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March 28, 2007

**Via Hand Delivery**

Vernon A Williams

Secretary

Surface Transportation Board

395 E Street, S W

Washington, DC 20423

ENTERED  
Office of Proceedings

MAR 28 2007

Part of  
Public Record

Re Finance Docket No 34943  
Beaufort Railroad Company, Inc 's Modified Rail Certificate

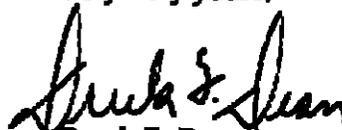
Dear Mr Williams

Enclosed please find an original and ten (10) copies of a Reply in Opposition to Petition for Leave to Intervene, Petition to Reconsider, and Petition for an Investigation to be filed in the above-referenced docket

Kindly date stamp the additional copy of this letter and Reply and return the same to our courier

If you have any questions regarding the enclosed, please contact me at the telephone number listed above

Very truly yours,

  
Derek F Dean

DFD/

Enclosures

cc Mr Dan Green (w/o enc)



**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**Modified Certificate of Public Convenience and  
Necessity of Beaufort Railroad Company, Inc., a  
subsidiary of the South Carolina Division of  
Public Railways**

**Finance Docket 34943**

**REPLY IN OPPOSITION TO LANDOWNERS'  
PETITION TO INTERVENE, PETITION TO RECONSIDER  
AND PETITION FOR AN INVESTIGATION**

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**March 29, 2007**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**Modified Certificate of Public Convenience and Necessity of Beaufort Railroad Company, Inc., a subsidiary of the South Carolina Division of Public Railways**

**Finance Docket 34943**

**REPLY IN OPPOSITION TO LANDOWNERS'  
PETITION TO INTERVENE, PETITION TO RECONSIDER  
AND PETITION FOR AN INVESTIGATION**

Beaufort Railroad Company, Inc ("BRC") and the South Carolina State Ports Authority ("SCSPA") (collectively the "South Carolina State Parties"), hereby file their Reply in Opposition to the Landowners' Petition to Intervene, for Reconsideration and for Investigation ("Petitions") dated March 21, 2007. The South Carolina State Parties respectfully request that the Board deny and disregard the Landowners' Petitions since the Petitions fail to comply with the Board's Rules and contain nothing more than needless, cumulative repetitions of arguments presented by similarly situated petitioners. Finally, the Petitions contain material, factual inaccuracies relating to operations over the Line.

First, Landowners urge the Board to grant their petition to intervene because their "interests cannot adequately be represented by any other party." See Landowners' Petitions at 5. However, the Landowners do not assert any "interests" that differ from those of the original petitioners in this matter. Indeed, Landowners state that they agree with the legal position asserted by the original petitioners and associate themselves with the relief sought by the original petitioners. See Landowners' Petitions at 4. Based on the Landowners' adoption of the original petitioners' position, it appears that the Landowners' interests in this proceeding are identical to those of the original petitioners and are thus adequately addressed by the original petitioners. As a result, intervention is unnecessary at this late date and only

serves to create undue delay in the Board's determination in this matter. Therefore, the Landowners' Petitions should be denied and disregarded

Second, the Board should deny the Landowners' attempt at intervening in this matter as the time for Petitions has passed. BRC's Notice was filed with the Board on December 1, 2006. On December 28, 2006, the Board published its decision with respect to BRC's Notice, thereby issuing a notice of modified certificate in the Federal Register. See 71 Fed Reg 78270, dated December 28, 2006. The Landowners current petition for reconsideration was filed under 49 CFR §1115.3. Such petitions must be filed within 20 days after service of the action or within any further period (not to exceed 20 days) as the Board may authorize. See 49 CFR §1115.3(c).<sup>1</sup> Therefore, under 49 CFR §1115.3(e), petitions for reconsideration were due by January 18, 2007. By that date, other similarly situated petitioners (the Landowners refer to these petitioners as the "Coberly Group") had filed a petition for reconsideration and/or to reopen the Board's December 28, 2006 Decision under 49 CFR §1115.3 and §1115.4, respectively. Although the Landowners "agree with the legal position asserted by the Coberly Group and associate themselves with the relief requested," see Landowner's Petitions at 4, the Landowners filed their own cumulative petition for reconsideration sixty-two (62) days after the due date for such filings. Contrary to what the Landowners seem to suggest in its Petitions, BRC was not under an obligation to serve its Notice on the individual Landowners and thus the Landowners should not be permitted to use this as an excuse for failing to timely file Petitions. The Board has found that publication in the Federal Register and the

