

SERVICE DATE – JULY 13, 2021

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36400

CHESTER COUNTY, PA.—PETITION FOR DECLARATORY ORDER

Digest:¹ Chester County, Pa., filed a petition for declaratory order seeking a finding that an earlier owner of a rail line did not consummate the abandonment authorized by the Board's predecessor agency. This decision finds that the abandonment was consummated and denies the petition.

Decided: July 9, 2021

By petition filed on May 20, 2020, Chester County, Pa. (the County), seeks a declaratory order that a railroad right-of-way formerly owned by The Wilmington and Northern Railroad Company (Wilmington & Northern) has not been abandoned and that the Board retains jurisdiction over it. (Pet. 3-4.) The County states that it acquired the right-of-way from the Friends of St. Peters Village and Trailway in 2014 and now wishes to place a recreational trail along it.² (Id. at 2-3.)

In support of its request, the County submitted a 1970 order by the Board's predecessor, the Interstate Commerce Commission (ICC), permitting Wilmington & Northern to abandon and the Reading Company to "abandon operations" over a portion of the French Creek Branch and the Falls Extension Branch.³ See Wilmington & N. R.R.—Aban. in Chester Cnty., Pa., FD 26327 (ICC served Nov. 10, 1970).⁴ The order required that the abandonment authority be

¹ 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 Pol'y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

² 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 3.)

³ It appears that Wilmington & Northern and the Reading Company were related entities. See, e.g., RailAmerica, Inc. & Del. Valley Ry., Pet. to Set Subsidy Terms Under 49 U.S.C. 744(c) and 49 CFR Part 1155, FD 33285, slip op. at 1 (STB served June 24, 1998).

⁴ Specifically, the 1970 order concerned

(1) that portion of the French Creek Branch which extends in a general easterly direction

exercised within one year and that the ICC be notified by submission of a journal entry within 60 days after exercise of that authority. Id. at 2. The County also submitted a document it obtained from the National Archives and Records Administration (NARA), which appears to be an undated journal entry concerning “the abandonment of the French Creek Branch and the Falls Extension Branch.” (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 that the Board determine that the line was not legally abandoned because there was no indication that [Wilmington & Northern] timely filed its journal entry with the ICC.” (Id.)

In a decision served on August 14, 2020, the Board directed the County to file any additional information or documentation it has concerning the status and history of the right-of-way since 1970 and 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 4. That decision also stated that the Board intended to examine records in Docket No. FD 26327 held at NARA’s Maryland facility once the records were made accessible.

On September 21, 2020, the County filed its explanation for the discrepancy in the descriptions of the French Creek Branch but did not provide any additional information concerning the status of the right-of-way. The National Association of Reversionary Property Owners also filed a comment on September 25, 2020.

On January 29, 2021, the Board issued a decision noting that it had received the file for Docket No. FD 26327 from NARA and that a letter from the ICC in the file suggested that the abandonment authority for the French Creek Branch had been consummated. See Chester Cnty., Pa.—Pet. for Declaratory Order (January 29 Decision), FD 36400, slip op. at 2-3 (STB served Jan. 29, 2021). The Board attached the file to its order and provided an opportunity for comments before ruling on the merits of the County’s petition. No comments were submitted.

DISCUSSION AND CONCLUSIONS

Under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321, the Board may issue a declaratory order to terminate a controversy or remove uncertainty. The Board has broad discretion in determining whether to issue a declaratory order. See Bos. & Me. Corp. v. Town of Ayer, 330 F.3d 12, 14 n.2 (1st Cir. 2003); Delegation of Auth.—Declaratory Order Proc., 5 I.C.C.2d 675, 675 (1989). For the reasons discussed below, the Board finds that the abandonment authority granted

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 + 67, a distance of 0.29 miles, in Chester County, Pennsylvania. Wilmington & N. R.R., FD 26327, slip op. at 1.

In its petition, the County did 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).

by the ICC in Docket No. FD 26327 was consummated and denies the petition for declaratory order in this proceeding.

As noted above, on November 10, 1970, the ICC authorized Wilmington & Northern to abandon and the Reading Company “to abandon operations” over a portion of the French Creek Branch and the Falls Extension Branch in Docket No. FD 26327. See Wilmington & N. R.R., FD 26327, slip op. at 1. That decision required that the authority be exercised within one year—that is, by November 10, 1971—and that a journal entry be submitted to the ICC within 60 days after exercising the authority. Id. at 2.

As the Board explained in its January 29 Decision, the record file in Docket No. FD 26327 obtained from NARA includes a letter from the ICC responding to correspondence from the Reading Company regarding rail line retirements authorized in 11 dockets, one of which is Docket No. FD 26327. January 29 Decision, FD 36400, slip op. at 2-3.⁵ The next page in the file is a journal entry for the Reading Company in Docket No. FD 26327.⁶

The ICC’s letter responded to letters from the Reading Company dated December 23 and 28, 1970, and January 15, 1971, which are described as “submitting accounting” for rail line retirements in the referenced dockets, including Docket No. FD 26327. The letter from the ICC shows that the Reading Company submitted a journal entry showing the accounting information for Docket No. FD 26327 prior to November 10, 1971. This establishes that the abandonment authority had been exercised within the one-year period provided by the ICC. See Black Hills Transp., FD 34924, slip op. at 5 & n.10 (finding that undated journal entries had been submitted within one year of ICC’s abandonment authorization, and were “conclusive evidence” that carrier exercised abandonment authority, where agency records contained letter from ICC to carrier referencing date of carrier’s letter filing the journal entries).

As mentioned above, the Board attached the NARA file to its January 2021 order and provided an opportunity for comments, but no comments were submitted. There is no evidence in the record that there has been any rail service on the line since the ICC granted Wilmington & Northern and the Reading Company abandonment authority in 1970 or any other evidence that would call into question the documentation in the record, discussed above. Therefore, the Board finds that the abandonment authorized in Docket No. FD 26327 was consummated, and the County’s petition for declaratory order will be denied.

It is ordered:

1. Because the Board has found that the abandonment authorized in Docket No. FD 26327 was consummated, the County’s petition for declaratory order is denied.

⁵ In this context, “retirement” means consummation of abandonment authority. See Black Hills Transp.—Modified Rail Certificate, FD 34924, slip op. at 5 (STB served Jan 27, 2010).

⁶ The County provided this journal entry as Exhibit C of its petition; it did not include the letter from the ICC to the Reading Company.

2. This decision is effective on its service date.

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