

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1296X

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

Decided: October 6, 2021

On May 26, 2021, Anderson County, Tenn. (Anderson County), filed a petition to reopen an exemption that became effective, allowing R. J. Corman Railroad Property, LLC (RJC Railroad Property) to abandon a rail line extending from milepost 0.95 at or near Oneida, Tenn., to the end of the line at milepost 42.0 at or near Devonias, Tenn., a distance of approximately 41.05 miles in Scott, Campbell, and Anderson Counties, Tenn. (the Line).¹

According to Anderson County’s petition, abandonment of the Line will leave a branch line “stranded” from the interstate rail network. (Pet. 4-5.) Anderson County claims that the Board’s predecessor, the Interstate Commerce Commission (ICC), authorized the Tennessee Railroad Company (TRC) to construct a branch line of railroad from a point on the Line at the mouth of Beech Fork of New River, in Campbell County, in a southeasterly direction along Beech Fork and Rocky Fork in Anderson County, a distance of six miles (the Beech Segment). See id. at 3-4; In re the Application of the Tenn. R.R. for a Certificate of Pub. Convenience & Necessity, 65 I.C.C. 654, 657 (1921). Anderson County asserts that there is no evidence that the Beech Segment was abandoned through authorization from the ICC or the Board and therefore the Beech Segment remains an active line of railroad. (Pet. 4.) Anderson County notes that Board precedent does not allow a segment of common carrier track to be “stranded” by abandonment of an adjacent section of track. (Id. at 5.) Anderson County argues that the omission of the Beech Segment from RJC Railroad Property’s notice of exemption in this proceeding constitutes material error, and the Board should reopen the proceeding and either deny the exemption or vacate the proceeding. (Id. at 4, 6.) AOK filed a reply supporting

¹ Notice of the exemption was served and published in the Federal Register on March 9, 2020 (85 Fed. Reg. 13,696). As discussed more fully in the Board’s most recent decision in this docket, Arkansas-Oklahoma Railroad Co. (AOK) had attempted to purchase the Line through the Board’s offer of financial assistance (OFA) process at 49 U.S.C. § 10904. See R. J. Corman R.R. Prop., LLC—Aban. Exemption—in Scott, Campbell, & Anderson Cnty., Tenn. (May Order), AB 1296X (STB served May 3, 2021) (with Board Member Oberman dissenting). RJC Railroad Property has not yet sought to consummate its abandonment authority and has consented to negotiate with two trail sponsors for acquisition of the Line for interim trail use/rail banking under the National Trails System Act, 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29. See May Ord., AB 1296X, slip op. at 8.

Anderson County's petition on June 1, 2021, but then notified the Board on August 3, 2021, that it is withdrawing from this proceeding.

RJC Railroad Property replied in opposition to Anderson County's petition on June 15, 2021. Among other things, RJC Railroad Property claims that Anderson County's petition is filed in bad faith and is meant to provide "leverage [to] AOK" in AOK's efforts to purchase the Line. (RJC R.R. Prop. Reply 3-4, June 15, 2021.) RJC Railroad Property notes that Southern Railway Company (Southern Railway), now part of Norfolk Southern Railway Company (NSR), purchased TRC out of bankruptcy in the 1970s. See Tenn. Ry.—Purchase—Tenn. R.R., FD 27312 et al. (ICC served July 3, 1973.) However, RJC Railroad Property states that it does not know what remained of the Beech Segment at that time, whether Southern Railway obtained authorization to operate the segment, or whether the segment was abandoned during the more than 50 years prior to 1973. (RJC R.R. Prop. Reply 5, June 15, 2021.)

RJC Railroad Property adds that there is no reason to conclude that NSR or the Line's subsequent purchaser, National Coal Company (NCC), considered the Beech Segment anything other than excepted track under 49 U.S.C. § 10906 based on the segment's characteristics. (RJC R.R. Prop. Reply 7, June 15, 2021.) RJC Railroad Property claims that, like NCC and possibly NSR, it did not seek authority to purchase and operate the Beech Segment when it acquired the Line in 2011 and that such course was reasonable. (*Id.* at 7.) At that time, the Beech Segment was overgrown with mature trees growing up through what remained of the track and was long severed from the Line, with Campbell County and multiple landowners already having removed track and paved over large segments of the right-of-way. (*Id.* at 8.) RJC Railroad Property also explains that it removed only one mile of what it considered excepted track from the Beech Segment, despite claims by Anderson County that RJC Railroad Property removed more track. (*Id.* at 8-9.)

On July 1, 2021, Anderson County filed a rebuttal challenging RJC Railroad Property's claims that Anderson County is acting in bad faith.² Anderson County argues, among other things, that without information from parties like Anderson County, the Board may never be made aware of a railroad line that was "de facto" abandoned without proper authority. (Anderson Cnty. Rebuttal 1-2.) Anderson County also reiterates that the Beech Segment remains a part of the national rail network and argues that Board precedent requires the Beech Segment to be abandoned through the proper Board procedures to prevent the segment from being stranded. (*Id.* at 5.)

To help the Board assess whether abandonment of the Line would create a potential stranded segment of rail line, RJC Railroad Property will be directed to file supplemental

² Anderson County also filed a motion asking that the Board accept the rebuttal into the record because, while a reply to a reply is not permitted under 49 C.F.R. § 1104.13(c), its rebuttal will only be helpful to the Board and will not prejudice the other party. (Anderson County Mot. 1.) In the interest of a complete record, the motion will be granted and the rebuttal accepted. See City of Alexandria, Va.—Pet. for Declaratory Ord., FD 35157, slip op. at 2 (STB served Nov. 6, 2008) (allowing a reply to a reply "[i]n the interest of compiling a full record").

information explaining who owns the Beech Segment, whether it is currently a railroad line within the Board's jurisdiction, and whether any entity has sought to abandon the segment in the past. This decision will also be served on NSR, as it is a successor in interest to Southern Railway and TRC and might have useful information concerning the Beech Segment's ownership and status.³ NSR and other interested persons will be invited to comment.

It is ordered:

1. Anderson County's motion to accept its rebuttal is granted, and the rebuttal is accepted into the record.
2. RJC Railroad Property is directed to file the supplement discussed above by November 5, 2021.
3. This decision will be served on Norfolk Southern Railway Company.
4. NSR and others interested persons may comment by November 5, 2021.
5. This decision is effective on its date of service.

By the Board, Valerie O. Quinn, Acting Director, Office of Proceedings.

³ Indeed, Southern Railway sought to discontinue service over a 2.7-mile segment on what was part of the Line in 1988, and Tennessee Railway Company, a successor to TRC, sought to abandon that segment. The verified notice, which was filed on NSR letterhead, does not seem to depict the Beech Segment on the map showing lines in the area. See Tenn. Ry. Verified Notice Ex. 1, Sept. 29, 1988, Tenn. Ry.—Aban. Between Devonia & Fork Mountain, Tenn., AB 290 (Sub-No. 42X).