

SERVICE DATE – NOVEMBER 17, 2022

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1296X

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

Digest:¹ This decision partially grants a petition to reopen because the Board has determined that exercising the abandonment authority previously granted in this docket would isolate or “strand” a connected line of railroad from the interstate rail network. This decision also provides guidance on next steps.

Decided: November 16, 2022

In February 2020, R. J. Corman Railroad Property, LLC (RJC Railroad Property), filed a verified notice of exemption 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 Devonia, Tenn., a distance of approximately 41.05 miles in Scott, Campbell, and Anderson Counties, Tenn. (the Oneida Line). Notice of the exemption was served and published in the Federal Register on March 9, 2020 (85 Fed. Reg. 13,696), and the exemption became effective in June 2020.²

On May 26, 2021, Anderson County, Tenn. (Anderson County), filed a petition claiming that abandoning the Oneida Line would isolate or “strand” a branch line from the interstate rail network, and asking the Board to reopen the proceeding and deny the exemption or vacate the proceeding.³ As discussed below, the Board will partially grant Anderson County’s petition to reopen, condition abandonment of the Oneida Line on the abandonment of potentially stranded

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 As discussed more fully in a decision served in this docket last year, Arkansas-Oklahoma Railroad Co. (AOK) offered to purchase the Oneida Line through the Board’s offer of financial assistance (OFA) process at 49 U.S.C. § 10904, but the Board rejected the OFA. See R. J. Corman R.R. Prop., LLC—Aban. Exemption—in Scott, Campbell, & Anderson Cntys., Tenn. (May 2021 Decision), AB 1296X (STB served May 3, 2021).

³ To date, RJC Railroad Property has not sought to consummate its abandonment authority and has consented to negotiate with two potential trail sponsors for acquisition of the Oneida Line for interim trail use/rail banking. On April 15, 2022, the Board issued a decision directing RJC Railroad Property not to consummate its abandonment pending further order.

segments, which are discussed as two distinct portions, and explain how RJC Railroad Property should proceed if it wishes to consummate abandonment of the Oneida Line.

BACKGROUND

According to Anderson County's petition, abandonment of the Oneida Line would leave a branch line stranded from the interstate rail network. (Anderson Cnty. 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 Oneida 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 Appl. 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 rail line. (Anderson Cnty. 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 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 arguments, RJC Railroad Property suggests that the Beech Segment was abandoned before 1973.⁴ (RJC R.R. Prop. Reply 10, June 15, 2021.) RJC Railroad Property adds that subsequent agency transactions involving the Oneida Line did not reference the Beech Segment.⁵ (RJC R.R. Prop. Reply 6-7, June 15, 2021.) It also claims that when the Board approved RJC Railroad Property's purchase of the Oneida Line in 2011, the Beech Segment was overgrown with mature trees growing up through what remained of the track and was long severed from the Oneida Line, with Campbell County and multiple landowners already having removed track and paved over large segments of the right-of-way. (*Id.* at 8.)

⁴ In that year, Tennessee Railway Company (Tennessee Railway) became a successor to TRC and a subsidiary of Southern Railway Company (Southern Railway). See *Tenn. Ry.—Purchase—Tenn. R.R.*, FD 27312 et al. (ICC served July 3, 1973). The ICC subsequently approved the acquisition of control by Norfolk Southern Corporation of Norfolk and Western Railway Company and Southern Railway in *Norfolk Southern Corporation—Control—Norfolk & Western Railway*, 366 I.C.C. 173 (1982). Southern Railway later changed its name to Norfolk Southern Railway Company (NSR). See *Norfolk S. Ry.—Pet. for Declaratory Ord.*, FD 36522, slip op. at 5 (STB served June 17, 2022).

⁵ In 2006, Tennessee Railway sought to abandon the Oneida Line, and NC Railroad, Inc. (NC Railroad), a subsidiary of National Coal Company, purchased the Oneida Line through the OFA process. See *Tenn. Ry.—Aban. Exemption—in Scott Cnty., Tenn.*, AB 290 (Sub-No. 260X) et al. (STB served Mar. 3, 2006).

