

SURFACE TRANSPORTATION BOARD

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

Docket No. AB 1296X

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

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

APPEAL OF DIRECTOR'S DECISION

North East Tennessee Railroad Authority ("NETRA") respectfully appeals a decision of the Surface Transportation Board ("Board") Office of Proceedings Director Allison C. Davis ("Director"), served June 26, 2020 ("Director's decision") in the above-referenced proceeding.¹ The appeal is governed by 49 C.F.R. § 1011.6(b), which provides that such an appeal will be granted only in exceptional circumstances to correct a clear error of judgement or to prevent manifest injustice. For the reasons stated below, this appeal should be granted to correct a clear error of judgment or to prevent manifest injustice.²

The Director's decision rejects an OFA filed by Arkansas-Oklahoma Railroad, Inc. ("AOK") to acquire a 41.05-mile rail line between Oneida and Devonia, TN ("Line") for continued rail operation. The ground alleged for such rejection is that AOK failed to demonstrate thorough evidence that there is a

¹ While NETRA did not file the Offer of Financial Assistance ("OFA") in this proceeding, it did file a letter of support and was specifically referenced in the OFA. NETRA has standing to file this appeal under the Board's more liberal standing requirements. *See San Jacinto Rail Limited Exemption and the Burlington Northern and Santa Fe Railway Company Operation Exemption – Build-Out to the Bayport Loop near Houston, Harris County, TX*, FD 34079, slip op at 1 n. 3 (STB served July 9, 2003). *See also Lamoille Valley Railroad Company, Inc. – Modified Certificate of Public Convenience and Necessity*, FD 33709, slip op. at 1 (STB served May 17, 1999). If the Board does not find standing, NETRA seeks to intervene in this appeal to add crucial information about a continued need for rail service.

² NETRA asserts that the Director's decision is based on a "clear error of judgment" based on the new evidence of shipper need for rail service set forth herein.

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continued need for rail service on the Line, as required by 49 C.F.R. § 1152.27(c)(1)(iv)(E). (Director's decision at 2). This requirement provides:

Demonstrate that there is a continued need for rail service on the line, or portion of the line, in question. Examples of evidence to be provided include: Evidence of a demonstrable commercial need for service (as reflected by support from shippers or receivers on the line or other evidence of an immediate and significant commercial need); evidence of community support for continued rail service; evidence that acquisition of freight operating rights would not interfere with current and planned transit services; and evidence that continued service is operationally feasible.

The Board has explained that these are "the types of evidence the Board will look for when considering the totality of the circumstances. . . , not specific requirements; offerors will not be strictly required to meet any one of (or all) the criteria to show a continued need for rail service." *Offers of Financial Assistance*, EP 729, slip op. at 17 (STB served June 29, 2017). The Director found that "[h]ere, although AOK has provided evidence of general community support for its OFA, ... it has not sufficiently demonstrated 'a continued need for rail service' on the Line under § 1152.27(c)(1)(iv)(E)." Director's decision at 2. The Director then explains that "[l]acking in the record is specific information such as statements from actual prospective users of the Line explaining their intent to use freight rail service in the foreseeable future or the actual volume of shipments they anticipate making."

Since the date of the Director's decision, NETRA has found strong evidence of a commercial need for service on the Line. First, the Straight Fork Timber Company ("Straight Fork") has submitted a letter, attached hereto, that demonstrates alone sufficient evidence of a need for rail service.³ Straight Fork states (with footnote added) as follows:

Thank you for reaching out to my company and mentioning the possibility of being able to utilize the rail line to load and ship our logs to be delivered to several of our vendors. We previously had reached out to R.J. Corman when Georgia Pacific was looking to purchase our products to ship to their plant in Warm Springs GA by rail from Huntsville, TN. This was the only cost

³ While NETRA understands that it did not provide information about this shipper in its Letter of Support, it asks the Board to consider this strong evidence in this appeal. As a result of the short time to draft its Letter of Support and the ongoing pandemic, it was difficult to reach out to the companies on the Line. NETRA believes this would be the equitable result especially in a community that is impoverished with limited resources.

effective way for both companies to make this work. Unfortunately R.J. Corman never followed up with us on ways to ship on their line.

