

SERVICE DATE – DECEMBER 7, 2020

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1065 (Sub-No. 2)

LANDOWNERS—ADVERSE ABANDONMENT—INDIANA SOUTHWESTERN  
RAILWAY CO. IN POSEY & VANDERBURGH COUNTIES, IND.

Digest:<sup>1</sup> The Board rejects an application for adverse abandonment filed by a group of landowners who own land adjacent to 17.2 miles of interconnecting rail lines in Posey and Vanderburgh Counties, Ind., because the application does not substantially conform with the requirements for an abandonment application.

Decided: December 7, 2020

On November 17, 2020, certain landowners (Landowners)<sup>2</sup> filed an application under 45 U.S.C. § 10903 requesting that the Board authorize the third-party, or “adverse,” abandonment of 17.2 miles of interconnecting rail lines in Indiana (the Lines) owned by the Indiana Southwestern Railway Co. (ISW). The Lines extend from: (1) milepost 227.5 at Poseyville, Ind., to milepost 240.2 near German Township, Ind. (approximately 12.7 miles); and (2) milepost 277.5 at Cynthiana, Ind., to milepost 282.0 at Poseyville (approximately 4.5 miles). For the reasons discussed below, the application will be rejected.

BACKGROUND

On October 25, 2010, in Indiana Southwestern Railway—Abandonment Exemption—in Posey & Vanderburgh Counties, Ind., Docket No. AB 1065X, ISW filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon the Lines. Notice of the exemption was served and published in the Federal Register on November 12, 2010 (75 Fed. Reg. 69,520). Subsequently, in a series of decisions, the Board imposed three salvage conditions and issued a notice of interim trail use or abandonment (NITU), authorizing

---

<sup>1</sup> 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 Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

<sup>2</sup> The 45 Landowners own land adjacent to the rail lines at issue in this proceeding. (Appl. 2.) They are also plaintiffs in Memmer v. United States, Case No. 14-135L (Fed. Cl. filed Feb. 18, 2014), and Butler v. United States, Case No. 17-667L (Fed. Cl. filed May 22, 2017)—two takings cases pending before the U.S. Court of Federal Claims involving the same 17.2 miles of rail lines. (Appl. 2.) Nine are plaintiffs in Memmer and 36 are plaintiffs in Butler. (Id. at 2 & nn.2-3.)

negotiations for interim trail use/rail banking of the Lines under the Board's regulations at 49 C.F.R. § 1152.29 (implementing the National Trails System Act, 16 U.S.C. § 1247(d)). Several extensions of the NITU negotiating period were granted, ultimately until November 8, 2013. No interim trail use/rail banking agreement was reached during the NITU negotiating period, and the NITU expired on that date. ISW did not file a notice of consummation of abandonment within 60 days thereafter, and ISW's abandonment authority therefore expired. See 49 C.F.R. § 1152.29(e)(2). As a result, the Lines remain part of the interstate rail network within the Board's jurisdiction. See Honey Creek R.R.—Pet. for Declaratory Order, FD 34869 et al., slip op. at 4 (STB served June 4, 2008).

Thereafter, in September 2019, the Landowners filed, in Landowners—Motion for Declaratory Order & Injunctive Relief, Docket No. AB 1065 (Sub-No. 1), a motion requesting that the Board issue a “declaratory order of abandonment” regarding the Lines and requesting that the Board order ISW to show cause why abandonment of the Lines had not been consummated and why the Board should not declare the corridor abandoned. In a decision served January 27, 2020, the Board denied the Landowners' motion, explaining that abandonment authority issued by the Board is permissive, that ISW could not be compelled to consummate the abandonment authority received in Docket No. AB 1065X, and that ISW's authority to abandon the Lines automatically expired when ISW did not file a timely notice of consummation by January 7, 2014. Landowners—Mot. for Declaratory Order & Injunctive Relief, AB 1065 (Sub-No. 1), slip op. at 5 (STB served Jan. 27, 2020). The Board further noted that the Landowners' possible remedy to compel the removal of the Board's jurisdiction over the Lines would be to file an application for adverse abandonment under 49 U.S.C. § 10903 and the regulations at 49 C.F.R. part 1152. Id. at 6 (citing Jackson Cnty, Mo.—Acquis. & Operation Exemption—Union Pac. R.R., FD 35982, slip op. at 3 (STB served Nov. 7, 2019)).

## DISCUSSION AND CONCLUSIONS

Under 49 C.F.R. § 1152.24(e)(1), the Board must reject an abandonment application that does not substantially conform to the relevant regulations regarding notice, form, and content. See also 49 C.F.R. § 1152.24(e)(2) (the Board shall reject an application if it is substantially incomplete or its filing is otherwise defective). Pursuant to those provisions, the Landowners' application will be rejected.

Prior to filing the application, the Landowners did not comply with the requirements at 49 C.F.R. §§ 1152.20 and 1152.21 for filing and publishing a notice of intent to file an abandonment application, nor did they comply with the requirement under 49 C.F.R. § 1152.20(c) to submit the Environmental and Historic Reports described at 49 C.F.R. §§ 1105.7 and 1105.8.

Moreover, the application itself does not substantially conform with the requirements for an abandonment application under 49 C.F.R. § 1152.22. For instance, the Landowners' application does not contain a detailed map of the Lines, a reference to the Lines' inclusion on the carrier's system diagram map, or a list of all the U.S. Postal Service ZIP Codes that the Lines traverse. See 49 C.F.R. § 1152.22(a). The application also does not provide sufficient information on the condition of the Lines, the service provided, revenue and cost data, rural and

community impacts, environmental impacts, or passenger service. See 49 C.F.R. § 1152.22(b)-(g). Also missing from the application are a draft Federal Register notice of the application in the form prescribed under 49 C.F.R. § 1152.22(i) and a verification in the form prescribed under 49 C.F.R. § 1152.22(j).

In its January 2020 decision denying the Landowners' motion in Docket No. AB 1065 (Sub-No. 1), the Board noted that it can waive otherwise applicable requirements for adverse abandonment application proceedings, upon request, if it finds that the requirements are not needed in a particular case. Landowners, AB 1065 (Sub-No. 1), slip op. at 6 n.6; see also 49 C.F.R. § 1152.24(e)(5); Alloy Prop. Co.—Adverse Aban.—Chi. Terminal R.R. in Chi., Ill., AB 1258 (STB served Aug. 16, 2017) (waiving certain regulatory requirements and exempting from certain statutory provisions related to filing an adverse abandonment application). However, the Landowners did not request waiver of any of the requirements outlined above or any others in the regulations.

Because of the deficiencies discussed above, the Board finds that the Landowners' application is substantially incomplete. Accordingly, the Landowners' application will be rejected.<sup>3</sup>

It is ordered:

1. The Landowners' application is rejected.
2. This decision is effective on its service date.

By the Board, Board Members Begeman, Fuchs, and Oberman.

---

<sup>3</sup> If the Landowners file a new application for adverse abandonment of the Lines within 60 days, or file a petition for waiver of certain application requirements within 60 days, and then after issuance of a Board decision on a petition for waiver, file a new application, the filing fee for the new abandonment application at 49 C.F.R. § 1002.2(f)(21) will be waived.