

August 12, 2022

BY E-FILING

Mai T. Dinh
Director, Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001

Re: Alabama Railroad, LLC – Abandonment Exemption – in Escambia, Conecuh, and Monroe Counties, Ala., AB-1324X

Dear Ms. Dinh:

This Reply, filed in the above-captioned proceeding instituted by Alabama Railroad, LLC (“ARL”), is presented on behalf of 39 landowners who collectively own 53 parcels (the “Landowners”) along the approximately 47.5 miles of rail line in Escambia, Conecuh, and Monroe Counties, Alabama, subject to the proceeding (the “Line”). This Reply intends to provide a brief factual background as to ARL’s recent activity on the Line and the Landowners’ involvement with the same, corrections to ARL’s characterizations of the Landowners’ position as stated in its petition for exemption, and a position statement on abandonment.

1. Factual Background

On March 29, 2019, the Line’s former operator, Alabama Railroad Company (“ALAB”) filed a Notice of Exemption for the Line in Docket No. AB-463 (Sub-No. 2X). In its Notice, ALAB certified there was no local or overhead traffic over the Line, no customers served on the Line, and that the Line had been out of service for more than two years.

On April 26, 2019, the Monroe County Commission (the “MCC”) informed the STB of their interest to negotiate with ALAB to acquire the Line for trail use, and on May 17, 2019, the STB issued a Notice of Interim Trail Use (the “NITU”). Based on the NITU, the Landowners filed a collective action in the Court of Federal Claims against the United States government for a Fifth Amendment taking of their property interests in the Line, and this litigation is ongoing. *See Lowery et al. v. United States*, Case No. 19-875L (filed June 14, 2019). Negotiations between the MCC and ALAB for a possible trail use agreement eventually fell through, yet Docket No. AB-463 (Sub-No. 2X) remains open, without a notice of consummation of abandonment, a notice of Line reactivation, or a notice of trail use agreement.

Ostensibly after negotiations for a trail use agreement fell through, ALAB agreed to transfer its interest in the Line to ARL. On October 21, 2020, ARL notified the STB of the transfer through a Notice of Exemption filed in Finance Docket No. 36450, and on November 6, 2020, the STB authorized ARL to assume common carrier obligations and operational responsibility for the Line. Shortly after, on December 23, 2020, ARL transferred a set

of licenses (including, for example, underground pipelines) and other revenue-generating agreements to TerraPact, a self-proclaimed “leader in managing corridor real estate assets.”

On July 26, 2022, ARL filed a new Petition for Exemption to abandon the Line. In its Petition, ARL stated that, since its purchase from ALAB, ARL has not moved any local traffic over the Line, there is no overhead traffic, and the Line is stub-ended (meaning overhead traffic could not exist). ARL further stated it doubts future demand for service on the Line will materialize, “particularly at volumes that would warrant restoring operations,” and that it “anticipates salvaging some or all of the Line’s track assets.” On July 26, 2022, the STB issued a Notice of ARL’s Petition for Exemption and instituted abandonment proceedings pursuant to 49 U.S.C. § 10502(b).

2. Corrections to ARL’s Petition for Exemption

In its Petition for Exemption, ARL made several either misleading or incorrect statements concerning the Landowners’ position that merit correction. At the outset, ARL asserts that the Landowners are “threatening to divest ARL of its interest in the Line via hostile state court action.” This is false. The Landowners’ qualms with ARL primarily concern its failure to use the Line for railroad purposes and its representations that it will try to exploit the Line for revenue related to non-railroad purposes.

The Landowners’ position is that ARL merely possesses an easement for its railroad purposes and does not possess any type of ownership interest in the sub-surface underlying the right-of-way. The Landowners’ state court action, if necessary, would seek to quiet title in their interest in the fee ownership of the right-of-way and to recover whatever monies ARL has received for any type of use that is not a railroad purpose. Obviously, that is a claim based entirely in state law, and the Landowners never envisioned, nor would they pursue, a state court action that would conflict with federal jurisdiction over the Line.

Contrary to ARL’s assertions, the Landowners’ state court action would not seek a determination of abandonment, based on *Monroe County Commission v. Nettles*, 288 So.3d 452 (Ala. 2019), or otherwise. The Landowners recognize the appropriate procedure for that determination is an adverse abandonment application before the STB, which the Landowners are prepared to file, if it becomes necessary. Additionally, contrary to ARL’s assumptions or inferences, the Landowners have no interest in taking possession of the trackage before it can be salvaged and support an orderly disposition of the Line. As explained below, the Landowners fully support an orderly consummation of abandonment, which would allow state law to take effect and obviate the need for a petition for adverse abandonment.

3. Position Statement on Abandonment

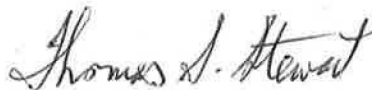
As to the Landowners’ position on the current abandonment proceedings under Docket No. AB-1324X, the Landowners’ fully support ARL’s abandonment of the Line. As ARL agrees, neither ARL nor its predecessors-in-interest have used the Line for railroad purposes for many years, and there is little prospect, if any, for future shippers. The Line is stub-ended, and ARL has stated it intends to begin salvage activities soon. The Landowners see no reason why ARL should oppose consummation of abandonment under these proceedings. Clearly, the Line no longer serves any customers who engage in interstate commerce, and ARL agrees the chance of this status quo changing are virtually nonexistent. Therefore, ARL should proceed toward voluntary abandonment of the Line, and the Landowners support this outcome.

As to potential interim trail use, based on first-hand experience and the fact that ALAB already tried and failed to find a trail operator, the Landowners believe trail use is not a viable option. If a trail operator comes forward that truly intends to convert the Line pursuant to a trail use agreement, obviously, that would change the landscape.

Otherwise, pursuing interim trail use serves no purpose other than forestalling consummation of abandonment, and the Landowners do not support such a course.

The Landowners look forward to monitoring these proceedings and ARL's proper and timely consummation of abandonment.

Sincerely,

A handwritten signature in cursive script, reading "Thomas S. Stewart". The ink is dark and the signature is fluid, with a prominent initial 'T'.

Thomas S. Stewart

cc: Robert A. Wimbish