

SURFACE TRANSPORTATION BOARD**Docket No. AB 1296X**

ENTERED
Office of Proceedings
May 26, 2021
Part of
Public Record

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

PETITION TO REOPEN OR TO VACATE

Anderson County, Tennessee (“Anderson County”) respectfully petitions the Surface Transportation Board (“STB” or “Board”) to reopen on ground of material error (49 CFR § 1152.25(e)(4)), or alternatively, to vacate on grounds of significant procedural defects (49 CFR § 1152.25(e)(6)), this abandonment authorization.¹ The abandonment as proposed will result in a “stranded” segment of a branch line which is subject to the jurisdiction of the STB.

THE ABANDONMENT PROCEEDING

On February 8, 2020, R. J. Corman Railroad Property, LLC (“RJC”), filed a verified notice of exemption at the STB under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon a railroad line extending from milepost 0.95 at or near Oneida, Tenn., to the end of the line at milepost 42.0 at or near Devonia, Tenn., a distance of approximately 41.05 miles in Scott,

¹ The STB has stated “[i]n the case of an abandonment that has not yet been consummated, we clearly can entertain a petition to reopen on grounds of material error, new evidence, or substantially changed circumstances (49 CFR 1152.25(e)(4)), or to vacate on grounds of significant procedural defects, such as the loss of a properly filed protest or the failure of an applicant to afford the public the requisite notice (49 CFR 1152.25(e)(6)).” *CSX Transp. Inc.—Aban. — between Bloomingdale & Montezuma — in Parke Cty., Ind.*, AB 55 (Sub-No. 486), et al. (STB served Sept. 13, 2002).

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Campbell, and Anderson Counties, Tenn. (the “Line”) in the above-referenced proceeding.²

Notice of the exemption was served and published in the Federal Register on March 9, 2020 (85 Fed. Reg. 13,696). By decision and notice of interim trail use or abandonment served on April 17, 2020, the proceeding was reopened and a one-year period was authorized for the Tennessee Citizens for Wilderness Planning, Inc., and Cumberland Trail Conference, Inc., to negotiate with RJC for acquisition of the Line for use as a trail under the National Trails System Act, 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29.

Thereafter, Arkansas-Oklahoma Railroad Co. (“AOK”) sought and received two extensions of the deadline to file an OFA, and on June 23, 2020, AOK filed an OFA to purchase the Line. On June 26, 2020, the Director of the Office of Proceedings rejected an OFA to purchase the Line filed by AOK. AOK filed an appeal of the Director Order on June 29, 2020, which was denied by the Board in the Appeal Order served on September 23, 2020.

AOK filed a petition under 49 C.F.R. § 1115.3(a) for reconsideration of the Appeal Order on October 13, 2020. In a decision served May 3, 2021, the Board denied a petition for reconsideration of the Appeal Order.

During this reconsideration process, on February 18, 2021, the Mayor of Anderson County, Terry Frank, filed a letter questioning whether a branch line authorized for construction in 1921 by the Interstate Commerce Commission, the Board’s predecessor, was ever properly abandoned, and asserting that, if it was not, that line would be cut off from the interstate rail system if the Line in this proceeding is abandoned. (Frank Letter 1, 2.) RJC responded to Mayor

² As stated, Anderson County is one of the counties that the Line proposed to be abandoned in this proceeding runs through. It has a strong interest in seeing this Line remain in service because of its vital importance to the economic development of this area. Therefore, Anderson County has been paying close attention to this proceeding.

Frank's letter on February 23, 2021, asserting, among other things, that it never sought or received authority over the branch line, that the branch line was likely abandoned decades ago, and that, if it was not abandoned, it has likely been out of use since before 1960. (RJC Reply 2-4, Feb. 23, 2021.) With respect to this letter, the STB stated in the reconsideration decision that "Mayor Frank has not asked the Board to reopen the abandonment exemption granted for the Line in this proceeding or made any arguments under the Board's reopening (or other) standards. *See, e.g.,* 49 U.S.C. § 1322(c); 49 C.F.R. § 1152.25(e)(4)." Therefore, the Board did not address this matter in the reconsideration decision.

In the interest of resolving this important issue about the abandonment of the branch line that remains an active rail line subject to the jurisdiction of the Board, Anderson County seeks to reopen this proceeding on the ground of material error or alternatively, to vacate on grounds of significant procedural defects.

ARGUMENT

1. The Branch Line Is Subject to the Jurisdiction of the Board and Has Never Been Abandoned.

As discussed in Mayor Frank's February 18, 2021 letter to the Board, it has come to the attention of Anderson County that the branch line of the Line that is being abandoned in this proceeding was never properly abandoned. Anderson County researched the history of this branch line and found its construction had been approved by the Interstate Commerce Commission ("ICC") in 1921. *In the Matter of the Application of the Tennessee Railroad Company for a Certificate of Public Convenience and Necessity*, 65 I.C.C. 654 (1921). In this proceeding, the Tennessee Railroad Company, a carrier by railroad subject to the Interstate Commerce Act, on October 28, 1920, filed its application with the ICC for a certificate of public

convenience and necessity authorizing it to construct a branch line of railroad from a point on applicant's main line (the Line at issue in this abandonment proceeding) at the mouth of Beech Fork of New River, in Campbell County, Tenn., in a southeasterly direction along Beech Fork and Rocky Fork in Anderson County, a distance of 6 miles. The ICC found “[u]pon the facts presented we find that the present and future public convenience and necessity require or will require the construction and operation by the applicant of the branch line.” *Id.* at 656.

