

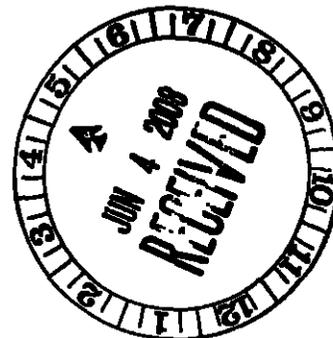
SIMONS & DEAN
ATTORNEYS AT LAW

222529

147 WAPPOO CREEK DRIVE, SUITE 604 | CHARLESTON, SC 29412 | 843.762.9132 | FAX: 843.406.9913

Keating L. Simons, III klsimons@chadestonattorneys.net
Derek F. Dean dfdenn@chadestonattorneys.net

June 4, 2008



Via Hand Delivery

The Honorable Anne K. Quinlan, Esq.
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024

ENTERED
Office of Proceedings

JUN - 4 2008

Part of
Public Record

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

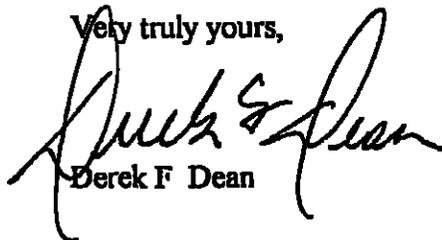
Dear Ms. Quinlan:

Enclosed please find an original and ten (10) copies of a Reply in Opposition to Petitioners' Response, Renewed Petitions and Supplemental Submission 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

Enclosures

cc: Mr. McWhorter (via facsimile only w/o enc.)

222529

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

REPLY IN OPPOSITION TO
PETITIONERS' RESPONSE, RENEWED PETITIONS AND
SUPPLEMENTAL SUBMISSION

ENTERED
Office of Proceedings

Derek F Dean
Simons & Dean
147 Wappoo Creek Drive, Suite 604
Charleston, SC 29412
Tel. 843-762-9132
Fax: 843-406-9913

Warren L. Dean, Jr.
Scan McGowan
Thompson Coburn, LLP
1909 K Street, N W
Suite 600
Washington, D.C. 20006
Tel: 202-585-6900
Fax: 202-585-6969

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Counsel for Beaufort Railroad Company,
Inc, a subsidiary of the South Carolina
Division of Public Railways

Counsel for the South Carolina State
Ports Authority

June 4, 2008

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
PETITIONERS' RESPONSE, RENEWED PETITIONS AND
SUPPLEMENTAL SUBMISSION**

Beaufort Railroad Company, Inc. ("BRC") and the South Carolina State Ports Authority ("SCSPA") (collectively the "South Carolina State Parties"), hereby file this Reply in Opposition to Petitioners' Response, Petitioners' renewed Petitions and Petitioners' Supplemental Submission requesting the Board to either rescind its December 28, 2006 Notice and its March 19, 2008 Decision or institute a fact gathering investigation. Again, like the Petitioners' prior filings, the current filings do not contain new evidence or changed circumstances that would affect the Board's Decision nor do they show that the Board's Decision involved material error. Therefore, the South Carolina State Parties respectfully request that the Board disregard and deny Petitioners' Response, Renewed Petitions and Supplemental Submission.

As an initial matter, the South Carolina State Parties would like to take this opportunity to update the Board on developments involving the Line. There has been no meaningful shipper interest in service over the Port Royal Line since December 2006, and the South Carolina State Parties have been exploring other options to preserve the Line. Specifically, the SCSPA is in the process of concluding an agreement to transfer the Line to another state agency, subject to a rail banking agreement with that agency. When those negotiations are concluded, the South Carolina State Parties intend to file an interim trail use request seeking the Board's approval to preserve the Line for future rail service. This, of

course, is a "permissible" action under the Board's March 19, 2008 Decision and Board precedent ¹

Second, Petitioners raise the same arguments regarding the bona fides of the Notice for Modified Certificate that have been raised in prior submissions. Petitioners once again question the intent of the South Carolina State Parties in filing the Notice for Modified Certificate. These arguments have been previously addressed in the filings² and dispensed with by the Board's March 19, 2008 Decision. The simple facts of this matter are these: the SCSPA purchased the Line from Seaboard in 1985, Tangent operated on the Line providing "as required" service to shippers under a Modified Certificate from June 1985 through November 2003; in October 2006, SCSPA stated in its Operating Agreement with BRC that it "wishes to ensure continued rail service over the rail line;"³ on December 1, 2006, BRC filed a Notice for Modified Certificate in order to "provide potential shippers, meeting preconditions to be determined, with 'as required' service over the rail line,"⁴ there has not been a shipper interested in BRC service over the Line to date; the SCSPA has maintained the Line since 1985; at no time has the SCSPA indicated an intent to abandon the Line; and the Line has