On July 1, 2021, Anderson County filed a rebuttal, challenging RJC Railroad Property's claims. Anderson County also reiterates that the Beech Segment remains a part of the national rail network and argues that Board precedent on stranded segments requires the Beech Segment to be abandoned through the proper Board procedures before abandonment of the Oneida Line may proceed. (Anderson Cnty. Reb. 5.)

To help the Board assess whether abandonment of the Oneida Line would create a stranded segment, RJC Railroad Property was ordered to file supplemental information, to the extent it possessed any, 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. See R. J. Corman R.R. Prop., LLC—Aban. Exemption—in Scott, Campbell, & Anderson Cntys., Tenn. (Oct. 2021 Ord.), AB 1296X, slip op. at 2-3 (STB served Oct. 6, 2021). NSR and other interested persons were invited to comment.

RJC Railroad Property filed its supplement on November 5, 2021, claiming again, among other things, that the Beech Segment is not currently a rail line within the Board's jurisdiction. (RJC R.R. Prop. Suppl. 5.) Concerning the question of ownership, RJC Railroad Property claims that the quitclaim deed it received from NC Railroad includes railway valuation maps relating to a portion of the Beech Segment. (*Id.* at 1.) RJC Railroad Property states that the pages appear to encompass "the Beech Segment from the junction with the Oneida Line to the former railroad station location of Carbon Hill" (Beech to Carbon Hill Portion). (*Id.* at 1 n.2.) But RJ Railroad Property concludes that the pages do not include "any former right-of-way extending southeast along the Stony Fork to Clinchmore" (Clinchmore Portion). (*Id.*)

NSR also responded to the October 2021 Order on November 5, 2021. NSR states that it cannot identify in its records any grant of abandonment authority for the Beech Segment and that ownership of the property conveyed to NC Railroad. (NSR Reply 2.)

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 1322(c) and 49 C.F.R. § 1152.25(e)(4), the Board may reopen a proceeding because of "material error, new evidence, or substantially changed circumstances." The alleged grounds must be sufficient to convince the Board that its prior decision in the case would be materially affected for reopening to be granted. See Neb., Kan., & Colo. Ry.—Aban. Exemption—in Decatur, Norton, & Phillips Cntys., Kan., & Harlan Cnty., Neb., AB 1032X, slip op. at 2 (STB served May 24, 2018).

As discussed below, the Beech Segment appears to remain a part of the national rail network that would be stranded by abandonment of the Oneida Line. The Board has said that it will not allow such stranding to occur: "It is well settled that so long as there is a common carrier obligation attached to a particular segment of track, the Board will not allow that segment to become isolated from the rail system as a result of the abandonment of the adjoining segment." Cent. Or. & Pac. R.R.—Aban. & Discontinuance of Serv.—in Coos, Douglas, & Lane Cntys., Or., AB 515 (Sub-No. 2), slip op. at 12 (STB served Oct. 31, 2008). Consistent with this precedent, the Board also has denied abandonment exemptions where the proposed abandonment would result in a stranded segment. See, e.g., Norfolk S. Ry.—Aban.

Exemption—in Balt. Cnty., Md., AB 290 (Sub-No. 237X), slip op. at 4 (STB served Apr. 3, 2006) (denying exemption because, among other things, no party adequately addressed the apparent stranded segment created by the proposed abandonment). Therefore, the Board will partially grant Anderson County’s petition to reopen.

RJC Railroad Property challenges Anderson County’s petition on procedural grounds, arguing that Anderson County forfeited its stranded-segment argument by not timely raising its objection, citing Norfolk Southern Railway—Petition for Exemption—in Baltimore City, Md., AB 290 (Sub-No. 311X) (STB served May 4, 2010), and Consolidated Rail Corp.—Abandonment Exemption—in Erie County, N.Y., AB 167 (Sub-No. 1164X) et al. (STB served Oct. 7, 1998). (RJC R.R. Prop. Reply 13, June 15, 2021.) But the stranded-segment issue was raised, though not formally, earlier in this proceeding. See May 2021 Decision, AB 1296X, slip op. at 3 n.5. Because Anderson County has now raised the issue formally in a petition to reopen, and because the Board now decides it was material error not to address the issue previously, the Board will do so now. This error, which if not addressed would affect the connectivity of other segments to the interstate rail network, materially affects the Board’s prior decision in this case.

