

ENTERED
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June 11, 2018
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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

CITY OF FISHERS, CITY OF	)	
NOBLESVILLE, AND HAMILTON	)	FINANCE DOCKET
COUNTY, INDIANA – PETITION FOR	)	NO. 36137
PARTIAL REVOCATION OF	)	
EXEMPTION	)	
	)	
NORFOLK AND WESTERN RAILWAY	)	
COMPANY – ABANDONMENT	)	DOCKET NO. AB-290 (Sub-No. 117X)
EXEMPTION – BETWEEN INDIANAPOLIS	)	
AND TIPTON IN MARION, HAMILTON,	)	
AND TIPTON COUNTIES, IND.	)	

**VERIFIED MOTION FOR PRELIMINARY INJUNCTION
PURSUANT TO 49 U.S.C. § 1321(b)(4)**

US RAIL HOLDINGS, LLC
7846 West Central Avenue
Toledo, OH 43617

Movant

Submitted By:

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Date: June 11, 2018

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INTRODUCTION

Pursuant to 49 U.S.C. § 1321(b)(4), US Rail Holdings, LLC (“USR”) seeks from the Surface Transportation Board (“Board”) a preliminary injunction (a) enjoining the cities of Fishers, Noblesville, Ind., and Hamilton County, Ind. (collectively, “Petitioners”) from removing the track and other rail assets along the 37.56-mile rail line at issue here between milepost I-2.13 at Indianapolis, Ind. and milepost I-39.69 at Tipton, Ind. (“the Line”), and (b) staying the Petition for a Notice of Interim Trail Use filed by Fishers, Indiana, regarding five miles of the Line pending a decision on the Motion for Clarification in this proceeding filed by USR simultaneously with this motion. Attached hereto, in support thereof, is the Verified Statement of Danielle Hall Mitchell, President, USR.

On August 1, 2017, Petitioners filed a petition to partially revoke their exempt status relating to the Line, which was previously authorized for abandonment over 26 years ago, in 1991. Petitioners sought to partially revoke their exempt status as state entities that acquired a line after it was authorized for abandonment so that they could file a new abandonment

exemption and then invoke Section 8(d) of the National Trails System Act (“Trails Act”), 16 U.S.C. § 1247(d), and the Board’s interim trail use regulations, 49 C.F.R. § 1152.29, to rail bank and develop a trail on the Line. USR did not oppose the request to revoke their exempt status to file a new abandonment exemption, but it asked the Board to allow 49 U.S.C. § 10904 to be made available in this new abandonment proceeding, if permitted, so it could file an offer of financial assistance for the Line. (USR/Indiana Transportation Museum 4, November 13, 2017).

On May 31, 2018, the Board decided that Petitioners may pursue rail banking of the Line under the trail use provisions without revocation authority from the Board (“Decision”). In other words, there would not be a new abandonment proceeding where USR could timely file an offer of financial assistance under Section 10904. The Board did not address what route USR could take to purchase the Line from Petitioners now that they did not have to seek abandonment in a new proceeding. As a result, USR has asked the Board for guidance in this proceeding by Motion for Clarification on the proper way to buy the Line.

On June 8, 2018, Petitioner Fishers petitioned for the issuance of a Notice of Interim Trail Use (“NITU”) on a portion of the Line from approximately MP 14 to approximately MP 19 in the original abandonment proceeding, Norfolk & W. Ry. – Aban. Exemption – Between Indianapolis & Tipton in Marion, Hamilton, & Tipton Ctys., Ind., AB 290 (Sub-No. 117X), et al. (ICC decided Nov. 4, 1991). As a result, USR is very concerned that the trackage on the Line will be removed by Petitioners or the trail process will be completed before it has an opportunity to seek authority from the Board to pursue the purchase of the Line in accordance with Board regulations.

STATEMENT OF FACTS

The Line was previously owned by Norfolk and Western Railway Company (“N&W”), and rail service on the Line was provided by the Indiana Rail Road (“INRD”) pursuant to a lease authorized by the Interstate Commerce Commission (“ICC”), the Board’s predecessor. Ind. R.R. – Lease & Operation Exemption – Norfolk & W. Ry., FD 31464 (ICC decided Jul. 3, 1989). In 1991, the ICC granted INRD authority to discontinue service over the Line and granted N&W authority to abandon the Line. Norfolk & W. Ry. – Aban. Exemption – Between Indianapolis & Tipton in Marion, Hamilton, & Tipton Ctys., Ind., AB 290 (Sub-No. 117X), et al.