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<sup>1</sup> Landowners also filed a Petition for an Investigation under 49 CFR §1115.5. That Rule requires the filing of petitions "not less than 10 days prior to the date the terms of the action take effect." See 49 CFR §1115.5(a).

availability of Board decisions on the Board's website provide sufficient notice. *See Tongue River Railroad Company, Inc. – Construction and Operation – Western Alignment*, 2003 STB LEXIS 598, \*6 (STB Sep 26, 2006). The fact that other petitioners filed petitions within the allotted time frame also indicates that notice in the Federal Register and on the Board's website was sufficient. *Id* Therefore, Landowners, through their own fault, failed to timely file their Petitions and the Petitions must be denied and disregarded

Third, the Landowners' Petitions should further be denied and disregarded because the Landowners' arguments are needless, cumulative reiterations of the Coberly Group's arguments in their petition for reconsideration and/or to reopen and, as such, Landowners' arguments and comments add nothing to the record which will assist the Board in making its determination. *See B J Alan Co , Inc v United Parcel Service, Inc.*, 1990 MCC LEXIS 109, at \*1, n.2 (ICC June 1, 1990)(denying multiple entities' requests to intervene where no new issues were raised by potential intervenors and nothing material would be added to the record if the intervention were permitted)

Fourth, the petition for investigation seeks information that is not required in the Board's Rules regarding a notice of modified certificate. The Board requires potential operators to provide information regarding 6 particular areas. *See 49 CFR §1150.23(b)*. BRC provided the required information and supporting documentation in its Notice dated December 1, 2006. *See BRC Notice at 2-6 and Attachments A-F*. The Board reviewed the information contained in BRC's filing, determined that it was complete, and issued its December 28, 2006 Decision accordingly. *See 49 CFR §1150.23(a)*. Since the Landowners' untimely petition for investigation seeks information that is not required under the modified certificate Rules of 49

CFR §1150.23(b) and simply reiterates the position of the Coberly Group, the Petitions should be denied and disregarded.<sup>1</sup>

Fifth, Landowners' assert that the Line has "not been operational in any sense of the word since, at least, 1985," and that "there has been no rail service over the line for over twenty years." That assertion cannot be reconciled with the factual record. On June 7, 1985, the ICC approved Tangent Transportation Company's ("Tangent") application for modified certificate for operation over the Line. *See Tangent Transportation Company – Modified Rail Certificate*, ID 30655 (June 7, 1985). Under this authority, Tangent moved cargoes for various shippers over the Line in each year from 1985 through 2003. From 1989 through 1999, Tangent moved over 17,000 carloads over the Line for commercial shippers. From 2000 through 2003, Tangent moved in excess of 1,300 carloads. This information was publicly available from various sources, including STB, and the South Carolina Public Railways Commission and its successors. Landowners assert that they are interested in assuring the integrity of the Board's processes. However, Landowners' assertions are inconsistent with that objective.

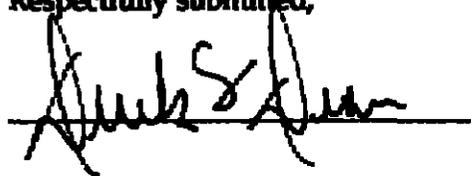
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<sup>1</sup> We note that the Landowners filed their petition for investigation under 49 CFR §1115.5, which addresses stays of action, however, Landowners did not style its pleading as a stay request nor did it address any of the standards governing a stay request in 49 CFR §1115.5. *See Caddo Antoine and Little Missouri Railroad Company - Feeder Line Acquisition*, 2000 STB Lexis 354, \*8 (June 22, 2000) (addressing the standards governing a stay request). Landowners have thus failed to comply with the stay requirements of 49 CFR §1115.5 and Board precedent.

**Conclusion**

For the reasons set forth above, the South Carolina State Parties respectfully requests the Board to deny and disregard the Landowners' Petition to Intervene, Petition for Reconsideration, and Petition for Investigation.

Respectfully submitted,



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Counsel for the South Carolina State Ports  
Authority

**Certificate of Service**

I hereby certify that on March 29, 2007, I served the foregoing Reply in Opposition to Landowners' Petition to Intervene, Petition to Reconsider and Petition for an Investigation on the following individuals by UPS overnight mail:

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