

SERVICE DATE – JANUARY 12, 2023

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36606

MARYLAND DEPARTMENT OF NATURAL RESOURCES—
PETITION FOR DECLARATORY ORDER

Digest:¹ The Maryland Department of Natural Resources filed a petition for declaratory order requesting that the Board determine whether a previous owner of a rail line consummated the abandonment authority granted by the Board's predecessor agency. This decision finds that the abandonment was timely consummated and the Board therefore lacks jurisdiction over the line.

Decided: January 11, 2023

By petition filed on April 22, 2022, the Maryland Department of Natural Resources (MDNR) seeks a declaratory order determining whether a portion of the Hagerstown Branch between Valuation Station 0+00 at Weverton, Md., and Valuation Station 980+00 at Roxbury, Md. (the Line), formerly owned by the Washington County Railroad Company (WCRC) and operated by the Baltimore and Ohio Railroad Company (B&O Railroad), has been abandoned or whether it remains part of the interstate rail network and the Board retains jurisdiction over it. (Pet. 3.) MDNR states that it acquired the line from WCRC's successor in interest in the Line, CSX Transportation, Inc. (CSXT), in September 1991 and "is exploring options for a rail-to-trail project." (Id. at 1.)

Along with its petition, MDNR submits a June 1978 certificate and decision by the Board's predecessor, the Interstate Commerce Commission (ICC), permitting abandonment of the Line (as well as another line segment not at issue here).² See Wash. Cnty. R.R. Aban.

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 An Administrative Law Judge initially authorized abandonment of the Line in November 1977. See Wash. Cnty. R.R. Aban. Portion Hagerstown Branch Between Weverton & Hagerstown, also Portion of the Antietam Branch near Security, All in Wash. Cnty., Md., AB 19 (Sub-No. 20) et al. (ICC served Nov. 8, 1977). Subsequently, the ICC received a petition for administrative review, which it denied in a 1978 decision affirming the 1977 decision. See Wash. Cnty. R.R.—Aban. Portion Hagerstown Branch Between Weverton & Hagerstown, also Portion of the Antietam Branch near Sec., All in Wash. Cnty., Md. (April 1978 Decision), AB 19 (Sub-No. 20) et al. (ICC served Apr. 27, 1978).

Portion Hagerstown Branch Between Weverton & Hagerstown, also Portion of the Antietam Branch near Security, All in Wash. Cnty., Md. (June 1978 Ord.), AB 19 (Sub-No. 20) (ICC served June 22, 1978). The June 1978 Order, AB 19 (Sub-No. 20), slip op. at 2, provided that, to exercise the abandonment authority, applicants would need to advise the ICC in writing of the date the abandonment took place and submit two copies of the journal entries showing that the Line had been retired from service.³ The order also provided that, if not exercised within one year, the abandonment authority would expire. June 1978 Ord., AB 19 (Sub-No. 20), slip op. at 2.

Additionally, MDNR submits two letters describing actions taken by either WCRC or B&O Railroad following the June 1978 Order.⁴ The first is addressed to the ICC acting secretary and signed by an attorney for the Chessie System Railroad (Chessie), which owned B&O Railroad.⁵ (Pet., Ex. D.) The letter, dated December 6, 1978, and stamped as received by the ICC on December 10, 1978, states that the abandonment authority authorized in Docket No. AB 19 (Sub-No. 20) “was exercised at 12:01 AM, November 15, 1978” and asserts that journal entries would be forwarded to the ICC. (Id.)

The second letter, dated April 10, 1979, is signed by Aubrey H. Herndon, Jr., Chief, Interpretations Branch, and is addressed to Chessie’s assistant vice president and comptroller, thanking him for his “letter of April 4, 1979, submitting the accounting for the authorized abandonments of the Hagerstown and Antietam branches that had been inadvertently omitted from [his] original submission to us of February 2, 1979.” (Pet., Ex. E.) The letter states that “[t]he accounting is acceptable and our file on this matter will be closed.” (Id.)

DISCUSSION AND CONCLUSIONS

Under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321, the Board may issue a declaratory order to terminate a controversy or remove uncertainty. The Board has broad discretion in determining whether to issue a declaratory order. See Bos. & Me. Corp. v. Town of Ayer, 330 F.3d 12, 14 n.2 (1st Cir. 2003); Delegation of Auth.—Declaratory Ord. Proc., 5 I.C.C.2d 675, 675 (1989). For the reasons discussed below, the Board will issue a declaratory order finding that the abandonment authority granted by the ICC in the June 1978 Order was consummated and that the Board does not have jurisdiction over the Line.

³ In this context, “retirement” refers to consummation of abandonment authority. See Black Hills Transp.—Modified Rail Certificate, FD 34924, slip op. at 5 (STB served Jan. 27, 2010). The submission of journal entries indicating the intent to retire a line was “the approach followed at that time to inform the agency when an abandonment had been consummated.” Id.

