

BEFORE THE SURFACE TRANSPORTATION BOARD

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Public Record

North Coast Railroad Authority –)
Abandonment Exemption –) AB 1305X
In Mendocino, Trinity and Humboldt Counties, CA)

NCRA/GRTA Reply to Mendocino Railway and
Motion to Modify Deadline to Respond to OFA

Great Redwood Trail Agency (“GRTA”), formerly named North Coast Railroad Authority (“NCRA”) and hereinafter referred to “NCRA/GRTA,” is an agency of the State of California, and pursuant to 49 C.F.R. 1152.50, seeks abandonment authority for the line of railroad extending from MP 139.5 (Willits) to end of line at, inter alia, MP 300.5 (Samoa). This Board issued a Notice of Exemption authorizing abandonment (NCRA/GRTA has asked for and consented to railbanking) by decision served May 20, 2022, subject to notices of intent to file an offer of financial assistance (“OFA”) on or by May 31, 2022. Mendocino Railway (MR), a tourist excursion operator since its inception in 2004, timely filed a notice of intent to file an offer of financial assistance for 13 miles of the NCRA/GRTA system namely, from MP 139.5 (Commercial Street in Willits) to MP 152.5 along Outlet Creek in the headwaters of the Eel River.

In its Decision served June 10, 2022, slip at 2-3 and n.7, this Board found that MR has met its standards for a showing of preliminary financial responsibility (a de minimis showing with little relation to this line's reality). However, MR quite evidently lacks the financial responsibility even to restore its own line (which for years has suffered from a collapsed tunnel), much less the resources to acquire and to restore yet more inoperable line (which also has a collapsed tunnel).

Fortunately, in the event MR actually files an OFA, it must meet the standard for actual financial responsibility. In addition, "the OFA process is designed for the purpose of continuing to provide freight rail service, and is not to be used to obstruct other legitimate purposes of law (whether Federal, state or local) when continuation of such service is not likely." RFRHA – Ab. Ex. – in Garfield, et al. Counties, CO, AB 547X, served May 21, 1999, slip op. at 4. MR must therefore address other substantive criteria and establish bona fide rail need. NCRA/GRTA and various commenters vigorously dispute MR's ability to successfully address the various substantive criteria much less make the required showings. STB's June 10 Decision postponed these disputes until later in the process but did not establish a schedule to address them. E.g., id. at n.7.

By motion served June 14, 2022, Mendocino Railway (MR) moved to toll the due date for its proposed Offer of Financial Assistance (OFA) until the later of 60 days from the original effective date of the Board's Notice of Exemption in this

proceeding or until 30 days after receipt by MR of 49 C.F.R. 1152.27(a) information which MR has requested. See Letter, W. Mullins to C. Brown, dated/filed June 14, 2022, at p. 2, para 11.

Reply to MR's Tolling Motion

NCRA/GRTA does not object to the relief sought by MR in the referenced motion at paragraph 11.

Motion to Clarify/Adjust Deadline for Response to OFA

In the event MR does file an OFA, this Board's regulations as revised in 2017 require MR to make a variety of showings, including not only actual financial responsibility (presumably to pay the purchase price and actually to operate the railroad for at least two years),¹ but also such matters as need for continued rail service, and operational feasibility. See 49 C.F.R. 1152.27(c)(1)(iv)(E). Since MR has been unable to restore its own line, it is inconsistent to think it has the resources to acquire and to restore this additional 13 miles.² In addition, since the entire NCRA/GRTA line at issue in this proceeding has been out of service

¹ See 49 C.F.R. 1152.27(c)(1)(iv)(B) (operation will necessitate rehabilitation).

² MR has been unable to restore its own line from Willits to Fort Bragg for rail service (which has a collapsed tunnel since 2016, see https://en.wikipedia.org/wiki/California_Western_Railroad), so it would follow that MR lacks the financial resources not only to eminent domain 13 more miles (which inter alia has a collapsed tunnel) from the State of California but also to restore that additional inoperable line so it is capable of providing service, assuming arguendo there is in fact a shipper committed to supply sufficient traffic to sustain rehabilitation and operation.

(and subject to a safety embargo by FRA) since 1998 MR also faces “a more difficult time showing a continued need for service.” Offers of Financial Assistance, Ex Parte 729, served June 29, 2017, slip at 14. To reiterate, there has been no shipper at MP 152.5, and certainly none requesting service since at least 1998. No service was requested to Willits. No service was requested to Fort Bragg. No service was requested to any other point that could be reached on any existing and functional rail line in northern California. In the circumstances, demonstrating actual continued rail need would appear next to impossible; any purported need would seem dependent on false assumptions or pretexts rather than economic realities.

The State of California by statute has determined that the line should serve important non-rail public purposes rather than continue to rust away, or be toyed with in a fashion that continues to threaten environmental damage to sensitive natural resources like the Eel River and its headwaters (Outlet Creek being one). In the circumstances, due process requires that NCRA/GRTA, other interested state agencies, and parties with an interest be permitted an adequate opportunity not only to respond to MR’s 1152.27(c)(1)(iv) showings should MR file an actual OFA, but also to move to dismiss any actual OFA. This is vital to prevent abuse of this Board’s processes and to ensure that the MR OFA is not contrived or the functional equivalent. See RFRHA, supra.

The Board's regulations are unclear as to the time that will be available to NCRA/GRTA for purposes of responding to MR's 1152.27(c)(1)(iv) showings, including evidence of actual financial responsibility. By some readings, the Board may act to order negotiations (sale under threat of eminent domain) or to allow the filing of a request for terms and conditions (eminent domain forced sale) without any opportunity by NCRA/GRTA, the State, or other interested parties to respond to claims made, or alleged evidence presented, by MR in connection with 1152.27(c)(1)(iv). The Board must not act in such an ex parte manner in the circumstances here. In order to ensure at least minimal time to prepare and to serve a meaningful response to MR's showings, NCRA/GRTA move that this Board enter a scheduling order providing that NCRA/GRTA shall have no less than twenty days to reply to MR's 1152.27(c)(1)(iv) showings and to move to dismiss, should MR file an OFA. This period is the standard reply period provided in this Board's procedural regulations (see 49 C.F.R. 1104.13(a)), and is entirely appropriate in light of the thirty days which MR shall have to prepare its showings once NCRA/GRTA supply the 1152.27(a) information to MR.

Conclusion

For the reasons stated, this Board should order that NCRA/GRTA and other interested parties shall have twenty (20) days to reply to any OFA filed by MR.

Certificate of Service. I hereby certify service of the foregoing by email attachment on June 15, 2022 on all parties of record in AB 1305X per the STB website service list as of said date.

Respectfully submitted,

s/Charles H. Montange

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