In 1995, the cities of Fishers and Noblesville purchased the Line from N&W, and Hamilton County became a joint owner of the Line in 2006. The 1995 purchase was not subject to ICC licensing authority pursuant to Common Carrier Status of States, State Agencies & Instrumentalities, & Political Subdivisions (“Common Carrier Status of States”), 363 I.C.C. 132 (1980), aff’d sub nom. Simmons v. I.C.C., 697 F.2d 326 (D.C. Cir. 1982). Pursuant to that decision, where a state entity acquires a line of railroad approved for abandonment and the abandonment has not been consummated, the acquisition is exempt from Board regulation.

As noted, on August 1, 2017, Petitioners filed a petition for partial revocation of their exempt status under Common Carrier Status of States. Petitioners explicitly sought revocation so that they could rail bank the Line and develop a trail pursuant to the Trails Act, 49 U.S.C. § 1247(d), and the Board’s interim trail use regulations, 49 C.F.R. § 1152.29. The Petitioners argued that the Line remains within the Board’s jurisdiction, and available for interim trail use, because the 1991 abandonment authority was never consummated. Petitioners presented various legal paths in their Petition and subsequent filings through which they might pursue rail banking of the Line, including revocation of their exemption from regulation under Common Carrier

Status of States to enable them to initiate a new abandonment proceeding and invoke the Trails Act in that proceeding. Petitioners also asked that any such abandonment proceeding be exempted from the statutes and regulations pertaining to an offer of financial assistance (“OFA”) (49 U.S.C. § 10904 and 49 C.F.R. § 1152.27) and public use (49 U.S.C. § 10905 and 49 C.F.R. § 1152.28). In making this request, Petitioners clearly were trying to prohibit anyone from reactivating common carrier service on this Line even though the policy behind the Trails Act is to maintain rail lines for future rail use. See 16 U.S.C. § 1247(d) (expressing “national policy to preserve established railroad rights-of-way for future reactivation of rail service”).

On November 13, 2017, USR and the Indiana Transportation Museum (“ITM”)¹ filed joint comments arguing that the Board should partially revoke the exemption to allow Petitioners to file a new abandonment proceeding, but only if that proceeding is subject to the OFA procedures cited above. This result would have permitted USR to file an offer of financial assistance, therein demonstrating “that there is an overriding public need for rail service over the [L]ine” and that USR is a “financially responsible” person in accordance with the OFA regulations.

On May 31, 2018, the Board served its Decision in this proceeding in response to the Petition. The Board found that the Petitioners were exempt from certain regulation under Common Carrier Status of States. It also decided that the abandonment of the Line authorized in 1991 was never consummated. Finally, the Board found “that Petitioners can directly invoke the Trails Act without the need to revoke their exempt status or commence a new abandonment proceeding, because it has allowed similarly situated line owners to do so on lines acquired under Common Carrier Status of States.” The Board specifically rejected the argument by USR and

¹ ITM is not a party to this motion because USR alone will purchase and operate the Line when permitted to do so by the Board.

ITM for a new abandonment proceeding but did not elaborate on whether they could pursue another avenue at this point to attempt to purchase the Line from Petitioners.

On June 8, 2018, Petitioner Fishers petitioned for the issuance of a NITU on a portion of the Line from approximately MP 14 to approximately MP 19.

USR is a “financially responsible person” as that term is defined in 49 U.S.C. § 10907(a); that is, it has the financial resources to purchase the Line for the constitutionally minimum value and to provide adequate transportation over the Line for three years. USR is a Class III railroad and provides a variety of value-added rail transportation services. It currently serves a railroad through a lease in Indiana, The Winamac Southern Railway (“WSRY”), and is growing its presence in other markets by providing a variety of rail logistics services: transloading, private industrial rail car switching, track maintenance services, rail car repair, and rail car storage.

The WSRY is also a Class III railroad in northern Indiana. It owns two lines radiating from Logansport to Kokomo and Bringhurst, Indiana. USR hauls mainly outbound grain and inbound agricultural supplies on the WSRY, connecting with the Toledo, Peoria & Western Railway at Logansport and with the Central Railroad of Indianapolis at Kokomo. WSRY is made up of approximately 59 miles of main line track.