If we had the opportunity we would look to ship to several of our clients in the region including Columbia Forest Products in Old Fort, NC and Frank Miller Lumber in Union City, IN to name a few. Currently our only shipping option is by truck, which limits expanding our reach to other markets outside of our region mainly due to trucking weight limits and distance costs. We would be able to ship nearly twice the quantity on one rail car over trucking, which makes rail more affordable and will allow our business to grow. I estimate we would average 900 to 1100 rail car shipments annually if not more as we market this option to new and existing clients.⁴

Moreover, NETRA mentioned the desire of a rail car repair and storage company, IRAIL Car Services (“IRAIL”), to locate on the Line in its Letter of Support filed herein, which was not mentioned in the Director’s decision. Since that time, IRAIL has filed a letter under seal in this proceeding on July 2, 2020, that demonstrates further evidence of a commercial need for rail service on the Line for rail car repair and storage. This operation would add hundreds of additional rail cars annually on the Line that would be handled by AOK.

Moreover, the Director notes that “NETRA also asserts that a ‘large volume importer of foreign wood’ has an interest in shipping on the Line, but it provides no more details.” Director’s decision at 3. This company is in the process of purchasing land on the Line to begin its new operation which is why it has not sought rail service in the past. This deal is subject to a non-disclosure agreement which is why NETRA cannot provide any more detail.

Based on these three shippers, NETRA has now demonstrated the “commercial need for service” based on the over one thousand cars annually that would move over the Line. *See 1411 Corporation – Abandonment Exemption – in Lancaster County, PA*, AB-581X, slip op. at 5-6 (STB served Sept. 6, 2001) (need for continued rail service found despite no traffic on line for ten years and only one shipper expressing desire to resume rail service); *Consolidated Rail Corporation – Abandonment Exemption – in*

⁴ In addition to not responding to Straight Fork’s request for rail service, RJ Corman did not respond to a request for service from NovaDX Ventures Corp/Sand Storm Metals and Energy. Moreover, RJ Corman has ripped out significant portions of the Line including the 6-mile long Beech Fork line that was connected to the Line.

Bergen and Passaic Counties, NJ, AB-167 (Sub-No. 1151X) (STB served Oct. 30, 1997) (OFA permitted with one shipper); *Union Pacific Railroad Company – Abandonment – in New Madrid, Scott and Stoddard Counties, MO*, AB-33 (Sub-No. 261) (same). Moreover, it already has demonstrated “community support for continued rail service.” As a result, the Board should find that NETRA and AOK have met this requirement of a “continued need for rail service” and grant this appeal to prevent manifest injustice or correct a clear error of judgment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2020, I served the foregoing NETRA Appeal of Director's Decision using the below email addresses on all parties of record in this proceeding:

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Mayor Tibbals,

6/26/20

Thank you for reaching out to my company and mentioning the possibility of being able to utilize the rail line to load and ship our logs to be delivered to several of our vendors. We previously had reached out to R.J. Corman several years ago when Georgia Pacific was looking to purchase our products to ship to their plant in Warm Springs GA by rail from Huntsville, TN. This was the only cost effective way for both companies to make this work. Unfortunately R.J. Corman never followed up with us on ways to ship on their line.

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Please keep me posted on your progress and let me know if you need anything else from me. I look forward to working with you if the line is re opened for service.

Eric Dennis
CEO/General Manager
Straight Fork Timber Company

Timber
Forestry
Land
GIS

VERIFICATION

I, Terry Frank, Mayor of Anderson County and Chairman of the North East Tennessee Railroad Authority, hereby verify under the penalty of perjury that to the best of my knowledge, the foregoing Appeal of the Director's Decision is true and correct. Further, I certify that I am qualified and authorized to make such verification on behalf of Anderson County and the North East Tennessee Railroad Authority in connection with this proceeding before the Surface Transportation Board.

Executed this 6 day of July, 2020



Terry Frank
Mayor, Anderson County;
Chairman, North East
Tennessee Railroad Authority