RJC Railroad Property further notes that Anderson County failed to file its petition to reopen within the timeframe set forth by 49 C.F.R. § 1152.25(e)(2)(i), but that deadline applies only when a person “wishes the Board to have the opportunity to consider a petition to reopen before the abandonment or discontinuance authorization becomes effective.” § 1152.25(e)(2)(i). Rather, here, 49 C.F.R. § 1152.25(e)(4) applies, which provides that “[a] person may file with the Board a petition to reopen any administratively final action of the Board.” And, the Board has considered petitions to reopen after abandonment exemptions have become effective. See Neb., Kan., & Colo. Ry., AB 1032X.

RJC Railroad Property also challenges Anderson County’s petition on substantive grounds. Relying on RLTD Railway v. STB, 166 F.3d 808, 813 (6th Cir. 1999), RJC Railroad Property claims that the regulatory history of the Oneida Line and the history and condition of the Beech Segment in 2011 demonstrate that even if the Beech Segment were not abandoned via the ICC, a de facto abandonment occurred prior to 1973. (RJC R.R. Prop. Reply 9, June 15, 2021.)

RJC Railroad Property’s argument concerning de facto abandonment is unpersuasive, as the Board’s precedent is clear that a railroad cannot abandon a line of railroad without Board authority. In 212 Marin Boulevard—Petition for Declaratory Order, FD 35825, slip op. at 4 (STB served Apr. 24, 2015), responding to an argument that a line was de facto abandoned due to severance from the national rail system, the Board stated that “[r]ailroad lines subject to the Board’s licensing requirements remain subject to Board jurisdiction unless and until the Board authorizes the line’s abandonment and the abandonment is consummated.” See also, e.g., Mo. Cent. R.R.—Acquis. & Operation Exemption—Lines of Union Pac. R.R., FD 33508 et al., slip op. at 7 (STB served Apr. 30, 1998) (citation omitted) (noting that “it is well established that a rail line is not abandoned until this agency authorizes abandonment under 49 U.S.C. [§] 10903 or the exemption provisions at 49 U.S.C. [§] 10502”). Although the Board has on occasion used the term “de facto abandonment,” it has not actually found a de facto abandonment in the absence of a grant of Board abandonment authority. See Zorzi—Pet. for Declaratory Ord.,

FD 36016, slip op. at 5 (STB served Jan. 31, 2017). As explained in Zorzi, the Board considered in the decisions leading to RLTD Railway whether it continued to have jurisdiction over a line of rail that several parties claimed had been abandoned pursuant to agency authority granted 20 years earlier. See Zorzi, FD 36016, slip op. at 6. In contrast, although RJC Railroad Property claims that the Beech Segment was abandoned before 1973, it provides no evidence that the ICC authorized it.⁶ Therefore, the Beech Segment remains a line in the national rail network and abandoning the Oneida Line would result in the Beech Segment being stranded—an outcome in conflict with Board precedent, as described above.

RJC Railroad Property claims that there are unique factual circumstances here, such as the long disuse of the Beech Segment and its physical severance from the Oneida Line, that justify not disturbing the abandonment exemption for the Oneida Line. (RJC R.R. Prop. Reply 14, June 15, 2021.) Similarly, RJC Railroad Property claims that Anderson County filed its petition to pressure the railroad to sell the Oneida Line to AOK and is therefore acting in bad faith. (Id. at 3-4.) Irrespective of the Beech Segment’s history or Anderson County’s motives, allowing abandonment of the Oneida Line without addressing the stranded segment would undermine Board policy.

Therefore, the Board will reopen the proceeding and condition the Oneida Line abandonment on abandonment of the Clinchmore Portion, the Beech to Carbon Hill Portion,⁷ and any other § 10901 track identified by RJC Railroad Property that could be stranded by the abandonment of the Oneida Line.⁸ Because the Clinchmore Portion does not seem to be owned

⁶ RJC Railroad Property claims that Anderson County fails to establish that the Beech Segment remains part of the national rail network because the County could not find proof of the Beech Segment’s abandonment in Board or ICC records, suggesting that the Beech Segment could have been abandoned before 1973 under state law. (RJC R.R. Prop. Reply 9, June 15, 2021.) But irrespective of how rail property may be viewed under state law, a rail line can be abandoned only if the Board or the ICC has authorized abandonment. See 49 U.S.C. § 10903; Chi. & N.W. Transp. Co. v. Kalo Brick & Tile Co., 450 U.S. 311, 319-23 (1981) (agency has exclusive and plenary authority over the abandonment of rail lines). Here, the absence of a record of STB/ICC abandonment authorization indicates that the line was not abandoned. See Zorzi, FD 36016, slip op. at 3, 5-6 (finding a line of railroad remains in the system despite claims that the line was de facto abandoned by 1960).

