

Statement of Brian O'Boyle
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Railroad Ventures Inc.–Abandonment Exemption–Between
Youngstown, OH, and Darlington, PA, in Mahoning and Columbiana Counties, OH,
and Beaver County, PA
STB Docket No. AB-556 (Sub-No. 2X)

Good morning Chairman Nober, Vice Chairman Mulvey, and Commissioner Buttrey.

The draft decision before you seeks to resolve three issues arising out of the same case. The case centers around Columbiana County Port Authority's purchase of a 35.7-mile rail line in eastern Ohio and western Pennsylvania from Railroad Ventures, Inc., pursuant to the offer of financial assistance provisions of 49 U.S.C. 10904. I will refer to these parties as the Port Authority and Railroad Ventures.

The first issue the draft decision resolves is whether to grant Railroad Ventures' petition to reopen the Board's valuation of the line. Pursuant to the Port Authority's request that the Board set the terms and conditions of the sale, the Board established the purchase price of the line in a series of decisions in 2000 relying primarily upon the appraisal of the Port Authority's expert. Now, more than three years after the parties had the opportunity to present their evidence on the value of the line, Railroad Ventures has petitioned the Board to re-value the line, alleging that the Port Authority's expert committed significant errors in his appraisal.

The draft decision would deny Railroad Ventures' petition to reopen because the Board correctly evaluated the original record, Railroad Ventures has had and lost challenges to the valuation, in the Sixth Circuit Court of Appeals, and because reevaluation now would be unfair to the Port Authority.

The second issue discussed in the draft decision regards the Port Authority's motion to compel discovery. Specifically, the Port Authority asks that Railroad Ventures be compelled to

respond to discovery requests regarding licenses that the Board previously ordered Railroad Ventures to turn over to the Port Authority. The Port Authority alleges that new evidence indicates that Railroad Ventures has not turned over all the licenses in its possession.

The draft decision grants the Port Authority's motion to compel. The Port Authority has presented evidence that strongly indicates that there are some licenses still in Railroad Ventures's possession. Because the Board has previously ordered Railroad Ventures to convey these licenses – not once, but twice – and Railroad Ventures appears still to be in defiance of this mandate, the draft decision warns Railroad Ventures that its failure to comply with this decision may result in an enforcement action against it.

The final issue addressed in the draft decision pertains to the former escrow fund that the Board ordered Railroad Ventures to establish as a condition to the sale. Railroad Ventures was ordered to provide \$375,000 to the Port Authority so that the Port Authority could use these funds to cover the cost of repairs so long as certain conditions were met. The Port Authority and the line's operator, Central Columbiana & Pennsylvania Railway, Inc., filed a joint motion essentially seeking a finding that they spent the funds properly.

The draft decision finds that, although the Port Authority and the operating railroad properly complied with the Board's conditions on use of the former escrow fund in many instances, it did not do so in all instances. Specifically, the Railroad did not provide sufficient evidence to justify numerous expenses. Thus, the draft decision orders the Port Authority to refund \$217,282 to Railroad Ventures, along with interest.

If you have any questions, we'll be happy to address them.