

FRASER STRYKER MEUSEY OLSON BOYER & BLOCH, PC  
LAWYERS

500 ENERGY PLAZA  
409 SOUTH 17TH STREET  
OMAHA, NEBRASKA 68102-2663  
TELEPHONE 402.341.6000  
TELEFAX 402.341.8290  
WWW.FRASERSTRYKER.COM

213030

MARK C. LAUGHLIN  
DIRECT DIAL: 402.978.5247  
MLAUGHLIN@FRASERSTRYKER.COM

OMAHA  
DENVER

January 17, 2005



Sent Via Overnight Delivery

Vernon A. Williams, Secretary  
Surface Transportation Board  
1925 "K" Street, N.W.  
Washington, DC 20423-0001

RE: Docket No. AB-600, Yakima Interurban Lines Association-Adverse Abandonment-  
Yakima County, Washington

Dear Mr. Williams:

Enclosed please find an original and 10 copies of Level 3 Communications, LLC's Opposition to Petition for Reconsideration and Clarification, for filing with the Board in the above-referenced matter. Kindly acknowledge receipt by date stamping the enclosed duplicate copy of this letter and return the same in the enclosed self-addressed stamped envelope.

Very truly yours,

A handwritten signature in cursive script, appearing to read 'Donna Green'.

Mark C. Laughlin  
FOR THE FIRM  
By: Donna Green, Legal Assistant

ENTERED  
Office of Proceedings

JAN 18 2005

Part of  
Public Record

MCL/sac  
Enclosures  
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SURFACE TRANSPORTATION BOARD

Yakima Interurban Lines Association )  
Adverse Abandonment )  
Yakima County, WA )  
ENTERED  
Office of Proceedings )  
JAN 19 2005 )  
Part of  
Public Record )

NO. AB-600  
OPPOSITION TO PETITION FOR  
RECONSIDERATION AND  
CLARIFICATION

COMES NOW, Level 3 Communications, LLC ("Level 3") and hereby submits this Opposition to the Petition for Reconsideration and Clarification filed by Kershaw Sunnyside Ranches, Inc. ("Kershaw").

**I. Kershaw's Request for an Administrative Appeal Violates the Board's Regulations.**

Kershaw is improperly requesting an administrative appeal of the Surface and Transportation Board's ("Board") November 18, 2004 decision. The Board's regulations clearly state that "[a]ppeals to the Board's decision in abandonment or discontinuance proceedings will not be entertained." 49 CFR 1152.25(e)(2). If at all considered by the Board, Kershaw's Petition for Reconsideration and Clarification ("Petition") should be treated as a petition to reopen under 49 CFR 1152.25(e)(4) and tested against the standard for reopening an administratively final action.

**II. Kershaw's Petition Fails to Make a Showing Sufficient to Reopen the Proceeding.**

A petition to reopen requires a detailed showing of (1) material error, (2) new evidence, or (3) substantially changed circumstances. 49 CFR 1152.25(e)(4). "The Board will grant a petition to reopen only upon a showing that the challenged action would be materially affected by one or more of those criteria." Union Pacific Railroad Company --Abandonment Exemption--In Rio Grande and Mineral Counties, Co, STB Docket No. AB-33 (June 22, 2004).

Kershaw fails to raise any change in circumstances or present any new material evidence. The fact is the Board's decision had been effective only ten days when the Petition was filed.

Kershaw's only evidence consists of newspaper articles and minutes from a December 1, 2004 hearing of the Yakima County Commissioners. However, the articles and the hearing minutes relate strictly to the Toppenish to White Swan Rail Line and have nothing to do with the Naches line.

Kershaw also fails to show material error in the Board's decision. The standard governing an application for abandonment is whether the present or future public convenience and necessity require or permit the abandonment. 49 U.S.C. § 10903. The record reflects that a plan to rehabilitate the Naches line has been supported by local and state governmental agencies, area shippers and multiple rail carriers. Further, restoration of rail service to the line would likely have a positive impact by converting truck traffic to rail and promoting community development. Thus, the record in this case support's the Board's conclusion that the public interest is best served by denying the adverse abandonment application.

Kershaw asserts that the Board's decision is contrary to a prior decision in CSX Corp. and CSX Transportation, Inc. --Adverse Abandonment Application-- Canadian National Railway Co. and Grand Trunk Western Railroad, Inc., STB Docket No. AB-31 (January 28, 2002). However, CSX is easily distinguished from the instant case because in CSX there was a finding that the abandonment would result in improved rail service by eliminating costly and time-consuming backups and delays, improving access to certain facilities and allowing for more efficient rail operations. Unlike CSX, the proposed abandonment in the instant would not improve rail service but, instead, would sever the Naches line by abandoning only a portion of the line resulting in potential shippers in Naches and elsewhere along the line being completely cut off. Furthermore, unlike CSX where no shippers opposed the abandonment, in the present case

shippers have filed oppositions to the proposed abandonment and have stated that they would utilize the line.

**III. If Appropriate, Level 3 Requests that the Board Impose Sanctions Against Kershaw.**

The Board's rules clearly state that Kershaw has no right to an administrative appeal in this matter. Further, Kershaw's Petition was filed within ten days of the effective date of the Board's decision and contains no new relevant evidence and identifies no change in circumstances. Moreover, Kershaw's attack on the merits of the Board's decision is baseless. Thus, Level 3 requests that, if the Board deems appropriate, sanctions be imposed against Kershaw.

For the reasons stated above, Level 3 respectfully requests that the Board deny Keshaw's Petition for Reconsideration and Clarification and award such other relief as the Board deems appropriate.

Respectfully submitted,  
Level 3 Communications, LLC

By:



Mark C. Laughlin  
FRASER STRYKER MEUSEY  
OLSON BOYER & BLOCH, P.C.  
500 Energy Plaza  
409 South 17th Street  
Omaha, NE 68102  
(402) 341-6000

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served this 17th day of January, 2005, by U.S. Mail, postage pre-paid, first class, upon the following:

Sarah Wixson, Velikanje Moore & Shore  
P. O. Box 22550  
Yakima, WA 98907  
(for Kershaw)

Jeanne A. Cushman  
Office of the Attorney General  
Transportation and Public Construction Division  
905 Plum Street, Building 3  
P. O. Box 40113  
Olympia, WA 98504-0113  
(for Washington Department of Transportation)

Charles H. Montange  
426 N.W. 162nd Street  
Seattle, WA 98177  
(for Yakima County)

Raymond L. Paoella  
Legal Department  
200 South Third Street  
Yakima, WA 98901-2830  
(for City of Yakima)

Paul D. Edmondson  
P. O. Box 384  
313 North Third Street  
Yakima, WA 98901  
(for Yakima Interurban Lines Association)

Gregory S. Lightly  
Halverson Applegate, P.S.  
311 North Fourth Street  
P. O. Box 22730  
Yakima, WA 98907-2715  
(for City of Naches)

W373018

A handwritten signature in black ink, appearing to be 'G. Lightly', written over a horizontal line.