⁷ It is unclear whether some of the track headed toward Carbon Hill was part of the 1921 authority from the ICC. See Tenn. R.R. Notes, 239 I.C.C. 765 (1940). To the extent that RJC Railroad Property can demonstrate that that track is excepted under 49 U.S.C. § 10906, no abandonment authority would be necessary for that segment of the track.

⁸ The Board notes that in Elk River Railroad—Abandonment Exemption—in Kanawha & Clay Counties, W. Va., AB 1314X (STB served Mar. 25, 2022), it recently denied a request for a similar condition and instead rejected the notice of exemption in relevant part. There, however, the abandonment exemption had never become effective. Here, in contrast, the abandonment exemption has already been in effect for over two years, and the condition we are imposing will address the stranded segment issue without unnecessarily undoing that previously granted and already-effective authority.

by RJC Railroad Property, RJC Railroad Property would need to file an adverse abandonment application as to that segment. Given the apparent long disuse of the Beech to Carbon Hill Portion, that segment might qualify for the abandonment class exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments and Discontinuances of Service and Trackage Rights, assuming the required certifications can be made. However, because that portion appears to connect the Clinchmore Portion to the Oneida Line, the Beech to Carbon Hill Portion may not be abandoned before the Clinchmore Portion is abandoned.

It is ordered:

1. Anderson County’s petition is granted, in part, as discussed above and the proceeding is reopened.
2. RJC Railroad Property’s abandonment of the Oneida Line is conditioned on abandonment of the Clinchmore Portion, the Beech to Carbon Hill Portion, and any other § 10901 track identified by RJC Railroad Property that could be stranded by the abandonment of the Oneida Line.
3. This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz. Board Member Hedlund concurred with a separate expression. Board Member Fuchs, joined by Board Member Schultz, concurred with a separate expression.

BOARD MEMBER FUCHS, with whom BOARD MEMBER SCHULTZ joins, concurring:

In this proceeding, the burden on RJC Railroad Property has been excessive. This notice of exemption process, ordinarily the quickest and least burdensome way to abandon a line, has been going on for nearly three years. There is no doubt that RJC Railroad Property’s target for the abandonment exemption, the Oneida Line, meets the criteria specified in the applicable regulations because, among other things, no traffic has moved over the line since 2013. See 49 C.F.R. § 1152.50. Yet RJC Railroad Property has had to defend itself no fewer than four times.¹ At nearly every turn, opponents have raised new or expanded arguments that should have been fully presented earlier in the proceeding. Here, however, Anderson County’s petition to reopen has merit, and I find the Board correctly applies its reopening standard to prevent “stranding” rail lines connected to the Oneida Line.

I recognize that the Board’s action today not only adds to the burden on RJC Railroad Property but that the application here of the Board’s policy disallowing stranded rail lines may

¹ (RJC R.R. Prop Reply, July 2, 2020 (responding to AOK’s June 29, 2020 appeal); RJC R.R. Prop. Reply, Oct. 21, 2020 (responding to AOK’s October 13, 2020 petition for reconsideration); RJC R.R. Prop. Reply, Feb. 23, 2021 (responding to Anderson County’s February 17, 2021 letter); RJC R.R. Prop Reply, June 15, 2021 (responding to Anderson County’s May 26, 2022 petition to reopen).)

appear unnecessary. Indeed, part of what would be stranded is currently unusable,² part has an unknown owner,³ and part may not even be subject to Board regulation.⁴ However, the Board has reasonably concluded that many, if not all, of the would-be stranded segments have a common carrier obligation that the agency has never relieved. Poor track conditions or incomplete ownership records, as seen in this case, do not negate the need for Board authority to remove a line from the interstate rail network. Ultimately the connectivity of the network, and the public's understanding of the reach of the Board's jurisdiction, are better off if the Board protects against stranded lines. By ensuring rail lines are not disconnected via an action targeting another line, the policy advanced by today's decision preserves rail transportation corridors and guards the rights of rail carriers, shippers, and others to restore and use lines when markets change.