In addition to the WSRY trackage, USR operates a 12-mile segment of track from Marion to Amboy, Indiana. This track is owned by a company called Kokomo Rail (part of the Kokomo Grain family of companies). This track connects directly to Norfolk Southern at Marion.

Moreover, pursuant to the “preliminary financial responsibility” provision in 49 C.F.R. § 1152.27(c)(1)(ii) for offers of financial assistance under 49 U.S.C. § 10904, USR meets this requirement. USR has in place a quote from OmniSource for the delivery of random lengths of

rail at a price of \$275.00 per gross ton dated June 11, 2018. Based upon this scrap price per ton times 132 short tons times 37.56 miles of rail, the scrap value of the line is \$1,363,428.00. The additional sum pursuant to 49 C.F.R. § 1152(c)(1)(ii) of \$4,000 times 37.56 is \$150,240 times 2 equals \$300,480.00. The total preliminary financial responsibility is \$1,663,908.00 ($\$1,363,428.00 + \$300,480.00 = \$1,663,908.00$). USR has cash available through a line of credit in excess of that amount to pay the purchase price.

In addition, there is a need for rail service on the Line. Crown Technology, Inc. ("Crown"), Stone Spectrum ("Stone"), and The Quikrete Companies ("Quikrete") have filed comments in this proceeding expressing a need for rail service on the Line. Quikrete and Crown are former shippers on the Line. Crown has a private sidetrack to enable rail transportation. Quikrete has buildings on both sides of the Line. Stone expressed a need for 100+ rail cars per year. Also, Kokomo Grain, Inc. has stated in this proceeding that based on its knowledge of the local grain market, the Line could expect to handle as many as 1900 carloads of grain per year. USR is ready to operate the Line and handle this need for freight rail service if it obtains proper authority from the Board.

Consequently, USR states that consummation of the trail use process by Fishers and any removal of the track and other rail assets on the Line now would cause it irreparable harm because the reactivation of the Line would become cost prohibitive at that point. However, if the trail use process is stayed for now and the track and rail assets remain in place while USR pursues the proper avenue for the purchase and operation of the Line at the Board, nobody would be harmed and the reactivation of common carrier freight rail service could be realized. The Line has been in a suspended state for over 26 years and waiting a few more months to review

whether reactivation of rail service is permissible under the Board's regulations would not hurt anyone.

DISCUSSION

Pursuant to 49 U.S.C. § 1321(b)(4), “[t]he Board may...when necessary to prevent irreparable harm, issue an appropriate order...” An “appropriate order” under Section 1321(b)(4) includes a preliminary injunction, and the Board has recognized that the statutory provision was designed “to grant administrative injunctive relief to address threats of irreparable harm *** in the exemption context,” as well as “in other areas of the Board’s jurisdiction.” Public Views on Major Rail Consolidations, 4 S.T.B. 586, 595 (2000) (quoting H.R. Conf. Rep. No. 422, 104th Cong., 1st Sess. 168-169, 170, 233 (1995)). The Board found in the Decision that the Line remains subject to its jurisdiction because the abandonment authorization granted in 1991 was never consummated. Therefore, the Board can prohibit Petitioners from finalizing the trail use process and removing the track and other rail assets to prevent irreparable harm to USR until the Board has determined whether it can purchase the Line.

To obtain an injunction, the requesting party must show: (1) it will suffer irreparable harm in the absence of an injunction; (2) there is a likelihood that it will prevail on the merits of any challenge to the action sought to be enjoined; (3) the public interest supports the granting of the injunction; and (4) other interested parties will not be substantially harmed by an injunction. See Wash. Metro. Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977); Va. Petroleum Jobbers Ass'n v. Fed. Power Comm'n, 259 F.2d 921, 925 (D.C. Cir. 1958); Am. Chemistry Council v. Ala. Gulf Coast Ry., NOR 42129, slip op. at 4 (STB served May 4, 2012). Irreparable harm is the main consideration relevant to the granting of injunctive

relief. DeBruce Grain, Inc. v. Union Pacific R.R. Co., 2 S.T.B. 773, 776 (1997). As discussed below, the criteria for a preliminary injunction have been met in this case.

