

BEFORE THE
SURFACE TRANSPORTATION BOARD

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DOCKET NO. AB-1296X

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

**APPLICANT'S REPLY TO APPEAL FILED BY ARKANSAS
OKLAHOMA RAILROAD CO.**

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*

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R. J. Corman Railroad Property, LLC (“RJC Railroad Property” or “Applicant”), by counsel, pursuant to 49 CFR 1011.2(a)(7), submits this Reply to the appeal of the decision of the Office of Proceedings Director Allison C. Davis, served June 26, 2020 (“Director’s Decision”) filed by Arkansas Oklahoma Railroad Co. (“AOK”) on June 29, 2020. For the reasons set out below, the Director’s Decision, dismissing AOK’s offer of financial assistance, is based on substantial evidence, consistent with established law, and should be affirmed by the Board.

A. AOK’s Offer was Properly Rejected; Totality of Circumstances Demonstrates No Need for Continued Rail Service on the Line.

The Director’s Decision correctly states that this “abandonment exemption is for a line of railroad with no active shippers, and on which there has been no service since 2013.” (Director’s Decision, p. 2). While operated by a rail carrier, and for many years before 2013, when all shipping ceased, the only freight shipped over the Line was high sulfur coal from a single location.

All offerors in OFA proceedings are required to show specific and concrete evidence of a continued need for rail service, and in all proceedings, the Board considers the totality of the circumstances in evaluating the evidence submitted by offerors. Offers of Financial Assistance,

EP 729 (STB served June 29, 2017). But, where there has been no need for rail service for seven years and prior to that the Line was exclusively used for transporting high sulfur coal, the obvious question is: What has changed simply as a result of the filing of a class exemption to abandon the Line? ¹

The evidence relied on by AOK to establish a need for continued rail service consists solely of a handful of letters which do not even suggest any specific and concrete evidence of a need for continued rail service. Rather, as correctly pointed out in the Director's Decision, the letters are, at best, only evidence of generalized community support.²

For example, Anderson County's Mayor's June 4, 2020 letter offers support for the OFA process, but otherwise only notifies the Board of the intent to involve the North East Tennessee Rail Authority ("NETRA"). Campbell County, Tennessee's letter speaks only to tourism and the possibility of an excursion train.³ Neither letter provides specific or concrete evidence of a need for continued rail service. The Tennessee Mining Association's ("TMA") May 21, 2020 letter is no different except for its passing assertion that there are "imminent freight needs." However, TMA's assertion is wholly unsupported by the record in that there is not a single statement of fact upon which its claim is based and can carry no weight in this matter.

AOK's appeal also claims that evidence of "three potential rail freight shipper interests" was submitted in support of its OFA. Use of the phrase "potential rail freight shippers" is quite generous upon examination of the evidence submitted. National Coal, the only shipper on the Line

¹ In the Board's discussion of its final OFA rule, the Board also points out that that an offeror is "likely to have a more difficult time showing a continued need for service over a line where there has not been service in at least two years." Offers of Financial Assistance, EP 729 (STB served June 29, 2017).

² AOK made no attempt to provide evidence of the other factors set forth in 49 CFR § 1152.27(c)(1)(iv)(E), including evidence demonstrable commercial need for service (as reflected by support from shippers or received on the line or other evidence of an immediate or significant commercial need); that acquisition of freight operating right would not interfere with current or planned transit services; evidence that continue service is operationally feasible.

³ The Campbell County Mayor fails to address whether an excursion train is even operationally feasible.

in recent history, has not shipped coal since 2013 and has yet to make one representation in this proceeding as to when or if it will resume coal mining in the area. As pointed out by the Director's Decision, National Coal admits market conditions do not permit them to mine and that it *hopes* to resume shipment when the market recovers. (Director Decision, p. 3). National Coal fails to describe or provide any specifics about the current market conditions that prevent it from mining, what would constitute a recovery in the market, or any meaningful analysis of whether a recovery is even possible.⁴

