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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 REPLY TO APPEAL FILED BY THE NORTH EAST
TENNESSEE RAILROAD AUTHORITY**

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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 its 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 North East Tennessee Railroad Authority (the “NETRA”) on July 6, 2020. The NETRA’s appeal or in the alternative, to intervene in Arkansas-Oklahoma Railroad Company’s (“AOK”) appeal, should be denied and the letters of support filed after the Director’s Decision was issued should be stricken from the record.

The NETRA did not make an offer of financial assistance in this case and has no standing to appeal the Director’s Decision. Moreover, the NETRA’s request to intervene in AOK’s appeal to submit additional information should be rejected as it ignores established deadlines and the additional information is not material to the appeal.

A. The NETRA’s Belated Attempt to Revive the OFA is Not in Good Faith or Consistent with Board Precedent.

The NETRA’s appeal is premised on a false narrative. It claims the Board should accept its untimely efforts supplement the record and overturn the Director’s Decision “as a result of the

short time to draft its Letter of Support and the on-going pandemic, it was difficult to reach the companies on the Line.”¹ (Footnote 3, page 3 of Appeal). The undisputed facts in the record establish the opposite is true.

Mr. Terry Frank, Mayor of Anderson County, who is also one of the three statutory members of the NETRA Board, was first notified that RJC Railroad Property would be commencing the subject abandonment proceedings by letter from counsel for RJC Railroad Property dated January 8, 2020.² Mr. Frank did not respond to that letter. Not until four months later, on May 11, 2020, did Mr. Frank submit a letter to the Board stating that he intended to ask the NETRA to take a formal position on the abandonment. Significantly, he also notes in that letter that he had been in direct contact with the OFA offeror, AOK, even before RJC Railroad Property filed the subject notice of exemption to abandon the Oneida Line.

On June 4, 2020, Mr. Frank filed another letter with the Board, stating a NETRA Board meeting was scheduled for June 16, 2020 to authorize funds to assist in the OFA process. On June 23, 2020, the NETRA filed a letter of support, the same day AOK’s OFA was due - which date was the result of an extension granted to AOK by the Board. Despite having five and a half months to gather and provide support for AOK’s OFA and after admittedly working closely with AOK on the OFA process, the NETRA failed to identify one potential shipper on the Line or otherwise provide evidence of a need for continued rail service. Given this, the NETRA’s failure to produce evidence supporting AOK’s OFA by the June 23, 2020 deadline cannot be excused due to shortness of time or the pandemic.

¹ The NETRA uses the phrase “companies on the Line” yet, none of the information submitted to date by the NETRA in support of the OFA process relates to an active company located on the Line.

² Even prior to the January 8, 2020 letter, in 2019, representatives of RJC Railroad Property held a conference call with Mr. Frank and other local officials to discuss possible filing of abandonment proceedings for the Line.

Moreover, the NETRA provides absolutely no precedent or other authority to support a claim that an entity such as itself, who is not the offeror of an OFA, has standing to appeal to a rejection of an OFA. The NETRA admits it does not have standing but urges the Board to apply a more “liberal” standard as reflected in the *San Jacinto* decision.³ However, the footnote referenced by the NETRA involves standing to submit environmental comments in a proceeding, not an ability to appeal a Director’s Decision in accordance with 49 CFR 1011.2(a)(7). The NETRA’s reliance on *Lamoille Valley*⁴ is also misplaced as it does not involve an offer of financial assistance. Moreover, the entity that was permitted to intervene in the proceedings was the State of Vermont, and significantly, was the owner of the line in question. The NETRA does not own the Oneida Line, nor did it submit an offer of financial assistance in this matter. It cannot now appeal the Director’s Decision in its own right.

Moreover, the NETRA’s request to intervene in the appeal to submit additional evidence should be rejected. As noted above, the NETRA has known of this possible abandonment long before the notice of exemption was filed. The Board has well-established procedures which include reasonable timeframes for acting so that the Board can operate fairly and efficiently. RJC Railroad Property complied with those rules, experienced delays as a result in AOK’s own failure to timely pursue its offer of financial assistance, and now is being forced to expend more time and resources addressing belated and so-called “new evidence” supporting the need for continued rail service. The NETRA’s current effort is simply an attempt to circumvent the consequences of its failure to file its own OFA or even seek an extension of time in which to do so.