1. Irreparable Harm to USR without a Preliminary Injunction.

USR would be irreparably harmed if the Board denies its request for a preliminary injunction here. If Petitioners consummate the trail use process and remove the track, reactivation of the Line to provide interstate common carrier freight service would become prohibitively expensive. This would effectively bar USR from pursuing the reactivation.

In determining whether irreparable harm has been demonstrated, the Board looks to whether the requesting party will suffer unredressable actual and imminent harm absent the injunction. Am. Chemistry Council v. Ala. Gulf Coast Ry., NOR 42129, slip op. at 5 (STB served May 4, 2012).

Here, the consummation of the trail use process and removal of the track are imminent as the Petitioner Fishers has filed its request for a NITU in the corresponding abandonment proceeding. If the trails use process is finalized and the track is removed, USR would not be able to reactivate the Line because the cost would be prohibitive. However, if the Board stays the trail use process and prohibits removal of the track, reactivation of the Line as a healthy railroad providing freight rail service to local shippers could become a reality for this area of Indiana.

While economic injury standing alone may not qualify as irreparable harm, economic losses that are substantial and unredressable can amount to irreparable injury. Colorado Wheat Administrative Committee, et al. v. V&S Ry., LLC, NOR 42140, slip op. at 4 (STB served May 7, 2015). Here, if Petitioners consummate the trail use process and remove all the track and other rail assets on the portion of the Line they plan to make into a trail, USR would then have to expend significant funds to replace the track and make the Line adequate for rail service. The

Petitioners would not have to reimburse USR for these costs if not enjoined. If USR would be saddled with these additional costs, it is highly unlikely that it would make economic sense to pursue this project. The result would be the withdrawal of its rail development plan, eliminating the possibility of rail service on this Line in the future.

Because USR has demonstrated that it is financially responsible and there is a need for rail service, to permit the consummation of the trail use process and the removal of the tracks would in all likelihood cause harm that could never be overcome from these substantial, additional costs to develop the Line. See Colorado Wheat, slip op. at 4 (irreparable harm found if owner was permitted to remove track before a feeder line application was acted upon by the Board). For these reasons, denying a preliminary injunction request here would result in irreparable harm.

2. Strong Likelihood of Success on the Merits by USR.

There is a strong likelihood of success on the merits for the Board to grant the request by USR to provide a proper path to purchase the Line from Petitioners, where the Line has been authorized for abandonment, but it was never consummated. As noted, the Line remains subject to the jurisdiction of the Board because the abandonment authorization was never consummated. Accordingly, the Board has the exclusive authority to permit a new rail carrier to purchase and operate on this Line. However, because of the unusual procedural state of the abandonment case, which has been in limbo since 1991 and was recently addressed in the Decision, it is unclear what path USR must pursue now to purchase the Line. It is clear though that there must be a path available that would allow it to purchase and operate the Line to comply with the transportation policy to maintain rail service on the Line. See 49 U.S.C. § 10101(4) (stating federal policy “to ensure the development and continuation of a sound rail transportation system

with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense”).

Where a rail line remains subject to the Board’s jurisdiction, there are various ways for an interested party to purchase a Line that its owner no longer wants to operate.² USR could submit an application under the feeder line statute, 49 U.S.C. § 10907, and the applicable regulation, 49 C.F.R. § 1151.2. Section 10907 provides in pertinent part:

(b)(1) When the Board finds that--

(A)(i) the public convenience and necessity require or permit the sale of a particular railroad line under this section; or

(ii) a railroad line is on a system diagram map as required under section 10903 of this title, but the rail carrier owning such line has not filed an application to abandon such line under section 10903 of this title before an application to purchase such line, or any required preliminary filing with respect to such application, is filed under this section; and

(B) an application to purchase such line has been filed by a financially responsible person,

the Board shall require the rail carrier owning the railroad line to sell such line to such financially responsible person at a price not less than the constitutional minimum value.

