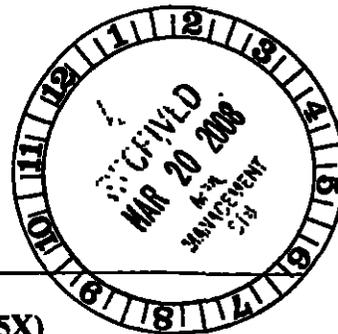


BEFORE THE
SURFACE TRANSPORTATION BOARD



221851

DOCKET NOS. FD-35082 AND AB-88 (SUB NO. 5X)

221850

PETITION OF VICTOR WHEELER, ET AL.,

ENTERED
Office of Proceedings

FOR DECLARATORY ORDER

MAR 20 2008

AND,

Part of
Public Record

JOINT MOTION OF THE NORTHWEST PENNSYLVANIA TRAIL ASSOCIATION
AND MATERIAL RECOVERY OF ERIE, INC., FOR SUBSTITUTION OF NEW
INTERIM TRAIL USER

AND,

REQUEST OF VICTOR WHEELER, ET AL., FOR EXPEDITED CONSIDERATION

REPLY OF NORTHWEST PENNSYLVANIA TRAIL ASSOCIATION;
PENNSYLVANIA ELECTRIC COMPANY AND MATERIAL RECOVERY OF ERIE,
INC.

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*Attorneys for Northwest Pennsylvania Trail
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ENTERED
Office of Proceedings

MAR 20 2008

Part of
Public Record

**REPLY OF NORTHWEST PENNSYLVANIA TRAIL ASSOCIATION;
PENNSYLVANIA ELECTRIC COMPANY AND MATERIAL RECOVERY OF ERIE,
INC.**

INTRODUCTION:

1 Respondents Northwest Pennsylvania Trail Association ("NWPTA"), Pennsylvania Electric Company ("Penelec") and Material Recovery of Erie, Inc ("Material Recovery") (collectively "Respondents") respectfully request that the Surface Transportation Board ("STB"/"Board") grant, in part, Petitioner's Request for Expedited Consideration in Docket Nos FD-35082, and AB-88 (SUB NO 5X) for discovery to end by May 30, 2008 and furthermore grant the parties' previous petitions to consider the matters addressed above concurrently Respondents specifically request that the STB deny Petitioner's request for an oral hearing to occur by September 30, 2008, for all of the reasons addressed in their Reply to the Request of Victor Wheeler, et al . for Oral Hearing

2 Contrary to Petitioners claims, the ownership and responsibility for the Trail in question are neither unresolved nor in dispute Since 1990, Material Recovery of Erie, Inc has maintained ownership and responsibility for the Trail Since this time the STB has separately ruled on two occasions that the Trail was never abandoned and that Material Recovery properly railbanked the Trail Neither of the STB's rulings were appealed nor were they ever challenged by the Petitioners To this day, Material Recovery remains the owner and the primary responsible party of the Trail Although NWPTA had previously entered into separate agreements with Material Recovery wherein NWPTA sought to acquire the Trail, all such agreements have been expressly contingent upon the STB's approval Despite Petitioner's claims, no such conveyances have ever been effectuated Because of NWTPA and Material

Recovery's failure to effectuate a conveyance and the pendency of these matters before the federal courts and STB, any plans to commence construction and promote the Trail have ceased

3 Although NWPTA and Material Recovery have entered into a separate agreements wherein NWPTA sought to acquire the Trail, all such agreements have been expressly conditioned upon the STB's approval. In fact, as recent as October 5, 2007 NWPTA and Material Recovery entered into a Reaffirmation and Extension of their original Donation Agreement. This Agreement, like the original Donation Agreement before it, is expressly conditioned upon STB approval. Also on October 5, 2007, NWPTA submitted to the Board all of the necessary paperwork to satisfy 49 C.F.R. 1152.29(f) and become new Interim Trail User. Despite Petitioner's claims, by entering into these Agreements, NWPTA and Material Recovery have not taken any action adverse to any STB or Federal Court ruling. As a matter of fact, by pursuing their course of action, NWPTA and Material Recovery are simply attempting to follow the rules and regulations set forth by the STB. Petitioner's claim that the District Court's refusal to dismiss the action against NWPTA and Material Recovery stands as affirmation that the Petitioner's have stated a valid claim against them is ludicrous. Specifically, in its decision the District Court stated

While we acknowledge that 28 U.S.C. § 1336 properly vests jurisdiction in this Court to enforce the 1997 STB Order, our jurisdiction to determine whether there has been a violation of the regulatory provisions cited therein is not exclusive

