

SERVICE DATE – OCTOBER 11, 2023

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 1296X

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

Docket No. AB 1296 (Sub-No. 1X)

R. J. CORMAN RAILROAD PROPERTY, LLC—ABANDONMENT EXEMPTION—
IN CAMPBELL COUNTY, TENN.

Digest:¹ This decision seeks clarification from the petitioner in Docket No. AB 1296 (Sub-No. 1X) and extends the negotiating period for interim trail use in Docket No. AB 1296X.

Decided: October 11, 2023

In February 2020, R. J. Corman Railroad Property, LLC (RJC Railroad Property), filed a verified notice under the two-year out-of-service class exemption under 49 C.F.R. part 1152 subpart F 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). The exemption became effective on June 26, 2020.²

On May 26, 2021, Anderson County, Tenn. (Anderson County), petitioned to reopen Docket No. AB 1296X, claiming that if RJC Railroad Property were to abandon the Oneida Line, the act would isolate, or “strand,” a branch line from the interstate rail network. Thereafter, the Board conditioned abandonment of the Oneida Line on the abandonment of potentially stranded segments and explained how RJC Railroad Property should proceed if it wished to consummate abandonment of the Oneida Line. See R. J. Corman R.R. Prop., LLC—Aban. Exemption—in

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 By decision served that day, an offer of financial assistance (OFA) under 49 U.S.C. § 10904 by another railroad to acquire the Oneida Line was rejected and the abandonment exemption made effective.

Scott, Campbell, & Anderson Cntys., Tenn. (Nov. 2022 Decision), AB 1296X, slip op. at 5-6 (STB served Nov. 17, 2022).

On April 21, 2023, RJC Railroad Property petitioned, in Docket No. AB 1296 (Sub-No. 1X), for an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10903 to abandon approximately 3.5 miles of line³ that appears to comprise at least some part of the Clinchmore Portion referenced in the November 22 Decision that potentially would be stranded if RJC Railroad Property were to abandon the Oneida Line. As discussed in more detail below, the record is unclear as to whether the endpoint of the segment RJC Railroad Property seeks to abandon is the same as the endpoint of the § 10901 line built on the Clinchmore Portion. The Board will therefore direct RJC Railroad Property to briefly clarify where the endpoint of the segment it seeks to abandon is located. In Docket No. AB 1296X, the Board will extend a previously granted interim trail use negotiating period for the Oneida Line.

BACKGROUND

As noted above, Anderson County filed a petition to reopen the Oneida Line abandonment exemption in Docket No. AB 1296X,⁴ claiming that abandonment of the Oneida Line would leave a branch line stranded from the interstate rail network. (Anderson Cnty. Pet. 4-5.) The petition argued that in 1921 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 (1921 Decision), 65 I.C.C. 654, 657 (1921). Anderson County asserted that there is no evidence that the Beech Segment was ever abandoned pursuant to authority granted by the Board or the ICC and that therefore the Beech Segment remains an active rail line that would be stranded by abandonment of the Oneida Line. (Anderson Cnty. Pet. 4.)

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 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., AB 1296X, slip op. at 2-3 (STB served Oct. 6, 2021).

In its supplement, RJC Railroad Property claimed, among other things, that the quitclaim deed it received from the prior owner of the Oneida Line included railway valuation maps

³ The line RJC Railroad Property seeks to abandon is depicted most clearly in the first map it includes at appendix A of its petition (Appendix A map); that map is attached to this decision.

⁴ A fuller history of the Oneida Line as well as RJC Railroad Property's attempt to abandon it can be found in the November 2022 Decision.

relating to a portion of the Beech Segment.⁵ (RJC R.R. Prop. Suppl. 1.) RJC Railroad Property stated that the deed appeared 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, RJC Railroad Property concluded, the deed does not include “any former right-of-way extending southeast along the Stony Fork to Clinchmore” (Clinchmore Portion). (*Id.*)

