

FLETCHER & SIPPEN LLC

ATTORNEYS AT LAW

29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832

RONALD A. LANE
(312) 252-1503
rlane@fletcher-sippel.com

Phone: (312) 252-1500
Fax: (312) 252-2400
www.fletcher-sippel.com

July 17, 2008

VIA ELECTRONIC FILING

Ms. Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

Re: **Finance Docket No. 35116** 222973
**R.J. Corman Railroad Company/Pennsylvania Lines Inc. --
Construction and Operation Exemption – Clearfield County, PA**

Finance Docket No. 35143
**R.J. Corman Railroad Company/Pennsylvania Lines Inc. – Acquisition
and Operation Exemption – Line of Norfolk Southern Railway Co.** 222974

Docket No. AB-167 (Sub-No. 1004N)
**Conrail Abandonment of the Snow Shoe Industrial Track
in Centre and Clearfield Counties, Pennsylvania** 222975

Dear Secretary Quinlan:

Attached for filing in the above-captioned proceedings is the Reply of R.J. Corman Railroad Company/Pennsylvania Lines Inc. to Pennsylvania Department of Conservation and Natural Resources Statement of Support, dated July 17, 2008.

Should any questions arise regarding this filing, please feel free to contact me. Thank you for your assistance on this matter. Kind regards.

Respectfully submitted,



Ronald A. Lane
Attorney for R.J. Corman Railroad Company/
Pennsylvania Lines Inc.

Attachment

cc: Parties on Certificate of Service

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35116

222 973

R.J. CORMAN RAILROAD COMPANY/PENNSYLVANIA LINES INC.
-- CONSTRUCTION AND OPERATION EXEMPTION --
CLEARFIELD COUNTY, PENNSYLVANIA

FINANCE DOCKET NO. 35143

222 974

R.J. CORMAN RAILROAD COMPANY/PENNSYLVANIA LINES INC.
-- ACQUISITION AND OPERATION EXEMPTION --
LINE OF NORFOLK SOUTHERN RAILWAY COMPANY

DOCKET NO. AB-167 (SUB-NO. 1004N)

222 975

CONRAIL ABANDONMENT OF THE
SNOW SHOE INDUSTRIAL TRACK
IN CENTRE AND CLEARFIELD COUNTIES, PA

**REPLY OF R.J. CORMAN RAILROAD COMPANY/
PENNSYLVANIA LINES INC. TO PENNSYLVANIA DEPARTMENT OF
CONSERVATION AND NATURAL RESOURCES STATEMENT OF SUPPORT**

Ronald A. Lane
Myles L. Tobin
Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

**ATTORNEYS FOR R.J. CORMAN
RAILROAD COMPANY/
PENNSYLVANIA LINES INC.**

Dated: July 17, 2008

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35116

R.J. CORMAN RAILROAD COMPANY/PENNSYLVANIA LINES INC.
-- CONSTRUCTION AND OPERATION EXEMPTION --
CLEARFIELD COUNTY, PENNSYLVANIA

FINANCE DOCKET NO. 35143

R.J. CORMAN RAILROAD COMPANY/PENNSYLVANIA LINES INC.
-- ACQUISITION AND OPERATION EXEMPTION --
LINE OF NORFOLK SOUTHERN RAILWAY COMPANY

DOCKET NO. AB-167 (SUB-NO. 1004N)

CONRAIL ABANDONMENT OF THE
SNOW SHOE INDUSTRIAL TRACK
IN CENTRE AND CLEARFIELD COUNTIES, PA

**REPLY OF R.J. CORMAN RAILROAD COMPANY/
PENNSYLVANIA LINES INC. TO PENNSYLVANIA DEPARTMENT OF
CONSERVATION AND NATURAL RESOURCES STATEMENT OF SUPPORT**

R.J. Corman Railroad Company/Pennsylvania Lines Inc. ("RJCP") submits this reply to the Statement of Support filed by the Pennsylvania Department of Conservation and Natural Resources ("DCNR") in connection with the Petition to Hold in Abeyance filed by People Protecting Communities ("PPC"). The DCNR Statement does not provide any additional reason to delay the transfer of the rail-banked line or to delay vacating of the Certificate of Interim Trail Use. PPC's petition should still be denied.

