

National Association of Reversionary Property Owners (NARPO)

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ENTERED
Office of Proceedings
November 12, 2019
Part of
Public Record

November 10, 2019 E-FILED

Surface Transportation Board, Cynthia Brown, Administrator

RE: Iowa Traction Railway--Discontinuance Exemption AB 1269-1X in Cerdo Gordo County, Iowa

Dear Ms. Brown:

On October 28, 2019, Iowa Traction Railway (IT) filed Environmental Materials in AB 1269-1X in preparation to file a Petition for Discontinuance of Service over a three mile rail line in Cerdo Gordo County, Iowa. In IT's Petition for Discontinuance, they state that they will salvage the track materials and sell the land for railbanking. NARPO mistook IT's filing of Environmental Materials as a Petition for Discontinuance. On October 30, 2019, NARPO filed a Comment requesting the STB to reject the Petition for Discontinuance in AB 1269-1X.

This Comment in AB1269-1X is somewhat identical to NARPO's October 30, 2019 Comment in that NARPO is requesting the STB to reject the Petition for Discontinuance Exemption or if rejection is not appropriate, then the STB should not entertain a request for NITU/railbanking.

Under STB rules, there can not be railbanking when only a discontinuance is petitioned for. After discussions with IT's attorney, IT is under the impression because the line was abandoned in 1987 (**AB-1-205X**, July 10, 1987) there is an exception to the Discontinuance rules and Railbanking when the line was previously abandoned.

In 1987 there was not only an abandonment authorized by the ICC, **AB 1-205X** July 10, 1987, but the carrier also informed the ICC that they consummated the abandonment. It was not until 1988 that Hermitage Homes obtained some sort of authority over the subject rail line, and there has been non-use of the rail line for the past 32 years according to IT's Petition for Discontinuance. When the line was abandoned and then consummated in 1987, the ICC lost jurisdiction over the line. The records of 1988 and 1987 are not readily available today to see exactly what transpired when the ICC granted Hermitage Homes authorization to operate over the line, but NARPO is sure the STB has access to those records. NARPO opines that the ICC did not have jurisdiction to issue any operating rights on a rail line the ICC had no jurisdiction over.

Since 1988 a series of non-carriers have had ICC and STB authority to operate part (three miles) of the rail line in question, and the rest of the right of way reverted to the abutting farmers. The last non-carrier is IT, see **FD 35677** October 5, 2012.

The property owners along this three miles are all farmers who own the reversionary rights to the land where the right of way is situated. Under Iowa Code Section 327G.76, last amended 1983 Acts, ch 121, §5; the right of way reverted to them when the rail line abandonment was consummated in 1987. The farmers have been waiting for 32 years to fully reclaim their land so they can farm the land the right of way is on. Some of the abutting farmers have always been using part of the right of way for farming.

The STB regulations and precedence do not allow railbanking on a discontinuance. It is questionable whether this rail line is even under STB jurisdiction as the line was abandoned in 1987 and the abandonment consummated. Since 1987, a series of non-carriers (see Footnote 1 in **FD 35677** October 5, 2012) have had some sort of operating authority even though no traffic has moved over the rail line in decades, see the last STB decision **FD 35677** in 2012. Also see IT's statement in **AB 1269-1X** Petition for

Discontinuance Exemption where IT states that no traffic has been over the line in 30 years and the line is overgrown with weeds. NARPO does not see any STB regulation or decision that allows railbanking with a discontinuance after an abandonment and consummation by another carrier and 32 years later a non-carrier asks for a discontinuance and also railbanking.

Iowa Traction Railroad cites **AB 1001X** as authority for the STB to grant trail use with a discontinuance, but AB 1001X, decision served January 15, 2008, has a different set of issues than AB 1269-1X. In AB 1001X there was no consummation of the previous abandonment as there is here in AB 1269-1X. Also in AB 1001X, the non-carrier was actually carrying freight over the rail line, but here in AB 1269-1X there has been no operation over the line in 32 years and the line is totally “overgrown with brush and vegetation with no real prospect for rail operations over the Line in the future.” Because the circumstances are different in AB 1001X, particularly the non-consummation, then in AB 1269-1X where there was a consummation, there can be no trail use after the Discontinuance. AB 1001X is not good authority to use in AB 1269-1X.

NARPO requests the STB to reject this Petition for Discontinuance as improperly filed as to the statement at the bottom of page 4 of the Petition;

...followed by sale of the Rail Line right-of-way to the City under the National Trails System Act (the Trails Act), 16 U.S.C. 1247(d) for railbanking and interim recreational trail use.

Or in the alternative, the STB should not grant a request for a NITU/Railbanking.

If the STB allows this requested Discontinuance and Railbanking, then the reversionary property owners would not be able to file a railbanking Takings claim at the U.S. Court of Claims as that court's precedence only allows railbanking takings claims after an abandonment has been certified by the ICC/STB. And the only abandonment on this rail line happened 32 years ago in 1987. The U.S. Court of Claims allows a six year statute of limitations, **Caldwell v. United States**, 391 F.3d 1226 (Fed. Cir. 2004), for filing railbanking Takings claims and that six years passed 26 years ago. A STB ruling allowing

this Discontinuance and then Railbanking would not allow these many property owners to file a Takings claim, and that would be a totally unjust and unfair ruling for these property owners. The STB should see through this ruse by IT.

NARPO also requests the STB to determine whether the STB even has jurisdiction over this non-carrier's operating rights which should not have been granted by the ICC in 1988 due to consummation of the abandonment by C&NW in 1987 in AB 1-205X.

Richard Welsh--Executive Director--NARPO

NARPO has served all parties of record via email on November 10, 2019.
Richard Welsh--NARPO