¹ See Board Decision dated March 19, 2008 at 9

² In a Petition to Reopen and/or for Reconsideration of Decision Served December 28, 2006, petitioners asserted that the SCSPA stated publicly that it intended to sell all or part of the Line to Beaufort County, SC for use as a recreational trail. See Petition dated January 16, 2007 at 4. BRC replied stating that the SCSPA's statement would not constitute new evidence or changed circumstances that would materially affect the Board's decision since the Board is fully aware, as evidenced by its many decisions, that if the BRC determines that service over the PRR line does not prove feasible, it may seek to preserve the right of way for potential future use through railbanking. See Reply dated February 6, 2007

³ See BRC Notice for Modified Certificate dated December 1, 2006 at attachment D

⁴ *Id.* at 1

never been abandoned. Petitioners attach two recent articles from the *Beaufort Gazette* as “compelling evidence” that the South Carolina State Parties have abused the Board’s processes and that the South Carolina State Parties’ goal had “nothing to do with reinstating rail service over the right-of-way; in fact, their goal seems to be directly inconsistent with the reestablishment of the line as part of the national rail network.” However, these articles simply show that the South Carolina State Parties were in the process of considering their option to place the Line in the trail system as a means of preserving the Line for future interstate rail service. This does not constitute new evidence or changed circumstances that would materially affect the Board’s December 28, 2006 Decision or its March 19, 2008 Decision. Indeed, this outcome is permitted and acceptable under the Board’s March 19, 2008 Decision and Board precedent.⁵ BRC offered to provide rail service on the Line. No shippers engaged BRC. Therefore, the South Carolina State Parties may exercise other viable alternatives to ensure that the Line is preserved for future interstate rail service.

Third, Petitioners raise the same arguments regarding the bona fides of the content of the Notice for Modified Certificate that have been raised in prior submissions. Petitioners assert that the Notice “falls far short” of what the Board’s regulations require. The Board’s regulations, however, require the operator filing the Notice for Modified Certificate to provide six pieces of information.⁶ BRC provided the required information and supporting documentation in its Notice dated December 1, 2006.⁷ The Board reviewed the information

⁵ See Board Decision dated March 19, 2008 at 9

⁶ See 49 CFR §1150.23(b)

⁷ See BRC Notice for Modified Certificate dated December 1, 2006 at 2-6 and Attachments A-F

contained in BRC's filing for sufficiency and completeness and determined that it contained the information required for a new modified certificate ⁸

Fourth, contrary to Petitioners' assertions, the South Carolina State Parties have never demonstrated an intent to abandon the Line. The SCSPA has maintained the Line since it acquired the Line in 1985. Tangent held a modified rail certificate to operate over the Line from June 1985 through November 2003. On December 1, 2006, BRC filed a Notice for Modified Certificate in order to "provide potential shippers, meeting preconditions to be determined, with 'as required' service over the rail line."⁹ The Board issued its decision on the BRC's Notice for Modified Certificate on December 28, 2006. At no time has SCSPA ever shown an intent to abandon the Line nor has it consummated abandonment of the Line.

Fifth, Petitioners assert that the photographs that they have submitted provide evidence that it has been the intention of the State to abandon the Line and that the South Carolina State Parties have given the Board a "patently false impression" of the condition of the Line. The South Carolina State Parties disagree with Petitioners' assertions and believe that the limited photographs, which Petitioners assert are all of the Line, do not establish new evidence that would materially affect the Board's Decisions and do not justify the opening of an investigation.¹⁰ The South Carolina State Parties have, on several occasions during this

⁸ See Board Decision dated March 19, 2008 at 2, 5

⁹ See BRC Notice for Modified Certificate dated December 1, 2006 at 1

¹⁰ While the South Carolina State Parties presume that all of the photographs are of the Line itself, there has been no authentication of the photographs. The Petitioners state that the photographs were taken by an amateur photographer and that the photographs are of inferior quality and limited scope. Further, Petitioners did not disclose the person who took the photographs nor did Petitioners provide the actual time when that person took the photographs.

proceeding, addressed the condition of the Line and the need for additional expenses to be incurred before active rail service over the Line could be completely restored. In its Notice for Modified Certificate, BRC stated that "sufficient funds, if any, may be required of shippers for rehabilitation and funding of the rail, track, and associated track materials."¹¹ In their Reply dated February 6, 2007, the BRC and SCSPA stated that SCSPA has performed, and continues to perform, the necessary maintenance to preserve the railroad including track inspections, cross tie maintenance and repair, patching and paving railroad crossings, chemical weed control, weed and brush cutting and removal, and removal and replacement of track for utility repairs.¹² At that time, the South Carolina State Parties also stated that "while there may be some areas where grass or weeds have accumulated near or on the tracks, this is a relatively minor issue that would certainly not pose an obstacle to reviving continued service."¹³ In addition, the South Carolina State Parties stated that "some additional expense would be required to completely restore active service over the Line."¹⁴ In its March 19, 2008 Decision, the Board acknowledged the South Carolina State Parties' statement that "some additional expense would be necessary to restore active rail service" over the Line.¹⁵ In their Reply dated April 28, 2008, the South Carolina State Parties stated that since the time of filing their Reply dated February 6, 2007, the SCSPA has spent approximately \$30,000 on continued

