

SERVICE DATE – JANUARY 11, 2022

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1261

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
—ADVERSE ABANDONMENT—
SARATOGA AND NORTH CREEK RAILWAY IN TOWN OF JOHNSBURG, N.Y.

Digest:¹ This decision denies a request to dismiss the proceeding and a request for expedited consideration.

Decided: January 11, 2022

On September 10, 2018, the New York State Department of Environmental Conservation (the Department) filed an application under 49 U.S.C. § 10903 requesting a third-party, or “adverse,” abandonment of the Saratoga and North Creek Railway (SNCR) over approximately 29.71 miles of rail line between milepost NC 0.0 at North Creek, N.Y., and its terminus at milepost NC 29.71 near the former Tahawus Mine (the Line). Notice of the application was served and published in the Federal Register on September 28, 2018 (83 Fed. Reg. 49,151).

By decision served on December 18, 2019, the Board sought supplemental information regarding, as here pertinent, a pending bankruptcy proceeding involving the San Luis & Rio Grande Railroad, Inc. (SLRG), and certain SLRG affiliates and subsidiaries, including SNCR, in the U.S. Bankruptcy Court for the District of Colorado (the Bankruptcy Court).² In response to the December 18, 2019 decision, William A. Brandt, as Chapter 11 trustee for the bankruptcy estate of SLRG (the Trustee), requested that this proceeding be held in abeyance. (Trustee Reply 2, Feb. 18, 2020.) On March 3, 2020, the Board granted the request and held this proceeding in abeyance for 60 days to allow the Trustee time to determine whether to file a bankruptcy petition on behalf of SNCR.

The Trustee responded on April 17, 2020, stating that on March 30, 2020, he filed a voluntary petition under Chapter 11 on behalf of SNCR in Bankruptcy Court,³ and requested that the Board continue to hold the proceeding in abeyance until December 31, 2020, so he could

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 See In re San Luis & Rio Grande R.R., Case No. 19-18905-TBM (Bankr. D. Colo.).

³ In re Saratoga & N. Creek Ry., Case No. 20-12313-TBM (Bankr. D. Colo.).

determine whether SNCR could be sold as an operating railroad. By decision served on May 19, 2020, this proceeding was held in abeyance until further order of the Board.

On December 14, 2020, the Trustee filed a letter stating he is opposed to the Department's adverse abandonment application and requesting that the Board continue holding the proceeding in abeyance. In a decision served June 21, 2021, over objection from the Department, the Board continued to hold this proceeding in abeyance and required the Trustee to file a status report by September 30, 2021.⁴

On September 30, 2021, as modified on October 5, 2021, the Trustee filed a motion asking the Board to deny the adverse abandonment and dismiss the proceeding. The Trustee argues that SNCR, potential shippers on the Line, Essex County, and the Town of Newcomb all oppose abandonment, and that the public interest supports denying the adverse abandonment application. On November 19, 2021, the Trustee filed a motion asking the Board to expeditiously resolve the adverse abandonment proceeding, explaining that an auction of SNCR's assets could occur in mid to late January of 2022. The Trustee requests a ruling on the abandonment proceeding "in order to bring certainty and closure to SNCR and to ensure that title to SNCR at the auction is not clouded by the pendency of this proceeding." (Trustee Mot. 3, Nov. 19, 2021.)

The Department filed replies opposing the motion to dismiss and the motion for expedited resolution on November 17, 2021, and December 2, 2021, respectively. The Adirondack Council also replied in opposition to the motion to dismiss on November 19, 2021. On November 17, 2021, the Town of Newcomb and Essex County filed in support of the Trustee's motion to dismiss.

As discussed below, the Board will deny the Trustee's motions.

DISCUSSION AND CONCLUSIONS

As noted above, the Trustee contends that the Board should dismiss this proceeding because SNCR, potential shippers, and a municipality and county in which the Line is located all oppose abandonment, and because the public interest supports dismissal. These arguments primarily address the merits of the adverse abandonment. Pursuant to 49 U.S.C. § 10903(d), the standard governing any application for authority to abandon a line of railroad is whether the present or future public convenience and necessity require or permit the proposed abandonment. In applying this standard in an adverse abandonment context, the Board considers whether there is a present or future public need for rail service over the line and whether that need is

⁴ The Town of Newcomb, N.Y., filed a letter on March 12, 2021, stating that it opposes the Department's adverse abandonment application and supports the sale of SNCR and its potential future use as a rail line. The Town of Newcomb and the Essex County Board of Supervisors filed a letter on June 8, 2021, in response to the Trustee's April 30, 2021 letter, stating that they oppose the adverse abandonment application and support the efforts of the Trustee to sell SNCR as an operating rail line.

outweighed by other interests. See Norfolk S. Ry.—Adverse Aban.—St. Joseph Cnty., Ind., AB 290 (Sub-No. 286), slip op. at 3-4 (STB served Apr. 17, 2012).

The Trustee notes that SNCR has entered into an asset purchase agreement with Revolution Rail Holding Company, LLC (Revolution Rail). As the “stalking horse bidder,” Revolution Rail has agreed to acquire the Line for a set price and to assume SNCR’s common carrier obligation over the Line, unless a higher bid under the same terms is received by the Trustee, in which case an auction will be held. (Trustee Mot. 2-3, Nov. 19, 2021.) The Trustee states that there are other potential bidders that “anticipate restoring freight and/or passenger services to the Saratoga lines.” (Id. at 3.)

Revolution Rail’s verified notice of exemption to acquire the Line was rejected in a September 2021 decision, which expressed concerns about whether Revolution Rail—the only identified bidder for the property—would actually provide common carrier service. Revolution Rail Holdings, Inc.—Acquis. Exemption—Saratoga & N. Creek Ry., FD 36535, slip op. at 2-3 (STB served Sept. 10, 2021). However, the Trustee argues that the abandonment proceeding should be concluded (and denied) to provide commercial certainty to the auction and, potentially, to increase the price of the assets to be sold. (Trustee Mot. 3, Nov. 19, 2021.)

As mentioned above, the Board’s obligation in an abandonment proceeding is to balance the need for rail service with other interests. As this matter has been in abeyance for nearly two years at the Trustee’s request, an expedited decision is not now warranted. The Trustee’s pleading does not provide any new evidence about the need for common carrier freight service over the Line, and the identity of the ultimate purchaser of SNCR’s assets and its plan for use of the Line may well be relevant to the Board’s consideration of the adverse abandonment application. In addition, parties might suggest additional briefing before the Board to address the issues raised in Revolution Rail Holdings, Docket No. FD 36535, including whether Revolution Rail would actually provide freight rail service or other issues not yet raised. Alternatively, the Bankruptcy Court could refer specific issues to the Board for adjudication, or the parties could wait until after the conclusion of the Bankruptcy Court proceeding before approaching the Board to resolve the adverse abandonment application.

For the foregoing reasons, the Trustee’s October motion to dismiss and November motion for expedited resolution will be denied.

It is ordered:

1. The motion to dismiss is denied.
2. The motion for expedited resolution is denied.
3. This decision is effective on its service date.

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