

RICHARD R. WILSON, P.C.

Attorney at Law

A Professional Corporation

518 N. Center Street, Ste. 1

Ebensburg, PA 15931

(814) 419-8152

888-454-3817 (Toll Free)

(814) 419-8156 FAX

rwilson@rrwilson.net – Email

www.rrwilsonesq.com - Website

851 Twelfth Street

Oakmont, PA 15139

Of Counsel to:

Vuono & Gray LLC

2310 Grant Building

Pittsburgh, PA 15219

(412) 471-1800

(412) 471-4477 FAX

July 20, 2010



Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Re: Allegheny Valley Railroad Company – Petition for Declaratory Order –
William Fiore
Finance Docket No. 35388

Dear Sir:

227527

Enclosed for filing in the above captioned proceeding, please find the Reply of Allegheny Valley Railroad Company to William Fiore's Motion to Strike Styled as a Reply.

Copies of this Reply have been served on all parties of record. Should you have any questions in connection with this matter, please do not hesitate to contact the undersigned. Please date stamp and return to the undersigned a copy of this letter to evidence the filing of this Reply.

Very truly yours.

RICHARD R. WILSON, P.C.

A handwritten signature in cursive script that reads "Richard R. Wilson".

Richard R. Wilson, Esq.

RRW/bab

Enclosures

cc: All Parties of Record
Allegheny Valley Railroad Company

ENTERED
Office of Proceedings

JUL 20 2010

Part of
Public Record

Before the
SURFACE TRANSPORTATION BOARD



FINANCE DOCKET NO. 35388

ALLEGHENY VALLEY RAILROAD COMPANY – PETITION FOR
DECLARATORY ORDER – WILLIAM FIORE

REPLY OF ALLEGHENY VALLEY RAILROAD COMPANY TO WILLIAM
FIORE'S MOTION TO STRIKE STYLED AS A REPLY

RICHARD R. WILSON, ESQ.
Attorney for Allegheny Valley Railroad
Company
Pa. I.D. #25661
518 N. Center Street, Ste. 1
Ebensburg, PA 15931
(814) 419-8152 - Phone
(814) 419-8156 Fax

ENTERED
Office of Proceedings

JUL 20 2010

Part of
Public Record

Date: July 20, 2010

JUL 28 2010
Office of Proceedings

JUL 28 2010

Part of
Public Record

Before the
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35388

ALLEGHENY VALLEY RAILROAD COMPANY - PETITION FOR
DECLARATORY ORDER – WILLIAM FIORE

REPLY OF ALLEGHENY VALLEY RAILROAD COMPANY TO WILLIAM
FIORE'S MOTION TO STRIKE STYLED AS A REPLY

On July 9, 2010, in accordance with the June 21, 2010 Order of the Honorable Ronald W. Felino of the Common Pleas Court of Allegheny County, Pennsylvania, Allegheny Valley Railroad Company ("AVRR") filed a Petition for Declaratory Order referring jurisdictional issues to the Surface Transportation Board for an advisory opinion and requested that the Board set this matter for hearing under its modified procedure. 49 C.F. R. §1112

On July 15, 2010, Mr. Fiore responded to AVRR's Petition for Declaratory Order with what is captioned as a "Reply" but is actually a Motion to Strike, betraying a lack of familiarity with the Board's Declaratory Order practice and its modified procedure. AVRR's Petition for Declaratory Order provided the Board with the factual and procedural context for the regulatory issues arising in the Common Pleas Court of Allegheny County that were referred to the Board for determination by Judge Felino. Given that the parties did not have an opportunity to compile a thorough factual record regarding AVRR's rail operations adjacent to Mr. Fiore's parcel and the state court made no factual findings, AVRR requested the Board to set this matter for handling under its

modified procedure to afford each party a full opportunity to submit evidence, testimony and legal argument regarding AVRR's and its predecessor railroads' operation and use of the railroad right of way on which Mr. Fiore's Lot 4-B encroaches and whether the claims asserted by Mr. Fiore in state court interfere with and obstruct AVRR's present and future use of its right of way for common carrier railroad purposes and impinge on the Board's exclusive regulatory jurisdiction.

The Board's modified procedures will enable the parties to create a thorough factual record for review by the Board in rendering its ruling for the state court. The legal arguments submitted by the parties will inform the Board on each party's contentions regarding the application of the law to the factual record permitting the Board to engage in reasoned decision making. The Board's modified procedure is preferable to Mr. Fiore's use of random motions to create a record and argue these regulatory issues.

WHEREFORE, AVRR respectfully requests that Mr. Fiore's Motion to Strike be denied and that the Board issue an Order setting this matter for hearing under its modified procedure.

Respectfully submitted,

RICHARD R. WILSON, P.C.

By: 

Richard R. Wilson, Esq.
Attorney for Allegheny Valley Railroad
Company

RICHARD R. WILSON, P.C.
518 N. Center Street, Suite 1
Ebensburg, PA 15931
(814) 419-8152

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of July, 2010, a copy of the foregoing Reply of Allegheny Valley Railroad Company to William Fiore's Motion to Strike Styled as a Reply was served upon the following via first class United States mail, postage prepaid:

Kathleen McConnell, Esq.
John H. Prorok, Esq.
Miello, Brungo & Miello, LLC
1 Churchill Park
3301 McCrady Road
Pittsburgh, PA 15235

Kathleen Jones Goldman, Esq.
BUCHANAN, INGERSOL & ROONEY, PC.
One Oxford Centre
301 Grant Street, 20th Floor
Pittsburgh, PA 15219-1410

Austin P. Henry, Esq.
Russell P. Mills, Esq.
Charles P. Jones, Esq.
MILLS & HENRY
200 Benedum Trees Bldg.
223 Fourth Avenue
Pittsburgh, PA 15222


Richard R. Wilson, Esq.