The Board subsequently found that the Beech Segment appears to remain a part of the national rail network that would be stranded by abandonment of the Oneida Line. Nov. 2022 Decision, AB 1296X, slip op. at 5. Therefore, the Board partially granted Anderson County’s petition to reopen and conditioned abandonment of the Oneida Line on abandonment of both portions of the Beech Segment—the Beech to Carbon Hill Portion and the Clinchmore Portion—as well as any other track subject to Board licensing under 49 U.S.C. §§ 10901 and 10903 identified by RJC Railroad Property that could be stranded by the abandonment of the Oneida Line. *Id.* at 5. Because the Clinchmore Portion did not seem to be owned by RJC Railroad Property, the Board noted that RJC Railroad Property would need to file a third-party, or “adverse,” abandonment application as to that portion. *Id.* at 5-6. The Board added that, given the apparent long disuse of the Beech to Carbon Hill Portion, that portion might qualify for the Board’s two-year out-of-service class exemption under 49 C.F.R. part 1152 subpart F, assuming the required certifications could be made. Nov. 2022 Decision, AB 1296X, slip op. at 6. However, the Board noted, because that portion appears to connect the Clinchmore Portion to the Oneida Line, the Beech to Carbon Hill Portion could not be abandoned before the Clinchmore Portion is abandoned. *Id.*

Pending requests as to the potentially stranded segment. In response to the Board’s November 2022 Decision, on April 21, 2023, RJC Railroad Property filed a petition in Docket No. AB 1296 (Sub-No. 1X), asking that the Board exempt from the prior approval requirements of § 10903 the abandonment of approximately 3.5 miles of rail line that appears to comprise at least some portion of line that would be stranded by the abandonment of the Oneida Line and find that the conditions imposed in the November 2022 Decision have been satisfied, thus paving the way for consummating the abandonment of the Oneida Line. (Pet. for Exemption 2, 15-16.) According to RJC Railroad Property, the line extends approximately 2.0 miles from milepost 33 on the Oneida Line along Beech Fork before reaching a junction that forks southeasterly toward Clinchmore. (*Id.* at 5.) At the fork, the line segment continues in a southeasterly direction along Stony Fork for approximately a mile and a half before dead-ending “at or about Clinchmore.” (*Id.*)⁶ RJC Railroad Property claims that this is the extent of what it owns and that there is no

⁵ As shown on the Appendix A map, the Beech Segment forms a “Y” stemming from the Oneida Line at Shea. One branch heads north toward Carbon Hill (and Peewee on the map) and another branch heads south toward Clinchmore.

⁶ As such, RJC Railroad Property now seems to claim to own a mile and a half of the Clinchmore Portion and has provided a 1973 railway valuation map (Val. Map 13a) depicting the section of track. (Pet. for Exemption 5; *id.*, App. B, Ex. 2.)

other § 10901 line beyond the identified 3.5 miles that would require abandonment authority. (Pet. for Exemption 5, 8.)⁷

RJC Railroad Property also seeks exemptions from the OFA procedures of 49 U.S.C. § 10904 and the public use provisions of 49 U.S.C. § 10905, waiver of the related regulations at 49 C.F.R. § 1152.27 and 49 C.F.R. § 1152.28, respectively, and waiver of the interim trail use provisions of 49 C.F.R. § 1152.29. RJC Railroad Property argues that these provisions are not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101 (RTP), and that granting the waivers would instead promote the RTP by eliminating unnecessary procedures and expediting the process. (Pet. for Exemption 12-13.)

On July 20, 2023, the Board instituted a proceeding to consider RJC Railroad Property's petition for exemption.⁸

Interim trail use on the Oneida Line. In April 2020, a notice of interim trail use or abandonment (NITU) was issued in Docket No. AB 1296X permitting Tennessee Citizens for Wilderness Planning, Inc. (TCWP), and Cumberland Trail Conference, Inc., to negotiate with RJC Railroad Property for interim trail use/rail banking of the Oneida Line under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29. In April 2022, the NITU negotiating period was extended to April 17, 2023. See R. J. Corman R.R. Prop., LLC—Aban. Exemption—in Scott, Campbell, & Anderson Cntys., Tenn., AB 1296X (STB served Apr. 22, 2022).

Thereafter, in response to the November 2022 Decision, TCWP filed a request that the “clock on the trail use negotiation period be stopped until the abandonment has been granted” and “reset to zero” at that time. (TCWP Pet. 1.) RJC Railroad Property responded on April 24, 2023, agreeing to a one-year extension of the NITU negotiating period. (RJC R.R. Prop. Reply 1, Apr. 24, 2023.)