³ *San Jacinto Rail Limited Exemption and The Burlington Northern and Santa Fe Railway Company Operation Exemption – Build-Out to the Bayport Looper near Houston, Harris County, TX*, FD 34079, slip op at 1 n.3 (STB served July 9, 2003).

⁴ *Lamoille Valley Railroad Company, Inc. – Modified Certificate of Public Convenience and Necessity*, FD 33709, slip op. at 1 (STB served May 12, 1999).

In fact, the NETRA's failure to present its proposed evidence by the June 23, 2020 deadline for the OFA begs the question: If the need for continued rail service by these alleged potential shippers was so critical, then why could the NETRA not identify that need and present its evidence by the June 23, 2020 deadline to file the OFA; particularly where, as here, the NETRA's own communications demonstrate that it had been aware for more than five (5) months that abandonment of the Line was imminent.

In short, the NETRA's actions are not in good faith and demonstrate a lack of respect for the reasonable procedures adopted by the Board. Moreover, there is simply nothing preventing AOK (or the NETRA) from timely and in good faith negotiating with RJC Railroad Property to purchase the Oneida Line.

B. The NETRA Incorrectly Asserts the Existence of Evidence of Three (3) Shippers Exists; Information Should be Stricken

The NETRA's request to intervene to provide "crucial information" of three (3) shippers should also be denied because such information is not material to issue before the Board.

Since the Director's Decision rejecting AOK's OFA was issued on June 26, 2020, three letters and the NETRA's appeal request have been filed. Specifically: (1) IRAIL Car Services submitted a heavily redacted letter of support dated July 2, 2020; (2) a June 22, 2020 letter from the Tennessee Department of Transportation (taking no position on the OFA) was submitted on July 6, 2020 by counsel for the NETRA; and (3) the NETRA submitted its appeal document as well as a letter from Straight Fork dated June 26, 2020 and addressed to "Mayor Tibbals" on July 6, 2020.

Citing these letters, the NETRA states that it has presented new information of "three shippers" on the Line. The first "shipper" identified is IRAIL Car Services which states it seeks to expand its business by locating on the Line. IRAIL Car Services is not in the business of

shipping freight. Even the NETRA acknowledges that IRAIL Car Services' desire is to locate a car repair shop and storage company on the Line. Car storage rail space may certainly be in demand currently, but it does not involve the shipping of freight.

The NETRA further urges the Board to change its position based on speculations about an importer of foreign wood who has an "interest" in shipping and states that no further details can be shared due to a non-disclosure agreement. The simple and uncontroverted fact is that there is only one facility even having access to the line; no freight has been shipped by rail from that facility for at least seven years, and no one has even hinted of an objectively plausible change of circumstances which might cause a new rail freight customer to locate on the line or the existing facility to resume the shipment of high sulfur steam coal, its only commodity, at any reasonably immediate or reasonably identifiable future date. At best, the NETRA points to speculative future economic development on the Line, and nothing more.

Finally, the NETRA cites to new "shipper" information in the form a letter from Straight Fork Forest Management LLC. Its CEO, Mr. Dennis states that he previously reached out to someone at RJC Railroad Property several years ago without success about shipping on the Oneida Line when Georgia Pacific was looking to purchase its products. In doing so, Mr. Dennis fails to state with any specificity when he reached out to RJC Railroad Property, who he reached out to, or why he did not follow-up.⁵ There is no hint whether Georgia Pacific's interest in dealing with Mr. Dennis ever came to fruition and if it did not, if that was the reason Mr. Dennis did not follow-

⁵ Without any context, the NETRA states in a footnote that another company "NOVADX Ventures Corp/Sand Storm Metals and Energy", requested service from RJC Railroad Property and was ignored. This clear and unsubstantiated attempt to paint RJC Railroad Property in a negative light should be seen for what it is. Significantly, President and CEO of NOVADX Venture Corp, Daniel A. Roling, was previously associated with National Coal, LLC, who has filed opposition to the abandonment. See <http://www.nationalcoalcouncil.org/NCC-member-focus/2017-06-Roling.pdf>. NOVADX is a capital investment company; Sandstorm Metals & Energy Ltd. acquires energy and base metal volume-based production payment (VPP) agreements from companies that have advanced stage development or operating projects. Neither of these companies are located on the Line in question.

up with RJC Railroad Property. The meaningful and again undisputed point is that no potential shipper has claimed or could truthfully claim that RJC Railroad Property ever refused to quote it a reasonable rate and reasonable terms or the movement of any freight over this Line.

