

300602

BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings
May 6, 2020
Part of
Public Record

DOCKET NO. AB-1296X

**R. J. CORMAN RAILROAD PROPERTY, LLC
– ABANDONMENT EXEMPTION –
IN SCOTT, CAMPBELL, AND ANDERSON COUNTIES, TENNESSEE**

**APPLICANT’S RESPONSE TO MOTION FOR THE BOARD TO FIND THAT
ABANDONMENT IS NOT CONSISTENT WITH THE PRESENT
OR FUTURE PUBLIC CONVENIENCE**

David R. Irvin
Catherine S. Wright
Irvin Rigsby PLC
110 North Main Street
Nicholasville, Kentucky 40356
Tel: (859) 724-4104
Fax: (859) 885-2307
*Attorneys for R. J. Corman Railroad
Property, LLC*

Date: May 6, 2020

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-1296X

**R. J. CORMAN RAILROAD PROPERTY, LLC
– ABANDONMENT EXEMPTION –
IN SCOTT, CAMPBELL, AND ANDERSON COUNTIES, TENNESSEE**

**APPLICANT’S RESPONSE TO MOTION FOR THE BOARD TO FIND THAT
ABANDONMENT IS NOT CONSISTENT WITH THE PRESENT
OR FUTURE PUBLIC CONVENIENCE**

R. J. Corman Railroad Property, LLC (“RJC Railroad Property”), by counsel, hereby submits its response to the motion for the Board to find that abandonment is not consistent with the present or future public convenience (“Motion”) filed by National Coal, LLC (“National Coal”) on April 29, 2020. RJC Railroad Property respectfully states as follows.

Contrary to National Coal’s statement in paragraph 13 of its Motion, RJC Railroad Property filed the instant class exemption abandonment proceeding under 49 C.F.R. § 1152.50. Nothing in National Coal’s Motion suggests that use of the class exemption was improper; in other words, there is no dispute that the 49 C.F.R. § 1152.50 (b) criteria have been met.

Significantly, at the time coal shipments began declining in 2011, RJC Railroad Property and its affiliated entity, RJC Railroad Company/Bardstown Lines, LLC agreed, at the request of National Coal (then Jim Justice and Premium Coal Company), to negotiate in good faith National Coal’s purchase of the Oneida Line from RJC Railroad Property. (August 1, 2010 Agreement, ¶ 6, Exhibit A). That negotiation period was from August 1, 2012 through July 31, 2013. Although the contractual burden of initiating discussions for its contemplated purchase of

the Line was on National Coal, National Coal never sent any document of any kind to RJC Railroad Property indicating that National Coal was invoking the provisions of Paragraph 6 of the Agreement.

Not only did National Coal not initiate negotiations to purchase the Oneida Line during that year, but by May 2013, National Coal had ceased all rail shipping activity entirely on the Oneida Line after it closed or idled its mining operations in Devon, Tennessee. National Coal's claim that RJC Railroad Property somehow failed to properly maintain the Oneida Line in the seven (7) years that no freight service has been requested or occurred, even if assumed as true, had no impact on National Coal's decision to cease shipping coal over the Oneida Line. Nor does the instant Motion contain any representation by National Coal that it intends to resume shipping freight on the Oneida Line, now or anytime in the near future.

In reality, after seven (7) years, National Coal seeks to prevent the abandonment of the Oneida Line, citing only its "right of first refusal" that is found in property deeds from NC Railroad, Inc. (an entity that no longer exists) to RJC Railroad Property. (Administrative Dissolution Tennessee, Exhibit B). No where does National Coal acknowledge that it failed to initiate negotiations to purchase the Oneida Line when it was given the opportunity in 2012.

Under the circumstances, RJC Railroad Property understands that these matters are governed entirely by the Board and that no purchase of the Oneida Line to continue rail service can be consummated without Board approval. If National Coal seeks to purchase the Oneida Line so that it may continue rail operations, it should utilize the existing Board offer of financial assistance (OFA) process in a timely manner. Because no disposition of the line, whether by sale to a successor rail carrier operator (whether by OFA or otherwise), abandonment subject to trail use, or outright abandonment, can be made outside the jurisdiction of the Board, this proceeding

is clearly the most efficient procedural vehicle for the exercise of the Board's exclusive jurisdiction, and there is no good cause for the Board to delay or refrain from doing so in this proceeding.