⁴ MDNR states that these letters are the “only documentation known to MDNR” relating to actions taken by WCRC or B&O Railroad with respect to the abandonment. (Pet. 3.)

⁵ B&O Railroad was part of Chessie, a unit of CSX Corporation, before merging into the Chesapeake & Ohio Railway Company, which merged into CSXT. See CSX Transp., Inc.—Aban.—Between Big Pool & Tonoloway in Wash. Cnty., Md., AB 55 (Sub-No. 240X), slip op. at 1 n.1 (ICC served July 13, 1988).

For lines authorized for abandonment before 1997,⁶ the Board determines whether abandonment authority was consummated on a case-by-case basis by evaluating all the facts and circumstances to determine the line owner's intent. See Beaufort R.R.—Modified Rail Certificate, FD 34943, slip op. at 6 (STB served Mar. 19, 2008). In determining whether there was an intent to consummate abandonment, the Board looks to the rail carrier's actions, including both stated intentions and various physical acts. See Md. Transit Admin.—Aban. Exemption—in Somerset Cnty., Md., AB 590 (Sub-No. 1X), slip op. at 3 (STB served May 13, 2015).

As noted above, in Docket No. AB 19 (Sub-No. 20), the ICC authorized WCRC to abandon and B&O Railroad to cease operations over the Line. See June 1978 Ord., AB 19 (Sub-No. 20), slip op. at 1. The ICC order required that, to exercise the authority, the applicants advise the ICC in writing of the date the abandonment took place and submit copies of the relevant journal entries, and it provided that the authority would expire if not exercised within one year. Id. at 2.

The record here contains a letter from Chessie stating that the abandonment authority was exercised on November 15, 1978. (Pet., Ex. D.) That letter was received by the ICC on December 10, 1978, (id.), and establishes both that the abandonment authority was exercised within the one-year period and that the ICC was advised in writing of the abandonment. See June 1978 Ord., AB 19 (Sub-No. 20), slip op. at 2.

Although the December 1978 letter also states that journal entries would be forwarded to the ICC, (Pet., Ex. D), the ICC file for Docket No. AB 19 (Sub-No. 20) in the Board's possession does not contain journal entries. However, the April 10, 1979 letter, which appears to be from the ICC to Chessie, sufficiently demonstrates that the ICC did receive relevant journal entries at some point prior to that date. That letter seemingly responds to a letter from Chessie, which is described as "submitting the accounting" for the "abandonments of the Hagerstown and Antietam branches" authorized in Docket No. AB 19 (Sub-No. 20). (Pet., Ex. E.) As the Board has recognized, it was standard ICC practice to describe correspondence containing journal entries as "submitting accounting," which indicates that the ICC sent the April 1979 letter to Chessie after having received journal entries. See Chester Cnty., Pa.—Pet. for Declaratory Ord., FD 36400, slip op. at 3 (STB served July 13, 2021) (stating that an ICC letter described correspondence it received "as 'submitting accounting' for rail line retirements," which showed that the ICC received "a journal entry showing the accounting information"). Additionally, the April 1979 letter states that "[t]he accounting is acceptable and our file on this matter will be closed," demonstrating that the ICC considered the journal entries sufficient and conclusive on the matter, and that no additional action was necessary to close the file. (Pet., Ex. E (noting that a copy of the letter would be inserted into the file for Docket No. AB 19 (Sub-No. 20)).)

⁶ In 1997, the Board established a rule requiring that railroads authorized to abandon a line file a "notice of consummation" within one year of the service date of a decision authorizing the abandonment "to signify that it has exercised the authority granted and fully abandoned the line." 49 C.F.R. § 1152.29(e)(2). Such notice is "deemed conclusive on the point of consummation." Id.; see Honey Creek R.R.—Pet. for Declaratory Ord., FD 34869 et al., slip op. at 4-5 (STB served June 4, 2008).

There is no evidence of record that calls into question this interpretation of the letters submitted by MDNR. Accordingly, the Board finds that the record sufficiently demonstrates that abandonment authority was exercised within one year of the June 1978 Order. See Black Hills Transp., FD 34924, slip op. at 5 (finding that journal entries were conclusive evidence that a carrier had exercised abandonment authority where agency records contained an ICC letter referencing the date of the carrier's letter filing such journal entries). Therefore, the Board finds that abandonment of the Line, as authorized in Docket No. AB 19 (Sub-No. 20), was timely consummated and that the Board has no jurisdiction over the Line, as it is no longer part of the interstate rail network.

It is ordered:

1. The Board finds that abandonment of a portion of the Hagerstown Branch between Valuation Station 0+00 at Weverton, Md., and Valuation Station 980+00 at Roxbury, Md., as authorized in Docket No. AB 19 (Sub-No. 20), was timely consummated and that the Board has no jurisdiction over the Line.

2. This decision is effective on its service date.

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