RJCP has explicitly stated that it does not intend to proceed with acquisition of NS's residual common carrier interests in the Eastern Segment (including the right to resume rail service) until construction of the Western Segment is approved, and the Board has explicitly

recognized that intention. RJCP Acquisition Notice, Finance Docket No. 35143, at 5; STB Acquisition Notice served June 5, 2008, at 3. Reactivation of the Eastern Segment for rail operations would not and could not occur until that time. In the meantime, RJCP has no intention of interfering with the existing interim trails use of the Eastern Segment.¹ For all the reasons set forth in RJCP's Reply to Petition to Hold in Abeyance at 5-8, the Board's action under the Trails Act is purely ministerial and does not constitute a "major Federal action" requiring environmental review.

The bulk of DCNR's Statement addresses the merits of the environmental review that the SEA is now attempting to scope, rather than the timing of the several Board actions that is the subject of PPC's pending petition. Thus, the Statement should more appropriately be considered as comments for the environmental review. However, to the extent that the Board may decide to consider DCNR's Statement, RJCP is constrained to reply.

1. The Nature of Trail Improvements and the Source of Funding Those Improvements Are Irrelevant to Reactivation of the Eastern Segment.

A primary concern of the DCNR seems to be the recovery of some \$800,000 it claims has been spent repairing and maintaining the Snow Shoe Trail, or at least the \$555,000 that the Federal Highway Administration evidently provided to DCNR to repair the Peale Tunnel on condition that the state agency repay the unamortized portion of the project in the event of rail reactivation.

The Supplemental Verified Statement of E.B. Abel, Jr. submitted by Resource Recovery, LLC ("RRLLC") concurrently herewith, together with the attachments to the DCNR

¹ Furthermore, RJCP has informed the Board that it does not object if an order vacating the CITU on the Eastern Segment indicates that actual termination of interim trails use will occur only upon commencement of construction of the Western Segment. RJCP Reply to Petition to Hold in Abeyance, at 6.

Statement, demonstrate that RRLLC forthrightly and responsibly took the initiative in the summer of 2004 – fully four years ago – to approach Headwaters Charitable Trust, the trail sponsor on the Eastern Segment, and advised them that it intended to reactivate this rail line. Those documents also establish that DCNR was fully aware of the plan for reactivation *before* it funded the tunnel work. In fact the Third Supplemental Agreement executed by the State recites that, “the parties acknowledge the possibility that this right-of-way may be reactivated for rail service ...,” that “Resource Recovery, LLC has advised [Headwaters Trust] that it plans to invoke the rail restoration provision of [the Trails Act]...,” and that “conversion of the trail to railroad use is currently projected to occur no earlier than 2008” DCNR Statement, Exhibit B at 2-3. The body of the agreement establishes the method by which Headwaters Trust will repay DCNR if rail service is restored during the ensuing 20-year lifetime of the Tunnel. DCNR apparently was satisfied that the Trust could meet that obligation, since “DCNR determined that investment in the Snow Shoe Rail trail was appropriate and *the risk of reactivation was considered low.*” DCNR Statement, p.4 (emph. added). In other words, DCNR consciously and deliberately assumed the risk that the line would be reactivated and that the Trust would not repay the grant.

Headwaters Trust failed to follow through with the letter of intent it entered into with RRLLC, and now DCNR seems to ask the STB for a bail out. However, this Board has already firmly established that it does not determine whether a trail user is entitled to compensation upon vacation of a CITU/NITU inasmuch as Congress intended to leave compensation matters to the parties in the trail use agreements. *Georgia Great Southern – Abandon. & Discontin. of Service – GA*, 6 S.T.B. 902, 908 (2003), citing *Rail Abandonments -- Supplemental Trail Act Procedures*, 4 I.C.C.2d 152, 156 (1987). To the extent that DCNR’s

Statement can be construed to seek to prevent reactivation of rail service on the line or a financial contribution to the Commonwealth, it would serve only to disrupt the fundamental and widely-understood purpose and predicate of the Trails Act. See *N&W -- Aban. -- St Marys and Minster in Auglaize County, OH*, 9 I.C.C.2d 1015, 1018 (1993) (agreement to interim trail use “may be withdrawn at any time the abandoning carrier wishes to reinstitute rail operations over the right-of-way.”).