¹¹ See BRC Notice for Modified Certificate dated December 1, 2006 at 5, n 6

¹² See Reply dated February 6, 2007 at 11.

¹³ *Id*

¹⁴ *Id.*

¹⁵ See Board Decision dated March 19, 2008 at 7

maintenance on the Line.¹⁶ All of these statements show that the South Carolina State Parties were always of the mindset that “some additional expense would be necessary to restore active rail service” over the Line. The Line is over 25 miles long. Maintenance on the Line is, and always has been, a continual process whether or not there is active service over the Line. Weeds grow on the Line, trees occasionally fall on the Line, and ties occasionally need repair or replacement on the Line.¹⁷ The photographs show, at most, that there may have been areas of the Line that required some attention but that is in keeping with the South Carolina State Parties’ statement that “some additional expense would be necessary to restore active rail service” over the Line and it is to be expected due to the age of the Line. These photos are certainly not indicative of an intent by SCSPA to abandon the Line, and they certainly do not warrant investigation.

On March 19, 2008, the Board found that the Line had not been abandoned, that the Line remained a part of the interstate rail system, and that the Board retained jurisdiction to authorize BRC’s operation pursuant to the modified certificate.¹⁸ The Board further found that “should BRC terminate its service obligations and South Carolina find an interested party to use the ROW for interim trail use, that outcome would be permissible, provided that it is pursued under the applicable statutory and regulatory requirements of the Trails Act.”¹⁹ This

¹⁶ See Reply dated April 28, 2008 at 10

¹⁷ The most recent maintenance service on the Line occurred approximately two weeks ago when an SCSPA contractor rode the Line with its vehicle and equipment and sprayed the entire 25 miles of the Line as part of its weed control function. At that time, the contractor noted that some trees had fallen on the right of way. SCSPA gave the contractor instructions to proceed with clearing the fallen trees.

¹⁸ See Board Decision dated March 19, 2008 at 1

¹⁹ *Id.* at 9

Decision was based on a careful review of the law and the factual record. The South Carolina State Parties intend to pursue this permissible option now so as to preserve the Line for future interstate rail service.

Conclusion

For the reasons set forth above, the Petitioners have provided no new evidence or changed circumstances that would affect the Board's December 28, 2006 or March 19, 2008 Decisions nor warrant the opening of an investigation. Therefore, the South Carolina State Parties respectfully request the Board to disregard and deny Petitioners' Response, renewed Petitions and Supplemental Submission.

Respectfully submitted,



Derck F. Dean
Simons & Dean
147 Wappoo Creek Drive, Suite 604
Charleston, SC 29412
Tel 843-762-9132

Counsel for Beaufort Railroad Company,
Inc., a subsidiary of the South Carolina
Division of Public Railways

Warren L. Dean, Jr.
Sean McGowan
Thompson Coburn, LLP
1909 K Street, N.W.
Suite 600
Washington, D.C. 20006
Tel 202-585-6900

Counsel for the South Carolina State Ports
Authority

Certificate of Service

I hereby certify that on June 4, 2008, I served the foregoing Reply in Opposition to Petitioners' Response, renewed Petitions and Supplemental Submission on the following individuals by Federal Express overnight mail:

Thomas F McFarland
Thomas F. McFarland, P C.
208 South LaSalle Street – Suite 1890
Chicago, IL 60604-1112
Tel: 312-236-0204
Fax: 312-201-9695

M. Robert Carr
Dow Lohnes PLLC
1200 New Hampshire Avenue, N.W
Suite 800
Washington, DC 20036
Tel: 202-776-2000
Fax: 202-776-2222

John L. Richardson
John L. Richardson, P L L C.
555 13th Street, N W.
Suite 420 West
Washington, DC 20004
Tel. 202-371-2258
Fax: 202-828-0158

Scott Y Barnes
Warren & Sinkler, L.L P
171 Church Street
Suite 340
Charleston, SC 29402
Tel: 843-577-0660
Fax: 845-577-6843

Cody L Partin
Dow Lohnes PLLC
Six Concourse Parkway
Suite 1800
Atlanta, GA 30328
Tel 770-901-8800
Fax: 770-901-8874


Sharon Simmons
Sharon Simmons