⁷ The Board noted that it was unclear whether some of the track headed toward Carbon Hill was part of the 1921 authority from the ICC. Nov. 2022 Decision, AB 1296X, slip op. at 5 n.7. The Board added that, to the extent that RJC Railroad Property could demonstrate that the track is ancillary track excepted from Board licensing under 49 U.S.C. § 10906, no abandonment authority would be necessary. Id. RJC Railroad Property responded in its petition for exemption, noting that the ICC found that an application to build track from the fork to Carbon Hill was dismissed by the ICC for lack of jurisdiction in 1940. See Appl. of Tenn. R.R. for a Certificate of Pub. Convenience & Necessity Authorizing the Constr. of Line of R.R. in Campbell Cnty., Tenn., FD 12747 (ICC served Mar. 7, 1940). The Board agrees with RJC Railroad Property and will only focus on the Clinchmore Portion.

⁸ That decision inadvertently referred to 49 U.S.C. § 10502(d) rather than 49 U.S.C. § 10502(b).

DISCUSSION AND CONCLUSIONS

The Board will request clarification from RJC Railroad Property as to the endpoint of the line sought to be abandoned in Docket No. AB 1296 (Sub-No. 1X). The Board will also extend the trail use negotiating period for the Oneida Line in Docket No. AB 1296X.

RJC Railroad Property claims to have acquired the approximately 3.5 miles of line it now seeks to abandon as part of its acquisition of the Oneida Line from NC Railroad, Inc. (NCR). See R. J. Corman R.R. Prop., LLC—Acquis. Exemption—NC R.R., FD 35363 (STB served June 29, 2011). The parties' quitclaim deed granted RJC Railroad Property ownership rights to the main tracks, sidings, spurs, and other appurtenant railway facilities of the Oneida Line, including those shown on Val. Map 13a, which identifies the approximately 3.5 miles of line subject to RJC Railroad Property's petition for exemption. (Pet. for Exemption 5.) According to RJC Railroad Property, the historical evidence supports a finding that any and all rights and authority granted by the ICC in 1921 to TRC, to the extent in fact exercised by TRC, were transferred to the Tennessee Railway Company in 1973, then to NCR, and eventually to RJC Railroad Property in 2011. (*Id.* at 10.)

However, RJC Railroad Property also claims that there is no § 10901 line beyond the 3.5 miles of line for which it seeks abandonment authority. (Pet. for Exemption 8.) It asserts that track washed away in a 1965 flood, citing a report from the Department of the Interior stating that "the railroad and the county road which paralleled Stony Fork up to Clinchmore were completely destroyed." (*Id.* at 6, App. B, Ex. 5 at 55-56.) RJC Railroad Property notes the Board's directive to seek adverse abandonment authority for a line it does not own but claims that "adverse abandonment of a line that is no longer physically present and thus, ownership uncertain, makes an adverse abandonment proceeding virtually impossible." (Pet. for Exemption 8 n.10.)

As a legal matter, any suggestion that the physical absence of track on a rail line obviates the need to obtain abandonment authority from the Board is incorrect. See, e.g., Honey Creek R.R.—Pet. for Declaratory Ord., FD 34869 et al., slip op. at 6 (STB served June 4, 2008); Nov. 2022 Decision, AB 1296X, slip op. at 4-5. The fact that the abandonment authority would be sought by a third party and does not involve a definitive line owner does not affect the requirement to obtain abandonment authorization. That said, it appears that Val. Map 13a, and the approximately 3.5 miles it depicts could have reached Clinchmore. Clinchmore appears to have been the end of the line, which could mean that there is no additional § 10901 line that would be stranded by consummation of the Oneida Line abandonment. Indeed, the ICC's 1921 decision authorizing the construction of the Beech Segment explained that it would be six miles long, extend beyond Campbell County into Anderson County, and would provide service for shippers of timber and coal. 1921 Decision, 65 I.C.C. at 654-55. Although it is not clear that TRC exercised all the construction authority granted to it, the record does suggest that the segment carried coal for the Clinchmore Coal Mining Company until 1965. (Pet. for Exemption 4, 6.) A railroad atlas and guide provided by RJC Railroad Property also reference service to Clinchmore, (Pet. for Exemption, App. B, Exs. 11, 12), and the topographical maps from 1947 and 1952 provided by RJC Railroad Property depict track extending into Clinchmore, (Pet. for Exemption, App. B, Ex. 10). See also B'hood of Locomotive Eng'rs v. Tenn. R.R.,