Wheeler v. Material Recovery, 2007 WL 1007595, 4 (W.D. Pa.) Furthermore, the Court held

in light of the STB's institutional knowledge of this particular case as a result of having considered these issues in both 1990 and 1997, their familiarity with their own 1990 and 1997 orders, and their general experience in dealing with issues of this nature, we find the benefits of referring this matter to the STB significantly outweigh the burdens

Id at 5. Simply stated, the District Court withheld any judgment regarding the case and referred the matter to the STB. The fact that the District Court withheld its judgment does not in the least part suggest any modicum of support for the Petitioner's allegations. To this day, Material Recovery of Erie, Inc. maintains ownership of the Trail. Nothing Material Recovery or NWPTA have done in the past has jeopardized Material Recovery's ownership of the Trail. Although Material Recovery has attempted to convey the Trail to NWPTA, such transfer was never effectuated because of the emergence of this litigation. As a result of the perpetuation of this litigation, adjacent landowners have continued to interfere with Material Recovery's ownership of the land and create hazards for users of the Trail. Respondents respectfully request that the STB expedite its decision and categorically deny any rights that the Respondents think they might have to the land of the Trail.

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CONCLUSION:

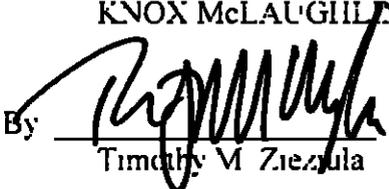
For all of the aforementioned reasons, the Northwest Pennsylvania Trail Association, Material Recovery of Erie Inc and Pennsylvania Electric Company hereby respectfully request that this Honorable Board to grant, in part, Petitioner's request for Expedited Consideration in the above captioned matters, and propose a procedural schedule as follows

- 1 End of Discovery By May 30, 2008.
- 2 No Oral Hearing

Respectfully submitted,

KNOX McLAUGHLIN GORNALI & SENNETT, P C

By

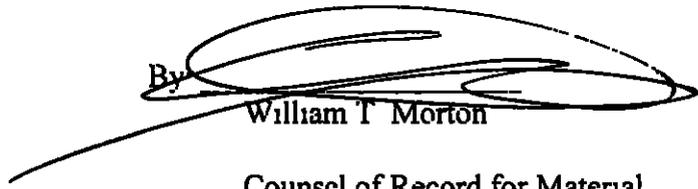

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AGRESTI MORTON & MOORE

By


William T Morton

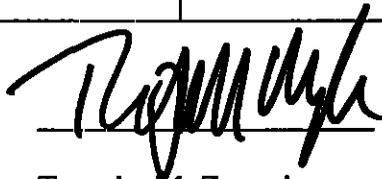
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(814) 866-8800

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of March, 2008, I have served a true and accurate copy of the foregoing motion on the following parties by first-class mail, postage pre-paid

Canadian National Railroad Company 935 de La Gauchetiere Street West Montreal, Quebec H3B 2M9	Thomas J Healey Attorney for Bessemer and Lake Erie Railroad Company 17641 S Ashland Avenue Homewood, IL 60430-1339
Robert N Gentile General Counsel & Secretary Bessemer and Lake Erie Railroad Company P O Box 68 135 Jamison Lane Monroeville, PA 15146	Donald Bartlett Smith Attorney for Victor Wheeler, Et Al 7800 Perry Highway Pittsburgh, PA 15237
William T Morton Attorney for Material Recovery of Erie, Inc 4934 Peach St Erie, PA 16509	



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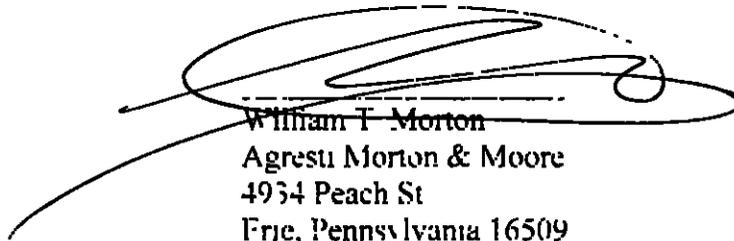
STATEMENTS OF VERIFICATION

I, Timothy M Zieziula, declare under penalty of perjury that the foregoing is true and correct
Further I certify that I am qualified and authorized to file this pleading Executed on March 17,
2008



Timothy M Zieziula
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I, William T Morton, declare under penalty of perjury that the foregoing is true and correct
Further, I certify that I am qualified and authorized to file this pleading Executed on March 17th,
2008



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