Evergreen Packaging Company's ("Evergreen") letter of support submitted on June 23, 2020 is likewise unhelpful to AOK's position. Mr. Roger Alley, the Royal Blue Chip Mill Supervisor of the plant in Pioneer, Tennessee states that unspecified "loggers" who "regularly harvest timber from the lands along the Line" could "significantly benefit" from keeping the Line operational. (June 23, 2020 Letter from R. Alley). Notably, Evergreen has never shipped on the Line. A brief look at an area map demonstrates why this is the case. Mr. Alley's plant is located just off of a major U.S. Interstate (I-75 South) and appears to already be serviced by Norfolk Southern Railway ("Norfolk Southern"). Moreover, Norfolk Southern also has an established line that runs in the same southerly direction as the instant Line which connects at Oneida. (Map, Attached as Exhibit A). In short, there is no reason to conclude from Mr. Alley's letter that anything has changed (much less a commitment to use the Line) in how unspecified loggers who are allegedly already harvesting timber from lands along the Line do business that would suggest a need for continued rail service.

⁴ It is worth noting that nowhere in the materials submitted by AOK is there even an offer of conjecture as to how rail shipped high sulfur steam coal might somehow economically compete with natural gas consistently available at less than \$2.75 per unit.

Finally, the NETRA's letter incorrectly relies on the letter from Mr. Alley in as much as it claims that the "loggers *remain* in need of this Line in order to move logs from the three-county areas to this wood chip mill." As such loggers have never previously used this Line while operated by a rail carrier, it is unclear how they can *remain* in need of it. The NETRA then cites National Coal as demonstrating additional need, even though National Coal itself is unwilling to articulate a need that is anything other than a "hope" to resume mining someday. Finally, NETRA vaguely suggests that the Scott County Industrial Development Board is working on a purchase of land and with an importer of wood products that has an "interest" in shipping on the Line. Although NETRA claims rail service "should be needed" in the "near future", it is apparent no land has been purchased, and no facility has been built; nor does there any suggestion of volume of freight service needed.⁵

What is apparent from the even the most cursory review of the letters relied on by AOK is that they are evasive and replete with generalizations and superficial statements, none of which demonstrate a need for continued service on the Line.⁶

B. The Director's Decision does not Constitute Manifest Injustice

AOK argues in its appeal that the Director's Decision should be overturned to prevent manifest injustice. To do so, AOK claims that the Director's Decision applied a new standard in arriving at its decision, one that does not exist in the regulation. AOK claims the Director required "communities to provide specific details demonstrating a commercial need for rail service."

⁵ After the Director's Decision on June 26, 2020 was filed, I Rail Car Services, LLC submitted an untimely letter on July 2, 2020, stating it has been in negotiations with AOK to locate a car repair business on the Line. The Director's Decision, however, does nothing to stop AOK from negotiating purchase of the Line from RJC Railroad Property outside of the OFA process. (Director's Decision, p. 4). Nor does a car repair business demonstrate a need for continued rail service on the Line.

⁶ Obviously, the rail corridor need not disappear as a result of this abandonment. Through an appropriate trail use agreement, the corridor and its railroad easement can be kept intact and available for rail service should the hopes expressed in AOK's submissions ever materialize into realities.

(Appeal Document, p. 2). AOK is essentially lifting one line from the Director's Decision to manufacture an issue where there is none. It is readily apparent from the Director's Decision that it determined that this singular evidence of generalized community support, evaluated in the totality of circumstances did not demonstrate a strong showing of need for continued rail service sufficient to warrant permitting a force sale of a Line through the OFA process. AOK's claim of manifest injustice is nothing more than a red herring and should be rejected.

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 July 2, 2020, I served the foregoing Reply 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

Tom McFarland
Thomas F. McFarland, P.C.
208 S. LaSalle St., #1666
Chicago, IL 60604-1228
Email: tmcfarland@ameritech.net

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

Terry Frank
Mayor, Anderson County, Tennessee
100 North Main Street, Suite 208
Clinton, TN 37716
Email: tfrank@andersontn.org

Christopher J. Schroeck
Counsel for National Coal, LLC
302 S. Jefferson St.
Roanoke, VA 24011
Email: chris.schroeck@bluestone-coal.com

Daniel R. Elliott
Daniel Elliott PLLC
2000 Pennsylvania Ave NW
Suite 7000
Washington, DC 20006
Email: danelliottiii@outlook.com

Chuck Laine
Tennessee Mining Association
12227 S Fox Den Dr
Knoxville, TN 37934
Email: info@tnmining.com

/s/ Catherine S. Wright