Therefore, it is beyond dispute that this branch line is subject to the jurisdiction of the Surface Transportation Board unless it was subsequently abandoned by the appropriate railroad.

The Line changed hands two times since this construction before it was acquired by RJC and apparently has involved this branch line in each of those transactions. However, upon extensive research of this branch line, there is no evidence that it has ever been abandoned at the ICC or STB. Therefore, it remains an active rail line. Consequently, Anderson County felt compelled to bring this to the attention of the STB in the event this branch line has been abandoned without authority. The STB has “stressed the well established principle that a carrier cannot escape our abandonment jurisdiction simply by terminating service or removing track.” *Chelsea Property Owners – Abandonment – Portion of the Consolidated Rail Corporation’s West 30th Street Secondary Track in New York, NY*, 8 I.C.C.2d 773, 790 (1992) (cites omitted).

2. Abandonment of this Line Will Cause the Branch Line to Be “Stranded” from the Interstate Rail System, Thereby Resulting in Material Error or a Significant Procedural Defect in this Proceeding.

This omission of the branch line from RJC’s notice of exemption in this proceeding clearly constitutes “material error” subject to reopening under 49 CFR § 1152.25(e)(4), or alternatively, a significant procedural defect subject to vacation under 49 CFR § 1152.25(e)(6). As noted, the abandonment of the Line in this proceeding will leave this active branch line

“stranded” from the interstate rail network in this area. Board precedent does not allow a segment of common carrier track to be "stranded" due to abandonment of an adjacent section of track: "It is well settled that so long as there is a common carrier obligation attached to a particular segment of track, the Board will not allow that segment to become isolated from the rail system as a result of the abandonment of the adjoining segment." *Central Oregon & Pacific Railroad, Inc. -Abandonment and Discontinuance of Service - In Coos, Douglas, and Lane Counties, OR*, STB Docket No. AB-515 (Sub-No. 2), slip op. at 12 (served Oct. 31, 2008). Consistent with this precedent, the Board also has denied abandonment exemptions where the proposed abandonment would result in a stranded segment. *Norfolk Southern Railway Company - Abandonment Exemption - In Baltimore County, MD*, STB Docket No. AB-290 (Sub-No. 237X), slip op. at 4 (served April 3, 2006) (Board denies exemption because, among other things, no party adequately addressed the apparent "stranded segment" created by the proposed abandonment); *Buffalo & Pittsburgh Railroad, Inc. -Abandonment Exemption - In Erie and Cattaraugus Counties, NY*, STB Docket No. AB-369 (Sub-No. 3X), slip op. at 7 (served Sept. 18, 1998) (Board denies exemption because, among other things, proposed abandonment would "isolate" another rail line "from the national rail system"). By stranding this branch line, RJC is effectively causing the branch line to be abandoned. This *de facto* abandonment should not be permitted to occur without proper authorization through the STB’s abandonment process.

As noted, RJC responded in defense to Mayor Frank’s letter that it never received authority from the STB to operate on this branch line. However, it does not dispute that it owns the branch line. Therefore, its admission that it never received authority to operate on this branch line only demonstrates that it failed to obtain proper authority to conduct an activity, i.e., purchase of rail line, subject to the exclusive jurisdiction of the STB.

RJC also claims the branch line probably was abandoned decades ago. However, RJC points to no abandonment proceeding before the STB, ICC, or the courts that confirm this claim. Anderson County searched ICC and STB decisions since the line became active and found no evidence of an abandonment or even a discontinuance of service. Therefore, abandonment authority has never been granted for this branch line.

In addition, RJC argues that there likely have been no rail operations on the branch line since 1960. While this claim certainly can be used as support for an abandonment, it has no relevance as to whether a line has been abandoned by the STB. As noted herein, a railroad cannot abandon a line by simply pulling up the track or ceasing service. It must obtain this authorization from the STB or the line remains active, like here.

Therefore, this omission of the branch line from RJC's notice of exemption clearly constitutes "material error" requiring reopening of this proceeding or a "significant procedural defect" warranting vacation of this abandonment, because it will be completely cut off from the interstate rail network. Its absence from this proceeding creates an untenable situation where a rail line that has never been abandoned has no access to the interstate rail network.

CONCLUSION

Based on the foregoing facts and argument, Anderson County respectfully asks the Board to reopen this proceeding and deny the exemption or vacate this proceeding.

Respectfully submitted,

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May 26, 2021

CERTIFICATE OF SERVICE

I hereby certify that on May 26, 2021, I served the foregoing Anderson County Petition to Reopen or to Vacate using the below email addresses on all parties of record in this proceeding:

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