Docket No. 20679, Award No. 11077 at 3 (NRAB Nov. 7, 1946) (“At Beech Fork, M. P. 32,” a train “turns off the Main Line goes 3.6 miles on a branch to a mine at Clinchmore, Tennessee and then backs out to the Main Line.”).

However, the Appendix A map shows the line that RJC Railroad Property intends to abandon extending only to a point approximately 0.5 miles outside of Clinchmore, based on the map’s legend. (Pet. for Exemption, App. A.) If that map is accurate, the historical records referenced above suggest that there would be some additional § 10901 rail line (notwithstanding the absence of track) between the end point on the Appendix A map and Clinchmore that RJC Railroad Property seems to claim to not own. In that case, RJC Railroad Property would need to obtain adverse abandonment authority for that portion if it wishes to consummate abandonment of the Oneida Line.⁹ If, instead, the endpoint represented on the Appendix A map was simply approximate or drafted imprecisely and the line (notwithstanding any absence of track) actually reaches Clinchmore, RJC Railroad Property could clarify that the endpoint of the line it seeks to abandon through its petition in Docket No. AB 1296 (Sub-No. 1X) is in Clinchmore and correct the Appendix A map to provide a more accurate endpoint of the line it seeks to abandon (or, if necessary, submit a new map). In that case, the Board could act on the petition for exemption, and there would be no need for an adverse abandonment proceeding.¹⁰ The Board could then decide RJC Railroad Property’s petition for exemption as well as its requests concerning the OFA procedures, public use provisions, and interim trail use provisions in Docket No. AB 1296 (Sub-No. 1X).

As such, by November 13, 2023, RJC Railroad Property shall clarify whether (a) the endpoint of the line it seeks to abandon through its petition is in Clinchmore or (b) the Appendix A map is accurate. If necessary, RJC Railroad Property may provide a new map.

Interim Trail Use on the Oneida Line.

TCWP indicates that it wishes to continue negotiating for interim trail use on the Oneida Line once the stranded segment is abandoned. The Board will grant a one-year extension, the additional period to which RJC Railroad Property agreed. Where, as here, the rail carrier has not consummated the abandonment and is willing to continue trail use negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended. See Rail Abans.—Use of Rts.-of-Way as Trails—Suppl. Trails Act Procs., 4 I.C.C.2d 152, 157-58 (1987); see also Birt v. STB,

⁹ The Board typically rules on petitions for exemption seeking abandonment authority within 110 days of the filing date, which would start here once RJC Railroad Property submits the necessary clarification discussed in this decision. Therefore, if adverse abandonment authority is determined to be required before proceeding with the abandonment authority requested in Docket No. AB 1296 (Sub-No. 1X), the Board may consider holding the latter in abeyance pending resolution of any necessary adverse abandonment proceeding.

¹⁰ RJC Railroad Property also would need to file a revised Appendix A or new map with OEA and update its environmental and historic report. Additionally, it would need to provide an update to other reviewing agencies. See 49 C.F.R. §§ 1105.7(b) and 1105.8(c). Moreover, environmental and historic review required for abandonments under 49 C.F.R. §§ 1105.6(b) and 1105.8 cannot begin until the endpoint of the line is known.

90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Vill. v. Mo. Pac. R.R., 95 F.3d 654, 659 (8th Cir. 1996). If more time is necessary, TCWP can seek a further extension, subject to a showing of extraordinary circumstances as provided under the Board's regulations. See 49 C.F.R. § 1152.29(d)(1)(ii).

It is ordered:

1. In Docket No. AB 1296 (Sub-No. 1X), RJC Railroad Property is directed to file the clarification discussed above by November 13, 2023.
2. In Docket No. AB 1296X, the interim trail use negotiating period is extended until April 17, 2024.
3. This decision is effective on its date of service.

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

ATTACHMENT

