of a railroad line over which service is to be discontinued. See, STB Docket No. AB-33 (Sub-No. 238X), Union Pacific Railroad Company-Discontinuance of Service-In Yuba County, CA, served March 6, 2007; STB Docket No. AB-998X, Timber Rock Railroad, Inc.-Discontinuance of Service Exemption-In Burleson, Brazos, Grimes, Montgomery, Liberty, Hardin and Jefferson Counties TX, served January 25, 2007; STB Docket No. AB-290 (Sub-No. 254X), Norfolk southern Railway Company-Discontinuance of Service Exemption-In Stanly County, NC served August 11, 2006.

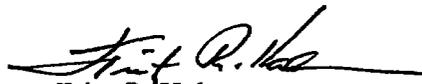
WHEREFORE, John Rupp, Jr., Steve Waits, Jim Daugherty, John Foster, Kevin Foster, Wayne Foster, R & H Sanders Farms, Inc., Leonard T. Stephens, Steve Winkey, Jim Waits, Mary Kenney and Gerald Sowers ask that they be permitted to leave to intervene in these proceedings and urge that, pursuant to 49 C.F.R. 1104.10(a), the Notice of Intent to File Offer of Financial

Assistance of Vandalia Railroad Company, dated March 26, 2007, be rejected as not complying with the Board's rules.

Respectfully submitted.

JOHN RUPP, JR., STEVE WAITS, JIM DAUGHERITY,
JOHN FOSTER, KEVIN FOSTER, WAYNE FOSTER,
R & H SANDERS FARMS, INC., LEONARD T. STEPHENS,
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By their attorney,



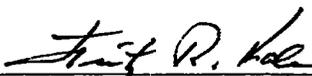
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Dated: March 27, 2007

CERTIFICATE OF SERVICE

I certify that I this day have served a copy of the foregoing Petition and Reply upon counsel for the Vandalia Railroad Company and the Chillicothe-Brunswick Rail Maintenance Authority, by facsimile transmitting and by mailing copies thereof by prepaid first-class mail to their respective attorneys, Daniel A. LaKemper, Esq. and Charles H. Montange, Esq.

Dated at Washington, DC, this 27th day of March 2007.



Fritz R. Kahn