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February 14, 2025

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VIA E-FILING

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

ENTERED
Office of Proceedings
February 14, 2025
Part of
Public Record

Re: Knoxville & Holston River Railroad Co., Inc., a wholly owned subsidiary of Gulf & Ohio Railways, Inc. – Abandonment Exemption – In Knox County, Tennessee AB-580 (Sub-No. 1X)

Knoxville & Holston River Railroad Co., Inc. (“KXHR”), a Class III railroad and a wholly-owned subsidiary of Gulf & Ohio Railways, Inc. (“G&O”) hereby replies in opposition to the “Notice of Intent to File Offer of Financial Assistance (Purchase) (“NOI”)” filed on February 10, 2025, by Hayduk International, LLC (“HIL”), a South Carolina Limited Liability company closely held by Michael J. Hayduk, who acts as its sole member. As discussed herein, the Board should deny HIL’s NOI, and proceed with the issuance of a Notice of Interim Trails Use for the 3.8-mile-long rail line, extending from Milepost 0.1, in Knoxville, TN, to the end of the line, also in Knoxville, TN (the “Line” or “K&A Belt”) in Knox County, Tennessee.

As background, KXHR invoked the Board’s petition for exemption procedures to abandon the K&A Belt by way of a petition for exemption (“Petition”) filed on December 11, 2024. The Board published notice of the proposed abandonment in the Federal Register on December 31, 2024 (89 Fed. Reg. 107189) (“December 31st Decision”). In keeping with 49 C.F.R. § 1152.27(c)(1)(i), the Board’s notice provided that [p]ersons interested in submitting an OFA must first file a formal expression of intent to file an offer by January 10, 2025, indicating the type of financial assistance they wish to provide (i.e., subsidy or purchase) and demonstrating that they are preliminarily financially responsible. *Id.* at 3. No shipper or other entity (1) made an inquiry about acquiring or subsidizing the line or (2) filed a timely NOI on or before January 10, 2025, despite KXHR filing its legal notice on December 9, 2024, in the Knoxville Focus and additional press on the line running on the abandonment in the Knoxville News on December 31, 2024.¹

¹ See Tyler Whetstone, *New Knoxville trail could connect Chapman Highway to Ijams Nature Center on Old rail*

Counsel for KXHR first learned that HIL was considering making an offer of financial assistance when it sent an email during the week of February 3, 2025 (more than three weeks after the deadline to file an NOI). As KXHR was preparing to respond to HIL's email inquiry, KXHR was served a copy of HIL's NOI. The late-filed NOI includes a motion for leave to late file, which argues that it should be permitted to enter the proceeding with an OFA at this late date because (1) it believes that continued common carrier railroad use would not prejudice any other party at this stage in the proceeding and (2) KXHR did not comply with the CFR as no subsidy or price as required by 49 CFR 1152.27(c)(1)(i). As explained herein, neither faulty rationale constitutes good cause for accepting the NOI. As the Board is aware, abandonments have tight statutory deadlines.² However, the Board in certain circumstances, will modify deadlines when the (1) the railroad does not object and/or (2) good cause is shown. HIL has not satisfied either standard and, consistent with Board precedent, HIL's late-filed OFA should not be accepted.³

KXHR objects to the late-filed OFA for all of the reasons set forth herein. First, contrary to HIL's claims, several parties would be prejudiced should the Board grant HIL leave to late file. After determining the line could not be operated profitably and that continuously decreasing revenues existed to cover maintenance and rehabilitation needs, not less operate, KXHR before filing its petition began discussions with the City of Knoxville ("City") concerning alternative public use of the K&A Belt. The City filed a notice of interim trail use ("NITU") on January 17, 2025, and KXHR consented to trail use on January 22, 2025. Both parties are awaiting the issuance of a NITU to allow for trails use negotiations to move forward and have been working towards that goal for a while because as explained in the Petition, revenues have been on a downward trend for over a decade. While the petition as a whole sets KXHR case in chief for the abandonment authority it seeks, the Petition at 78 explains certain facts that are relevant here:

[T]he potential for new shippers or traffic is non-existent as the area adjacent to the first mile and a half of the Line is rapidly becoming a mixed-use residential/commercial development area, limiting the more expansive property needed for new shippers or industries requiring freight rail

line, Knoxville News Sentinel. Available at <https://www.knoxnews.com/story/news/local/2024/12/31/knoxville-trail-could-connect-chapman-highway-to-ijams-on-rail-line/77320473007/>.

² See Aban. & Discontinuance of Rail Lines & Rail Transp. Under 49 U.S.C. 10903, 1 S.T.B.

894, *909-10 (STB served December 24, 1996) (in enacting the ICC Termination Act of 1995, Congress shortened the time for the Board to process OFAs under 49 U.S.C. 10904).

³ North Coast Railroad Authority –Abandonment Exemption—In Mendocino, Trinity, and Humboldt Counties, Cal., AB 1305X, slip op. at 3 (STB served June 10, 2022) (rejecting a late-filed OFA by North Coast Railroad Company, LLC ("NCRCA") as NCRCA did not articulate a sufficient reason as to why its notice could not have been filed by the May 31st deadline); General Railway Corporation d/b/a Iowa Northwestern Railroad—Abandonment Exemption— In Osceola and Dickinson Counties, IA, AB 1067 (Sub-No. 2X), slip op. at 1 (STB served Oct. 24, 2008) (denying a late-filed NOI (*9 days after deadline*) where the offeror's counsel stated that he was unable to file the NOI by the due date because of his involvement in litigation); and, Illinois Central Railroad Company— Abandonment Exemption—In Champaign County, Ill., AB 43 (Sub-No. 189X), slip op. at 2 (STB served May 11, 2015) (the Board did not accept the offeror's late-filed NOI (*10 days after the deadline*) as the offeror did not "provide any reason why its NOI was late and could not have been filed by the April 20 deadline).

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services.... After reviewing the City's plan for land use development, we agree that the best course of action, given the changing landscape in the area adjacent to the Line in Knoxville, TN, is to abandon the Line and convey it to the City so that they can redevelop the Line and create a rail trail.... KXHR revenues attributed to freight rail services on the K&A Belt are unsubstantial, and despite marketing efforts by KXHR, the prospects for increasing business and revenues from the current reduced levels are unrealistic. In 2024, for example, the railway operations of the K&A Belt produced revenue of \$6,200.00 while costing KXHR \$92,982.00 to maintain operations. As a result of this substantial loss in 2024 and equivalently egregious losses from 2019-2024, we have been unable to fund the necessary maintenance and capital expenditures of the Line, leading to significant deferred maintenance and rehabilitation that will require an expenditure of approximately \$3.32 million in immediate total costs to rectify. See Petition at 78.

KXHR, the City, and members of the greater public would be prejudiced by the Board allowing a late-filed NOI here. Forcing KXHR to incur substantial losses to explore a late-filed OFA where no traffic warrants continued rail operations is contrary to the underlying rationale for OFAs, particularly given the millions in maintenance cost necessary to repair a tunnel and two bridges that are reaching the end of its useful life, having been built 118 years ago.⁴ It is also worth noting that the sole shipper served by the K&A Belt did not oppose the abandonment, despite having until February 10, 2025, to file comments on the Petition. It is unclear from HIL's pleadings what shippers/commodities it believes justify an OFA, and HIL has identified any on-line or off-line shippers that would be able to produce revenues that could adequately cover the cost of rehabilitation, maintenance, and operations. Moreover, the \$75,062.46 HIL proposes to demonstrate its preliminary financial responsibility represents less than 2.25% of the immediate rehabilitation cost necessary for any rail carrier to continue operating the K&A Belt.⁵

Second, HIL's other argument in favor of the late-filed NOI erroneously purports that per 49 CFR 1152.27(c)(1)(i) KXHR had an obligation to state in its newspaper notice "an estimated minimum purchase price to keep the line or a portion of the line in operation." It appears HIL is confusing the newspaper requirements for petitions for exemptions located at 49 CFR 1105.12 with OFA requirements set forth in 1152.27(c)(1)(i). While HIL has asked KXHR to provide certain financial information related to filing an OFA, KXHR does not intend to do so until the Board issues a decision on whether to accept HIL's late-filed NOI.

