

SERVICE DATE – AUGUST 5, 2020

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36389

CATTARAUGUS LOCAL DEVELOPMENT CORP.—
PETITION FOR DECLARATORY ORDER

Docket No. AB 1300X¹

CATTARAUGUS LOCAL DEVELOPMENT CORP.—
ABANDONMENT EXEMPTION—IN CATTARAUGUS COUNTY, N.Y.

Digest:² The Board declines to issue a declaratory order and instead opens an abandonment exemption proceeding, which is held in abeyance to allow Cattaraugus Local Development Corporation to first file a verified notice of exemption for authority to acquire the line.

Decided: August 4, 2020

On March 4, 2020, Cattaraugus Local Development Corporation (CLDC) filed a petition for declaratory relief, requesting that the Board declare that a section of rail line in Cattaraugus County, N.Y. (the Line), has been abandoned pursuant to 49 U.S.C. § 10502, or, in the alternative, that CLDC may satisfy the requirements for an exempt abandonment pursuant to 49 U.S.C. § 10502.

CLDC, a not-for-profit corporation established to create community and economic development opportunities throughout Cattaraugus County, states that it acquired the Line in 2000 from the Cattaraugus County Industrial Development Agency (IDA). (Pet. 1.) CLDC explains that IDA acquired the Line from the Trustees of the Erie Lackawanna Railway Company (Erie Lackawanna), pursuant to an order of the U.S. District Court for the Northern District of Ohio, Eastern Division, dated February 28, 1980. (*Id.*) CLDC states that IDA contracted with the New York & Lake Erie Railroad Company (NY&LE) to operate IDA's railroad holdings, and by the early 1990s, the Line was no longer in operation. (*Id.* at 2.) According to CLDC, NY&LE took steps toward initiating an abandonment proceeding in 1996, going as far as obtaining a docket number from the Board and providing notice to certain

¹ The petition filed in Docket No. FD 36389 will be docketed under Docket No. AB 1300X, as discussed below.

² The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

entities, but there is no record that NY&LE proceeded with a formal abandonment proceeding before the Board. (*Id.* at 2, 5.) However, CLDC asserts that NY&LE’s actions led IDA to believe abandonment had been approved, and IDA treated the Line as if it had been legally abandoned.³ (*Id.* at 2.)

CLDC states that, when it acquired the Line in 2000, it began developing the Line into the Senator Pat McGee Trail (McGee Trail) “as a Rails-to-Trails Program” and that the McGee Trail opened in 2005. (Pet. 3.) In September 2016, CLDC began taking steps to transfer ownership of the Line to New York State (the State) for continued operation of the McGee Trail. (*Id.*) CLDC states that, as part of that process, it became aware, in May 2019, that a certificate of abandonment from the Board had never been recorded in the real property records in Cattaraugus County. (*Id.*) According to CLDC, its research indicates that formal abandonment was never finalized. (*Id.*) Accordingly, CLDC requests that the Board confirm that the Line has been “de facto abandoned,” or, in the alternative, that CLDC may satisfy the requirements for an abandonment under the Board’s exemption procedures. (*Id.*)

The Board has discretionary authority under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321 to issue a declaratory order to eliminate controversy or remove uncertainty. See Bos. & Me. Corp. v. Town of Ayer, 330 F.3d 12, 14 n.2 (1st Cir. 2003); Intercity Transp. Co. v. United States, 737 F.2d 103 (D.C. Cir. 1984); Delegation of Auth.—Declaratory Order Proc., 5 I.C.C.2d 675 (1989). The Board will not institute a proceeding or issue a declaratory order to consider whether the Line has been de facto abandoned because Board precedent is clear that a carrier cannot abandon a rail line without Board authority. See, e.g., Landowners—Motion for Declaratory Order & Injunctive Relief, AB 1065 (Sub-No. 1X), slip op. at 6 (STB served Jan. 27, 2020); Zorzi—Pet. for Declaratory Order, FD 36016, slip op. at 5-6 (STB served Jan. 31, 2017). Because abandonment authority has not been granted for the Line, it remains a rail line subject to the Board’s jurisdiction. Given CLDC’s alternative request for a finding that CLDC may satisfy the requirements for an abandonment exemption, the Board will docket CLDC’s petition here under Docket No. AB 1300X for consideration under the Board’s abandonment exemption procedures.

However, under Board precedent, an entity that previously acquired a rail line without authority should remedy that error by later obtaining acquisition authority from the Board.⁴

³ CLDC adds that, under New York state law, the Commissioner of Transportation has the preferential right to acquire property that has been abandoned for railroad transportation purposes, so, in order to ensure clear title to the property, IDA requested and was granted a release of preferential rights by the New York State Department of Transportation. (Pet. 2-3.)

⁴ See, e.g., Oakland Glob. Rail Enter.—Pet. for Declaratory Order, FD 36168, slip op. at 10 (STB served Mar. 15, 2019) (directing parties to either seek acquisition authority for previously unauthorized acquisitions or explain why acquisition authority was not required); Allied Indus. Dev. Corp.—Pet. for Declaratory Order, FD 35477, slip op. at 6 (STB served Sept. 17, 2015) (noting that, “if the Board determines here that licensing authority for the transaction was necessary, and no after-the-fact authority is obtained, then the transaction would be void under federal law”); V&S Ry.—Pet. for Declaratory Order—R.R. Operations in

Because CLDC did not obtain Board authority when it purchased the Line in 2000, the Board will hold the abandonment proceeding in Docket No. AB 1300X in abeyance and direct CLDC to seek after-the-fact authority to acquire the Line by filing a verified notice of exemption pursuant to 49 C.F.R. part 1150 subpart D.⁵ See, e.g., City of Belfast, Me.—Aban. Exemption—in Belfast, Me., AB 1109X, slip op. at 1 n.2 (STB served Apr. 30, 2014) (holding abandonment proceeding in abeyance to allow the City to obtain after-the-fact acquisition authority); see also City of Belfast, Me.—Acquis. Exemption—Certain Assets of Belfast & Moosehead Lake R.R., Docket No. FD 35766. Once CLDC has obtained acquisition authority, the abandonment exemption proceeding may move forward, including completion of the required environmental review process.

It is ordered:

1. CLDC's petition will be docketed under Docket No. AB 1300X for consideration under the Board's abandonment exemption procedures.
2. Docket No. AB 1300X is held in abeyance pending further Board order.
3. CLDC is directed to file a verified notice of exemption to acquire the Line.
4. Docket No. FD 36389 is closed.
5. This decision is effective on its service date.

By the Board, Board Members Begeman, Fuchs, and Oberman.

Hutchinson, Kan., FD 35459, slip op. at 8 (STB served July 12, 2012) (stating that, if an entity was found by the district court to have purchased a rail line, it would be required to seek after-the-fact acquisition authority from the Board).

⁵ In its verified notice, CLDC should clarify the length of the Line and include the relevant mileposts. The petition for declaratory order varies when referring to the Line's total mileage. (See Pet., LeFeber Aff. at 2 (12.13 miles), Ex. A at 1 (14.2 miles), Ex. B at 1 (14.062 miles), and Ex. C at 1 (12.4 miles)). The New York State Department of Transportation's release describes the Line as extending from milepost 414.95 at the boundary line of Town/City of Salamanca, N.Y., to milepost 426.58 in Cattaraugus County, a distance of approximately 12.13 miles. (Pet., Ex. D at 2.)