Nonetheless, Mr. Dennis states that he would look to ship lumber on the Line to two specific clients (in Indiana and North Carolina) and estimates an average annual number of rail car shipments. Mr. Dennis assumes this will be more cost-effective without any details and certainly, fails to explain how using the Oneida Line when his company is not located on the Line would be more beneficial than the two Norfolk Southern Lines that are in similar proximity to his company. Nor does Mr. Dennis address whether these two companies in fact use rail service; the North Carolina customer's website makes no reference to accepting shipments by rail.

Finally, the case law cited by the NETRA in support of its claim these "three shippers" are sufficient evidence of the need for continued service on the Oneida Line is suspect. Even assuming the NETRA has demonstrated evidence of three shippers, which is denied, none of the cases cited by the NETRA support its position. Contrary to the NETRA's statement that the *1411 Corporation*⁶ decision demonstrates the need for continued rail service was found where there was only one shipper and no traffic online for ten years. What the NETRA ignores is that the one (past) shipper was the offeror and "offered a convincing explanation for its recent reliance on trucks and its desire to resume using rail service, and it points to its past use of the Line and its previous attempts to buy the Line." The NETRA's reliance on *Consolidated Rail*⁷ decision is also misplaced inasmuch as the Board denied a city's attempt to reopen OFA proceedings where applicant and the one active shipper on the line had already reached a purchase agreement. If the

⁶ *1411 Corporation – Abandonment Exemption – in Lancaster County, PA*, AB-581X, slip. op. at 5-6 (STB served Sept. 6, 2001).

⁷ *Consolidated Rail Corporation – Abandonment Exemption – Bergen and Passaic Counties, NJ*, AB-167(Sub-No. 1151X)(STB served Oct. 30, 1997).

owners of the coal wash plant, the only former shipper on the Oneida Line, had any desire to maintain rail freight service on the Line for any purpose, they certainly had every right and every opportunity to file their own OFA in this proceeding. The *Union Pacific*⁸ decision cited by the NETRA involved an active shipper on the line in question, which is not true in the instant case.

C. Conclusion

The Board has established well-defined requirements for the offer of financial assistance process for the specific purpose of avoiding delays and prejudice to the parties involved. AOK was provided two extensions during its OFA process to prepare its offer of financial assistance. Neither AOK nor the NETRA, should now be permitted to engage in belated attempts to circumvent those requirements or to bolster AOK's case, particularly with proposed evidence that even if timely submitted would not have controverted the undeniable facts underlying the Director's Decision, after all deadlines and extended deadlines have passed and the Director's Decision issued. This is not about manifest injustice; this is about one party attempting take advantage of Board processes which might entitle it to purchase a line without following any of the requirements for those processes, all while delaying an applicant's ability to liquidate and dispose of an asset which has been idle and unproductive for more than seven years. If either of them is genuinely serious about doing so, nothing prevents AOK or even the NETRA from negotiating with the Applicant to purchase the Line outside the abandonment process.

Applicant respectfully requests that the NETRA's appeal as well as its motion to intervene in AOK's appeal to submit new information be rejected. Furthermore, RJC Railroad Property requests that all additional information submitted past the OFA filing deadline and after the Director's Decision be stricken from the record as untimely and/or without substantive value.

⁸ *Union Pacific Railroad Company – Abandonment Exemption – in New Madrid, Scott and Stoddard Counties, MO*, AB-33 (Sub-No. 261)(STB served Sept. 10, 2009).

Respectfully submitted,

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CERTIFICATE OF SERVICE

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