⁴ See 1411 Corporation - Abandonment Exemption - In Lancaster County, PA, et al., AB-58 1X, slip op. at. 5 (STB served May 30, 2002) ("The underlying rationale of the OFA provision ...represents an accommodation of the conflicting interests of railroads that desire to unburden themselves quickly of unprofitable lines, and shippers that desire continued rail service.") (citing Hayfield Northern R. Co. v. Chicago & N.W. Tr. Co., 467 U.S. 622, 630 (1984)), aff'd sub nom., Borough of Columbia v. Surface Transp. Bd., 342 F.3d 222 (3d Cir. 2003). On average, the lifespan of a railroad bridge is typically 50-70 years and that of a railroad tunnel is between 100-125 years depending on original construction techniques.

⁵ Counsel for KXHR, provided signed undertakings to HIL and requested financials, but has not received them by the time of this filing in opposition.

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Third, as the Board is well aware, the Board's OFA processes are designed to permit, under certain narrow circumstances, the time-limited subsidization of freight rail service over a line of rail sought to be abandoned, or the purchase, by a financially responsible person, of the rail line that has attached to it a freight common carrier obligation, in each case for the purpose of continued common carrier freight service. See 49 U.S.C. Section 10904(c). No shipper currently or formerly served by the K&A Belt is demanding service and HIL does not claim so. Instead, HIL purports HIL "has been acquiring rail equipment, currently owns multiple locomotives and railcars, and is interested in expanding into new markets as a common carrier and has a legitimate interest in the rail line." See NOI at 1. Even if this statement is accepted as true, it does not demonstrate a continued need for rail service over the K&A Belt. One who submits an OFA must [d]emonstrate that there is a continued need for rail service on the line, or portion of the line, in question, not that the entity simply wants to become a railroad. OFAs have been rejected in analogous circumstances.⁶

Fourth, the strict deadlines applicable to the OFA process (regardless of the procedures the railroad has invoked to obtain abandonment authority) are designed to protect the abandoning carrier from undue delay in the disposition of assets that are not remunerative. As this agency long has recognized, the OFA statute at 49 U.S.C. § 10904 reflects the Congressional balancing of competing policy considerations. Congress considered a balance between providing a path for preserving rail lines for continued rail service and prolonging the abandoning railroad's financial considerations. These considerations have framed the Board's carefully considered OFA regulations and strict procedural timeframes, which is why the Board consistently has declined to accept late-filed notices of intent where the abandoning carrier has not consented to their acceptance.

CONCLUSION

HIL has provided no basis for a waiver of the Section 1152.27(c)(2) deadline for tendering a formal notice of intent to file an OFA, and it is opposed by KCHR. For these reasons, the Board should deny HIL's request to late-file its Notice of Intent, and it should permit KXHR's rail line abandonment exemption to expeditiously move forward.

Sincerely,

Crystal M. Zorbaugh

Crystal M. Zorbaugh
Counsel for Knoxville & Holston River Railroad Co., Inc.

cc: Parties of Record

⁶ When there is no "demonstrable commercial need for rail service", no "community support for continued rail service"; and "continued rail service is [not] operationally feasible", OFAs will not be permitted. See BNSF Railway Co. – Abandonment Exemption – In Kootenai County, ID, AB-6 (Sub-No. 468X), slip op. at 4 (STB served November 27, 2009).