

Voting Conference, September 15, 2005

Statement of Timothy Strafford
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Yakima Interurban Lines Association—
Adverse Abandonment— in Yakima County, WA
STB Docket No. AB-600

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

The draft decision before you would deny a petition filed by Kershaw Sunnyside Ranches, Inc. (Kershaw), to reconsider and clarify a decision served on November 19, 2004, in this proceeding that denied Kershaw's adverse abandonment application. That application concerned approximately one mile of a railroad line in the State of Washington called the Naches Line that crosses Kershaw's property.

The Naches Line was taken out of service due to poor track conditions in 1997. In 1999, Yakima Interurban Lines Association (YILA) acquired 11.29 miles of the Line between Fruitvale and Naches. The State of Washington, through the Washington State Department of Transportation (Washington DOT), subsequently made a \$516,000 loan to YILA to rehabilitate the Line, but YILA failed to carry out the rehabilitation and defaulted on the loan.

In January 2004, Kershaw filed an adverse abandonment application, asking the Board to withdraw its primary jurisdiction to permit Kershaw to go to state court to obtain control of the portion of the Line that crosses its property. Protests were filed jointly by Yakima County, the City of Yakima, the Town of Naches, and YILA (Rail Commenters), and individually by Level 3 Communications, L.L.C., Washington DOT, and The Burlington Northern and Santa Fe Railway Company (BNSF).

In the November decision, the Board denied Kershaw's application. The agency noted that, although the Line is not currently being operated, local governments and shippers, a potential replacement rail carrier, Washington DOT, and BNSF opposed abandonment. The Board also pointed out that Rail Commenters had presented feasible plans for rehabilitation of the Line and restoration of rail service.

Kershaw has sought reconsideration and clarification of the decision, which the draft decision addresses as a petition to reopen. Kershaw argues that the Board erred in finding that the public convenience and necessity does not require abandonment here and that the Board misapplied precedent. Kershaw also asks the Board to impose a deadline for rehabilitation of the Line and resumption of service.

The draft decision finds that petitioner has not shown material error warranting reopening this proceeding, as there is a realistic potential for restored rail service over the

Line. It also finds that the November decision appropriately applied precedent. The draft decision declines to impose a specific deadline for rehabilitation activities, but notes that a significant delay and a demonstrated lack of progress could be evidence of changed circumstances that would warrant a grant of adverse abandonment authority.

That concludes my statement. We would be happy to answer any questions that you may have.