

SERVICE DATE - MAY 19, 2020

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1261

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
—ADVERSE ABANDONMENT—
SARATOGA AND NORTH CREEK RAILWAY IN TOWN OF JOHNSBURG, N.Y.

Decided: May 18, 2020

On September 10, 2018, the New York State Department of Environmental Conservation (the Department) filed an application under 49 U.S.C. § 10903 requesting a third-party, or “adverse,” abandonment of the Saratoga and North Creek Railway (SNCR) over approximately 29.71 miles of rail line between milepost NC 0.0 at North Creek, N.Y., and its terminus at milepost NC 29.71 near the former Tahawus Mine (the Line). Notice of the application was served and published in the Federal Register on September 28, 2018 (83 Fed. Reg. 49,151).

By decision served on December 18, 2019, the Board sought supplemental information regarding whether and how a pending receivership proceeding involving the San Luis & Rio Grande Railroad, Inc. (SLRG) and certain SLRG affiliates and subsidiaries, including SNCR, in the U.S. District Court for the Northern District of Illinois¹ and a pending bankruptcy proceeding involving SLRG in the U.S. Bankruptcy Court for the District of Colorado (the Bankruptcy Court)² affect this proceeding, including the effect of any stays in those cases.

In response to the December 18, 2019 decision, William A. Brandt, as chapter 11 trustee for the bankruptcy estate of SLRG (the Trustee) stated that the automatic stay imposed under 11 U.S.C. § 362(a) by the filing of SLRG’s bankruptcy case did not apply to SNCR at that time. He noted, however, that that analysis would change if a bankruptcy petition were filed on behalf of SNCR itself and that the Bankruptcy Court had authorized, but not directed, him to file such a petition on behalf of SNCR. The Trustee requested a 60-day abeyance of this proceeding to allow time for him to determine whether to file such a petition. By decision served on March 3, 2020, the Board granted the request and held the proceeding in abeyance until April 17, 2020.

¹ Big Shoulders Capital LLC v. San Luis & Rio Grande R.R., Case No. 19-cv-06029 (N.D. Ill.).

² In re San Luis & Rio Grande R.R., Case No. 19-18905-TBM (Bankr. D. Colo.).

On April 17, 2020, the Trustee filed a response stating that on March 30, 2020, he filed a voluntary chapter 11 bankruptcy petition on behalf of SNCR in the Bankruptcy Court.³ The Trustee states that the commencement of a bankruptcy case generally operates as an automatic stay under 11 U.S.C. § 362(a) on certain actions against the debtor and property of the debtor's bankruptcy estate, but, citing § 362(b)(4), asserts that there is a question as to whether the automatic stay applies to this proceeding. The Trustee, therefore, requests that the Board continue to hold this proceeding in abeyance, arguing that he needs until the end of the year to determine if SNCR can be sold as an operating railway.⁴

Given the ongoing bankruptcy proceeding, the request to continue to hold the proceeding in abeyance will be granted. Accordingly, the proceeding will be held in abeyance until further order of the Board.

It is ordered:

1. The proceeding is held in abeyance until further order of the Board.
2. This decision is effective on its service date.

By the Board, Allison C. Davis, Director, Office of Proceedings.

³ In re Saratoga and N. Creek Ry., Case No. 20-12313-TBM (Bankr. D. Colo.).

⁴ On April 17, 2020, the Essex County Board of Supervisors wrote to urge the Board to deny the adverse abandonment application and support local efforts to reactivate the Line. Warren County, N.Y. filed a letter on April 23, 2020, disputing the Trustee's assertion that he has been negotiating with Warren County (among others) regarding a potential sale of SNCR's assets. And on May 11, 2020, SNCR wrote to withdraw its previous statement of non-objection to proceeding with abandonment on a voluntary basis. None of these parties, however, expressly opine on the Trustee's abeyance request.