In contrast, if National Coal's Motion is merely a belated attempt to prevent an abandonment that has already been approved in accordance with well-established Board policy and regulations, then it should be rejected. But importantly, RJC Railroad Property believes these are issues that are properly addressed by the Board.

Respectfully submitted,

/s/ Catherine S. Wright

David R. Irvin

Catherine S. Wright

Irvin Rigsby PLC

110 N. Main Street

Nicholasville, Kentucky 40356

Tel: (859) 724-4104

Fax: (859) 885-2307

*Attorneys for R. J. Corman Railroad
Property, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on May 6, 2020, I served the foregoing Response using the below email addresses on all parties of record in this proceeding:

Daniel A. LaKemper, Esq.
General Counsel
Arkansas-Oklahoma Railroad Co.
P.O. Box 185
Morton, IL 61550
Email: lakemper@mtco.com

Robert Weber
Chairman, Cumberland Trails Conference
409 Thurman Ave #102
Crossville, TN 38555
Email: weber9985@att.net

Mark Bevelhimer
President, Tennessee Citizens for Wilderness Planning
P.O. Box 6873
Oak Ridge, TN 37830
Email: bigelowt2@mindspring.com

Christopher J. Schroeck
Bluestone Resources, Inc.
302 S. Jefferson St.
Roanoke, VA 24018
Email: chris.schroeck@bluestone-coal.com

/s/ Catherine S. Wright

AGREEMENT

THIS AGREEMENT made and entered into this 1st day of August, 2012, by and between R. J. Corman Railroad Company/Bardstown Line ("RJCC") and James C. Justice, Inc., acting for and on behalf of itself and certain of its operating subsidiaries, including Ranger Energy Investments, LLC and Premium Coal Company, Incorporated (collectively "Justice").

RECITALS:

1. RJCC and National Coal Corporation (now National Coal, LLC) are parties to a certain Railroad Transportation Contract dated on or about May 18, 2010 (the "Contract").

2. By an Assignment and Assumption Agreement executed on or about April 16, 2010, Justice assumed both the rights and obligations of National Coal Corporation pursuant to the Contract.

3. Among the provisions of the Contract, as set out in section 4 thereof, is a requirement that industry shall pay carrier for transporting not less than 35,000 net tons in any calendar month.

4. RJCC commenced a civil action in the Circuit Court for Scott County, Tennessee on May 30, 2012, styled *R. J. CORMAN RAILROAD COMPANY/BARDSTOWN LINE v. NATIONAL COAL, LLC, et al.*, being Case No. 8331 on the docket of said Court, in which RJCC contends among other things, that Justice failed and refused to pay invoices for the aforesaid required net tonnage transportation minimum amount for all months accruing subsequent to October, 2011, which amount, for the months of November and December 2011, include money owed for coal actually transported, but less than the required monthly minimum.

5. On July 17, 2012, Justice paid RJCC the sum of \$1,492,225.00.

6. The parties mutually desire to settle and resolve the aforesaid litigation and to establish, by agreement, the terms and conditions of the carrier and shipper relationship going forward between them, all on the terms and conditions set out below.

NOW THEREFORE, in consideration of the mutual covenants, promises, terms and conditions set out herein, it is hereby agreed by and between the parties as follows:

1. RJCC accepts the aforesaid payment of \$1,492,225.00 in full and complete satisfaction of all monthly minimum net tonnage and other payments required of Justice under the terms of the Contract through July 31, 2012.

2. The aforesaid civil action, and any and all claims which have been or could have been asserted by any party thereto on or before July 17, 2012, shall be dismissed with prejudice, as settled, with each party to bear its own costs; and by mutually executing this Agreement all parties authorize and direct their respective attorneys to execute and tender for entry an agreed order of dismissal effectuating this paragraph.

3. From the date of this Agreement and for the duration of the Contract term, the Contract shall be deemed amended such that Justice shall tender no coal for shipment by RJCC until and unless it has wire transferred to the account of RJCC an amount equal to any then outstanding balance owed plus an amount equal to the then applicable net per ton freight rate for all coal then so tendered.

