

SERVICE DATE – AUGUST 14, 2020

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36400

CHESTER COUNTY, PA.—PETITION FOR DECLARATORY ORDER

Decided: August 13, 2020

By petition filed on May 20, 2020, Chester County, Pa. (the County), seeks a declaratory order that a railroad right-of-way in Warwick Township, Pa. and West Nantmeal Township, Pa., that was formerly owned by The Wilmington and Northern Railroad Company (Wilmington & Northern) has not been abandoned and that the Board retains jurisdiction over the right-of-way. The County states that it acquired the right-of-way from the Friends of St. Peters Village and Trailway in 2014¹ and now wishes to place a recreational trail along the right-of-way. (Pet. 2-3.)

In support of its request, the County submits a 1970 order from the Board's predecessor, the Interstate Commerce Commission (ICC), permitting Wilmington & Northern to abandon a portion of the French Creek Branch and the Falls Extension Branch. See Wilmington & N. R.R.—Aban. in Chester Cty., Pa., FD 26327 (ICC served Nov. 10, 1970).² The order required that the authority be exercised within one year and that two copies of a journal entry be submitted to the ICC within 60 days after exercising the authority. Id. at 2. The County also submits a document it obtained from the National Archives and Records Administration (NARA), which appears to be an undated journal entry. (Pet. 3, Ex. C.) The County argues that, because that document is not dated, "it cannot be determined with certainty whether the abandonment authorization . . . was timely exercised." (Pet. 3.) The County therefore "requests

¹ The deed describes the right-of-way as "[beginning] at a point in the centerline of said French Creek Branch at Engineering Station 34+71, more or less, thence extending along said right-of-way 27,601.2 lineal feet, more or less, to Engineering Station 310+72.2, more or less, to the place of ending." (Pet., Ex. A at 2.)

² Specifically, the 1970 order concerned: "(1) that portion of the French Creek Branch which extends in a general easterly direction from engineering station 140 + 68 to the end of the Branch at engineering station 310 + 63.2, a distance of 3.22 miles, and (2) the Falls Extension Branch which extends in a general southerly direction from engineering station 0 + 00 (beginning point of said Branch being the point of switch at engineering station 304 + 79 in the French Creek Branch) to the end of the Branch at engineering station 15 + 57, a distance of 0.29 miles, in Chester County, Pennsylvania." Wilmington & N. R.R., FD 26327, slip op. at 1. The County does not explain the apparent discrepancy in the length of the French Creek Branch as described in the 1970 order (3.22 miles) and the deed for the County's 2014 acquisition (approximately 5.2 miles).

that the Board determine that the line was not legally abandoned because there is no indication that [Wilmington & Northern] timely filed its journal entry with the ICC.” (Id.)

The Board intends to examine records in Docket No. FD 26327 that are held at NARA’s Maryland facility.³ In the meantime, to assist the Board in its evaluation of the petition, the County is directed to file, by September 14, 2020, any additional information or documentation it has concerning the status and history of the right-of-way since 1970. In that filing, the County should also explain, to the best of its ability, the discrepancy in the descriptions of the length of the French Creek Branch noted above. See supra note 2.

It is ordered:

1. The County shall submit the filing described above by September 14, 2020.
2. This decision is effective on its service date.

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

³ The Board has been in contact with NARA, which is in the process of coordinating a way to provide access to these records.