

BEFORE THE
SURFACE TRANSPORTATION BOARD



221857

ENTERED
Office of Proceedings

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

MAR 20 2008

221859

Part of
Public Record

PETITION OF VICTOR WHEELER, ET AL.,

FOR DECLARATORY ORDER

AND,

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 ORAL HEARING/ARGUMENT

REPLY OF NORTHWEST PENNSYLVANIA TRAIL ASSOCIATION;

PENNSYLVANIA ELECTRIC COMPANY AND MATERIAL RECOVERY OF ERIE,

INC.

Timothy M Zieziula
Knox McLaughlin Gornall & Sennett, P C
120 West 10th Street
Erie, PA 16501
(814) 459-2800

William T Morton
Agresti Morton & Moore
4934 Peach Street
Erie, PA 16509
(814) 454-2520

Neal R Devlin
Knox McLaughlin Gornall & Sennett, P C
120 West 10th Street
Erie, PA 16501
(814) 459-2800

Attorney for Material Recovery of Erie, Inc

*Attorneys for Northwest Pennsylvania Trail
Association & Pennsylvania Electric Company*

**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 (“Penelco”) and Material Recovery of Erie, Inc (Material Recovery”) (collectively “Respondents”) respectfully request that the Surface Transportation Board (“STB”/“Board”) deny Petitioner’s Request for Oral Hearing/Argument in Docket Nos FD-35082, and AB-88 (SUB NO 5X)

2 Contrary to Petitioner’s argument, the facts and issues raised in the above cases are not complex. As detailed in Respondent’s prior pleadings, since 1990, the STB has separately ruled on two occasions that the Trail at issue was never abandoned and that Material Recovery properly railbanked the Trail. Neither of the STB’s prior 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. In their request for Oral Hearing/Oral Argument, Petitioners suggest that because the District Court for the Western District of Pennsylvania did not categorically dismiss or rule against the Petitioner’s claims that Material Recovery and NWPTA had violated the provisions of 49 C.F.R. 1152.29(f) by transferring ownership of the Trail without fulfilling the regulatory requirements described therein, the Court’s failure to dismiss or rule against the Petitioners “tends to support their allegations” is unfathomable. 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

[i]n 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 Respondents are confident that the Board will be able to effectively and efficiently render its judgment based on the pleadings already submitted None of the issues presented to the Board are matters of first impression, in fact, all of the Petitioner's claims present similar, if not identical, claims to those that have been already decided by the Board in its earlier decisions under Docket AB-88 (SUB NO 5X) Respondents believe that by having an Oral Hearing/Oral Argument they will not only incur additional legal expenses, but such action will also unnecessarily prolong an already drawn-out resolution

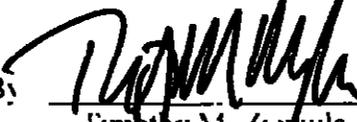
[The remainder of this page is left intentionally blank]

CONCLUSION:

For all of the aforementioned reasons, the Northwest Pennsylvania Trail Association Material Recovery of Eric, Inc and Pennsylvania Electric Company hereby respectfully request that this Honorable Board deny or dismiss Petitioner's request for an Oral Hearing/Oral Argument in the above captioned matters

Respectfully submitted,

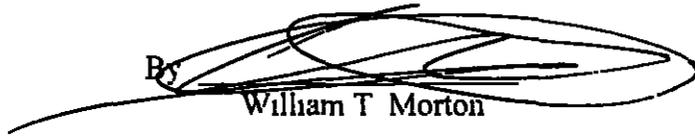
KNOX McLAUGHLIN GORNALL & SENNETT, P C

By 
Timothy M. Ziechula

Counsel of Record for Northwest
Pennsylvania Trail Association &
Pennsylvania Electric Company

120 West Tenth Street
Erie, Pennsylvania 16501-1461
(814) 459-2800

AGRESTI MORTON & MOORE

By 
William T. Morton

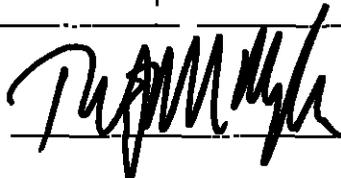
Counsel of Record for Material
Recovery of Eric, Inc

4934 Peach Street
Erie, Pennsylvania 16509
(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	



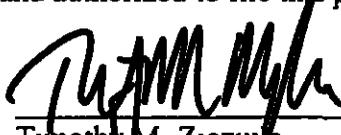
Timothy M Zieziula

Counsel of Record for Northwest
Pennsylvania Trails Association &
Pennsylvania Electric Company

Knox McLaughlin Gornall & Sennett, PC
120 West Tenth Street
Erie, Pennsylvania 16501-1461
(814) 459-2800

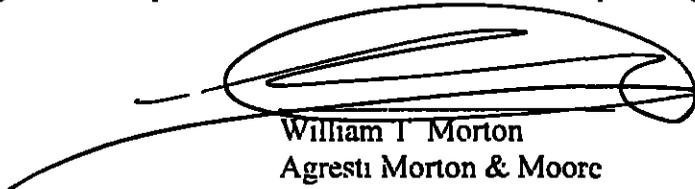
STATEMENTS OF VERIFICATION

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 12,
2008



Timothy M Zieziula
Knox McLaughlin Gornall & Sennett, PC
120 West Tenth Street
Erie Pennsylvania 16501-1461
(814) 459-2800

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 12,
2008



William T Morton
Agresti Morton & Moore
4934 Peach St
Erie, Pennsylvania 16509
(814) 866-8800