4. For the period from August 1, 2012, through July 31, 2013 only, the Contract shall be deemed amended such that the freight rate for coal transported pursuant thereto shall be \$4.00 per net ton for all coal up to and including 40,000 net tons per calendar month and \$2.61 for all coal in excess of 40,000 net tons per calendar month.

5. For the period from August 1, 2012, through July 31, 2013 only, the Contract shall be deemed amended such that, in addition to the freight rates set out in numerical paragraph 4 above, and in lieu of the monthly minimum stated in the Contract (as stated in Recital 3, above), calendar monthly tonnage volume shortfall charges to industry, based on the tonnages actually transported, shall apply as follows:

- A. If less than 10,000 tons transported; a shortfall charge of \$50,000;
- B. If 10,000 or more, but less than 20,000 tons transported; a shortfall charge of \$30,000; and
- C. If 20,000 or more, but less than 35,000 tons transported; a shortfall charge of \$25,000.

6. During the period from August 1, 2012, through July 31, 2013, at the request of Justice, RJCC shall negotiate in good faith with Justice for the sale and purchase of the railroad line from Oneida, Tennessee to Devonia, Tennessee or for a permanent change in the tonnage rate and shortfall charges set out in numerical paragraphs 4 and 5, above, but failing the successful conclusion of any such negotiations, the freight tonnage rates and required monthly minimum volumes as stated in the Contract shall, commencing on August 1, 2013, again become effective and shall remain in effect for the duration of the Contract term.

7. Except as amended hereby the Contract shall remain in full force and effect as written, and each of the parties hereby ratifies and confirms the same, except as amended hereby.

8. This Agreement may be executed in duplicate counterparts, each of which shall have the effect of an original.

R. J. CORMAN RAILROAD COMPANY/
BARDSTOWN LINE

~~JAMES C. JUSTICE, INC.~~

Premium Coal Company

BY: *Robert D. Adams*

BY: *Steve Sarver*

TITLE: *CEO*

TITLE: *Senior Vice President*



Tre Hargett
Secretary of State

Division of Business Services
Department of State
State of Tennessee
312 Rosa L. Parks AVE, 6th FL
Nashville, TN 37243-1102

Filing Information

Name: NC Railroad, LLC

General Information

SOS Control #	000507850	Formation Locale:	TENNESSEE
Filing Type:	Limited Liability Company - Domestic	Date Formed:	12/05/2005
	12/05/2005 8:49 AM	Fiscal Year Close	12
Status:	Inactive - Dissolved (Administrative)	Member Count:	1
Duration Term:	Perpetual		
Managed By:	Manager Managed		

Registered Agent Address
DANIEL A ROLING
ROAD
8915 GEORGE WILLIAMS
KNOXVILLE, TN 37923

Principal Address
8915 GEORGE WILLIAMS ROAD
KNOXVILLE, TN 37923

The following document(s) was/were filed in this office on the date(s) indicated below:

Date Filed	Filing Description	Image #
08/09/2011	Dissolution/Revocation - Administrative	A0088-2291
Filing Status Changed From: Active To: Inactive - Dissolved (Administrative)		
Inactive Date Changed From: No Value To: 08/09/2011		
06/02/2011	Notice of Determination	A0076-0269
12/09/2010	Conversion	6801-0358
Filing Name Changed From: NC RAILROAD, INC. To: NC Railroad, LLC		
Principal Address 1 Changed From: 8915 GEORGE WILLIAMS To: 8915 George Williams Road		
Principal Address 2 Changed From: RD. To: No value		
Shares of Stock Changed From: 1,000 To: No value		
Managed By Changed From: No Value To: Manager Managed		
03/15/2010	Articles/Statement of Correction	6675-0182
03/11/2010	2009 Annual Report	A0009-2371
05/07/2009	2008 Annual Report	6533-0225
10/29/2008	Administrative Amendment	6394-0985
10/28/2008	Application for Reinstatement	6395-1087
10/15/2008	2007 Annual Report	6390-0734

Filing Information

Name: NC Railroad, LLC

Registered Agent Changed

08/22/2008 Dissolution/Revocation - Administrative

ROLL 6366

06/17/2008 Notice of Determination

ROLL 6325

04/04/2007 2006 Annual Report

6015-1643

12/05/2005 Initial Filing

5622-0419

Active Assumed Names (if any)

Date

Expires