2. The Proximity of the Pennsylvania Wilds is Irrelevant.

DCNR claims that the proposed rail line reactivation “would be located in the southern portion of the Pennsylvania Wilds.” Statement at 6 and attaches 23 glossy pages of a consultant’s report replete with colored pictures of pristine forests and waterways, suggesting that reactivation of this rail line would despoil the Pennsylvania Wilds. That suggestion is baseless.

The Wilds consist of numerous tracts of *public* land, some very large tracts. But neither the rail line nor the proposed landfill is located on any of these public lands. To the contrary, all the land at issue is and has been privately owned and lies wholly outside the boundaries of any of the Pennsylvania Wilds. The closest that the rail line (or the landfill) comes to the Pennsylvania Wilds is where “[s]everal miles of the proposed new [sic] line travel along Moshannon Creek, which borders Moshannon State Forest land.” DCNR Statement at 6. That is a far cry from the suggestion that somehow the rail line will despoil the pristine condition of the Pennsylvania Wilds. Moreover the claim that, “[t]he remote and natural beauty of the Moshannon Creek valley as experienced from the Snow Shoe Rail Trail is a unique and valuable outdoor experience” is mere hyperbole. That statement is belied by 1) the Pennsylvania Wilds contain within their own landholdings “hundreds of miles of backpacking trails, bike paths and


trout fishing streams,” DCNR Statement at 5, so the experience on this 9.3 mile segment is hardly unique; and 2) the valley is filled with the roar of racing ATVs on the current Snowshoe Trail, and it parallels Interstate 80 as well as Moshannon Creek -- so in those respects the valley is neither remote nor natural. If the public authorities were so inclined, there would be ample space within their own 2 million acres of natural beauty, DCNR Statement, Exhibit A at 5, to provide a replacement 9.3 mile ATV trail without dictating the use of private property.

CONCLUSION

Neither PPC nor DCNR has presented any justification for delaying consideration of either the pending petition to vacate the Eastern Segment CITU in Docket No. AB-167 (Sub-No. 1004N) or the pending motion to dismiss the Eastern Segment from the construction proceeding in Finance Docket No. F.D. 35116. The Board’s requested ministerial action in the former proceeding and its requested jurisdictional action in the latter proceeding are not subject to NEPA, and need not await the environmental review that the Board is undertaking with regard to the Western Segment. To the contrary, the SEA is awaiting the Board’s decision on these issues to determine the proper scope of its review, and the Pennsylvania DEP is awaiting this Board’s approval of rail construction before reviewing the environmental impact of the landfill. The Board should not entertain the delaying tactics of the landfill opponents.

WHEREFORE, RJCP respectfully requests that the PPC Petition be denied.

Respectfully submitted,

By: 

Ronald A. Lane

Myles L. Tobin

Thomas J. Litwiler

Fletcher & Sippel LLC

29 North Wacker Drive

Suite 920

Chicago, Illinois 60606-2832

(312) 252-1500

**ATTORNEYS FOR R.J. CORMAN
RAILROADCOMPANY/
PENNSYLVANIA LINES INC.**

Dated: July 17, 2008

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of July, 2008, a copy of the foregoing Reply
Of R.J. Corman Railroad Company/ Pennsylvania Lines Inc. To Pennsylvania Department
of Conservation and Natural Resources Statement of Support was served by first class mail,
postage prepaid, upon:


Kimberly A Hummel, Chief Counsel
Department of Conservation and Natural Resources
400 Market Street
P.O. Box 8767
Harrisburg, PA 17105

Kathryn H.S. Pett
Ballard Spahr Andrews & Ingersoll, LLP
One Utah Center, Suite 800
201 South Main Street
Salt Lake City, UT 84111-2221

Richard R. Wilson
Richard R. Wilson, P.C.
127 Lexington Avenue, Suite 100
Altoona, PA 16601

John V. Edwards
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510-2191

Ms. Jodi Brennan
Secretary
Headwaters Charitable Trust
478 Jeffers Street
DuBois, PA 15801



Ronald A. Lane