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SERVICE DATE – FEBRUARY 20, 2025

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 580 (Sub-No. 1X)

KNOXVILLE & HOLSTON RIVER RAILROAD CO., INC., A WHOLLY OWNED
SUBSIDIARY OF GULF & OHIO RAILWAYS, INC.—ABANDONMENT EXEMPTION—
IN KNOX COUNTY, TENN.

Decided: February 20, 2025

On December 11, 2024, Knoxville & Holston River Railroad Co., Inc. (KXHR), a Class III rail carrier and wholly owned subsidiary of Gulf & Ohio Railways, Inc., filed a petition under 49 U.S.C. § 10502 for an exemption from the prior approval requirements of 49 U.S.C. § 10903 to abandon an approximately 3.8-mile rail line between milepost 0.1 and the end of the line, in Knoxville, Knox County, Tenn. (the Line).¹ Notice of KXHR's petition was served and published in the Federal Register on December 31, 2024 (89 Fed. Reg. 107,189). The Board's notice stated that notices of intent to file an offer of financial assistance (OFA) would be due by January 10, 2025, and requests for interim trail use/rail banking would be due by January 21, 2025.

On January 17, 2025, the City of Knoxville, Tenn. (the City), timely filed a request for the issuance of a notice of interim trail use. KXHR replied on January 22, 2025, indicating its willingness to engage in negotiations with the City.

On February 10, 2025, Hayduk International, LLC (Hayduk), late-filed a notice of intent to file an OFA to purchase the Line. Hayduk requests leave to late-file its notice, asserting that continued common carrier service over the Line would be in the public interest and that no party would be prejudiced if the Board accepted the late-filed notice. (Hayduk Notice of Intent 3.) Hayduk also alleges that KXHR failed to comply with the Board's regulations in that "no subsidy or price as required by 49 CFR 1152.27(c)(1)(i) was included in the notice published in Knox County, Tennessee." (Hayduk Notice of Intent 3.) According to Hayduk, that information would have assisted it in reaching its decision to file its notice of intent. (Id. at 3-4.)

KXHR replied in opposition on February 14, 2025. KXHR states that it has been in discussions with the City concerning alternative public use of the Line, and that KXHR, the City, and the general public would be prejudiced by the Board accepting a late-filed OFA despite the timely filed trails use request. (KXHR Reply 2-3.) KXHR further argues that it should not be forced to incur substantial losses to explore a late-filed OFA where no traffic warrants continued rail operations (particularly in light of significant maintenance needed) and where the sole

¹ On December 17, 2024, KXHR filed an errata with an updated map.

shipper on the Line has not opposed the abandonment. (Id. at 3.) KXHR also denies that it failed to comply with any publication requirements, as Hayduk alleges, and argues that Hayduk has failed to demonstrate a continued need for rail service. (Id. at 3-4.) Lastly, KXHR argues that the Board has consistently rejected late-filed notices of intent to file an OFA where the abandoning carrier objects. (Id. at 4.)

Hayduk's late-filed notice will be rejected. As the Board has previously stated, "Congress expedited the abandonment process so that carriers could promptly relieve themselves of unprofitable assets, and the OFA process should move quickly so that carriers can know where things stand." Offers of Fin. Assistance, EP 729, slip op. at 4 (STB served Sept. 30, 2016); see also ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, 825-27 (1995) (shortening the time for the Board to process OFAs under 49 U.S.C. § 10904). Hayduk's notice of intent was filed 31 days after the deadline, and Hayduk has not sufficiently explained why it was unable to timely file its notice.

According to Hayduk, it was unable to "mak[e] a decision" to file its notice of intent in a timely manner because no subsidy amount or price was included in KXHR's notice "published in Knox County, Tennessee," as Hayduk claims is required by 49 C.F.R. § 1152.27(c)(1)(i). (Hayduk Notice of Intent 3-4.) That regulation, however, includes no such requirement. Moreover, the regulations describing the newspaper notice to be published in the counties where the line is located do not require subsidy or price information. See 49 C.F.R. §§ 1105.7(c), 1105.12. The other justifications proffered by Hayduk (e.g., that continued common carrier service would be in the public interest and that no party would be prejudiced) do not address why Hayduk late-filed its notice.

Moreover, accepting Hayduk's late-filed notice of intent would, at a minimum, prejudice KXHR because its ability to dispose of allegedly uneconomical assets, including through the Trails Act, would be delayed.

For these reasons, accepting Hayduk's late-filed notice of intent of an OFA over KXHR's objection would be contrary to Congress's direction to streamline the abandonment and OFA process. See, e.g., Gen. Ry.—Aban. Exemption—in Osceola & Dickinson Cntys., Iowa, AB 1067 (Sub-No. 2X), slip op. at 2 (STB served Oct. 24, 2008); N. Coast R.R. Auth.—Aban. Exemption—in Mendocino, Trinity, & Humboldt Cntys., Cal., AB 1305X, slip op. at 3 (STB served June 10, 2022) (rejecting a notice of intent to file an OFA, filed one day after the deadline, where the justification for the late filing was insufficient and the carrier objected).

It is ordered:

1. Hayduk's notice of intent to file an OFA is rejected.
2. The decision is effective on its service date.

By the Board, Mai T. Dinh, Director, Office of Proceedings.