Given the time and paperwork costs of this proceeding, the Board should evaluate three potential improvements to expedite similar cases going forward. First, the Board should consider ways to mitigate the need for abandonment authority—the root source of burden in this case—when the agency can simultaneously protect network connectivity. Specifically, RJC Railroad Property has attempted negotiations for an interim trail use/railbanking agreement under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and implementing regulations, 49 C.F.R. § 1152.29, and the Board should consider a regulatory change so that parties are not required to receive abandonment authority to enter into such an agreement. The Trails Act—which prevents railroad rights-of-way from being treated as abandoned if, among other things, interim use is subject to restoration or reconstruction for railroad purposes—does not require abandonment authority as a prerequisite. Not only could a regulatory change reduce burden and better protect rail transportation corridors generally, but it could potentially reduce would-be stranded line conflicts by maintaining connectivity through statutory restoration and reconstruction rights. See 16 U.S.C. § 1247(d).

Second, the Board should reduce litigation costs by clarifying that parties may not submit late-filed evidence on appeal of a Director's Order. See 49 C.F.R. § 1011.2(a)(7). In this case, after the Board's Director of Proceedings ruled on a matter, a party used evidence⁵ that was not submitted for the Director's consideration to try to show the Director erred. The Board rejected this attempt, but the late-filed evidence unnecessarily increased burden on RJC Railroad Property and consumed agency resources. The filing also undermined the very purpose of delegating authority to the Director. A clearer standard henceforth would increase efficiency and fairness.

² (RJC R.R. Prop. Reply, June 15, 2021, Ex. C, E. West Aff.)

³ As noted above, it does not appear that the Clinchmore Portion is owned by RJC Railroad Property.

⁴ As also noted above, it is unclear whether some of the track headed toward Carbon Hill was part of the 1921 authority from the ICC. See Tenn. R.R. Notes, 239 I.C.C. 765 (1940).

⁵ (See, e.g., AOK Pet. for Recon. 9-11, Oct. 13, 2020; NETRA Comment 2-4, July 6, 2020); see also R. J. Corman R.R. Prop. LLC—Aban. Exemption—in Scott, Campbell, & Anderson Cntys., Tenn., AB 1296X, slip op. at 6-8 (STB served May 3, 2021).

Finally, as a long-term objective that might have helped prevent the problems identified late in this proceeding, the Board should consider the practicality of creating an accessible rail network map that delineates the lines in its jurisdiction, the regulatory status of each line (e.g., 49 U.S.C. § 10901), and relevant license information (e.g., owner, operator).⁶ The costs of such an undertaking should certainly be weighed against any benefits, and the creation of the map would necessarily involve a robust process for public input. However, more comprehensive and accessible rail line information could enable parties, particularly small entities, to engage in licensing proceedings without the need for time-consuming archival research. The Board ought to do more to reduce parties' burden in notice of exemption cases.

BOARD MEMBER HEDLUND, concurring:

I agree with my colleague that the burden on RJC Railroad Property in this case has been excessive, but likewise agree that the Board correctly decides the reopening issue here to protect against the possibility of so-called “stranded segments.” And while most notice of exemption cases proceed expeditiously (as the ICC contemplated they would when it adopted the notice-of-exemption procedures), I appreciate my colleague’s thoughtful concurrence suggesting ways we might refine the overall process. I look forward to considering these and other prospective improvements to all of our processes in due course.

⁶ The state of agency and railroad records, the fact that many lines were abandoned prior to the Board’s consummation notice requirement, and the complexity of some regulatory determinations—and the associated legal risk—may make the agency-initiated creation of this map impractical. The undertaking may necessitate a new statutory process or framework. In the alternative, the map might initially include the known rail line information, stipulating that much line information is currently unknown, and the map would be updated over time as the agency adjudicates individual cases.