USR asserts that the Board should permit it to file under Section 10907(b)(1)(A)(i) to purchase the Line. The public convenience and necessity (“PCN”) clearly require the sale of the Line, because USR is a financially responsible person that can pay a price not less than the constitutional minimum value and provide freight transportation service on the Line for three

² As suggested by USR in its earlier comments in the event of a new abandonment proceeding, it would have been able to acquire the Line through an offer of financial assistance under 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27 in an abandonment proceeding. However, Section 10904(c) provides that “[w]ithin 4 months after an application is filed under section 10903, any person may offer to subsidize or purchase the railroad line that is the subject of such application.” Clearly, USR now cannot offer to purchase the Line within four months after the notice of exemption from section 10903 was filed since that occurred over 26 years ago, unless the Board can toll or exempt USR from this statutory period. See R.R. Ventures, Inc. v. STB, 299 F.3d 523 (6th Cir. 2002), SF&L Ry., Inc. – Abandonment Exemption – In Hancock, McDonough, Fulton and Peoria Counties, IL, AB 448 (Sub. No. 2X) (STB served December 26, 2002). If the Board does toll or exempt USR from the statutory period, USR could file an offer of financial assistance in the corresponding abandonment proceeding.

years.³ Also, there is a need for rail service on this Line as demonstrated by the four shippers who have filed letters in support of rail service here.

Moreover, it makes sense to utilize the feeder line provision to allow USR to seek the authority to purchase the Line. While feeder line applications are usually filed before an abandonment proceeding has commenced at the Board, the Board has ruled that a feeder line application can be heard when an abandonment proceeding involving the line is pending. Revision of Feeder R.R. Development Rules, EP 395 (Sub. No. 2), slip op. at 8 (STB served Sept. 8, 1991). See Oregon Int'l Port of Coos Bay--Feeder Line Application—Coos Bay Line of the Central Oregon & Pac. R.R., Inc., FD 35160 (STB served October 31, 2008); New York & Greenway Ry.—Feeder Line Acquisition—A Line of Norfolk Southern Ry. Co., FD 34649 (STB served July 27, 2005). The Board decides on a case-by-case basis whether to accept a feeder line application filed subsequent to an overlapping abandonment application. Id. This situation involving USR seems to be ideal for a feeder line application because it is a financially responsible person interested in purchasing the Line, which would be rendered useless by the

³ Section 10907 lists five standards to satisfy the PCN:

(c)(1) For purposes of this section, the Board may determine that the public convenience and necessity require or permit the sale of a railroad line if the Board determines, after a hearing on the record, that—

(A) the rail carrier operating such line refuses within a reasonable time to make the necessary efforts to provide adequate service to shippers who transport traffic over such line;

(B) the transportation over such line is inadequate for the majority of shippers who transport traffic over such line;

(C) the sale of such line will not have a significantly adverse financial effect on the rail carrier operating such line;

(D) the sale of such line will not have an adverse effect on the overall operational performance of the rail carrier operating such line; and

(E) the sale of such line will be likely to result in improved railroad transportation for shippers that transport traffic over such line.

USR satisfies these standards because the Line has been authorized for abandonment and no freight traffic has been on the Line in over fifteen years.

removal of the track and development of a trail on it. Consequently, it makes sense for the Board to consider a feeder line application by USR first before permitting the interim trail use process to proceed and having the track removed on this portion of the Line.

In addition, the Board should allow USR to use the feeder line process because, if the Petitioners successfully finalize an interim trail use agreement with Fishers under the Trails Act, USR could then seek to reactivate the rail-banked line because it would remain subject to the jurisdiction of the Board. This additional process of going through the Trails Act seems counterintuitive because the same result would occur if a feeder line application is accepted now. The policy behind the Trails Act is to maintain rail lines for future rail service, and here rail service could be obtained more efficiently through a feeder line application. See 16 U.S.C. § 1247(d) (“Consistent with the purposes of that Act, and in furtherance of the national policy to preserve established railroad rights-of-way for future reactivation of rail service, to protect rail transportation corridors, and to encourage energy efficient transportation use, in the case of interim use of any established railroad rights-of-way pursuant to donation, transfer, lease, sale, or otherwise in a manner consistent with this chapter, if such interim use is subject to restoration or reconstruction for railroad purposes, such interim use shall not be treated, for purposes of any law or rule of law, as an abandonment of the use of such rights-of-way for railroad purposes.”) As a result, the Board should determine now whether USR can purchase and operate the Line under the feeder line process instead of going through the process under the Trails Act and then determining whether USR can purchase and operate the rail-banked Line. As such, USR respectfully asks the Board to allow it to purchase the Line now pursuant to the feeder line guidelines in order to reactivate rail service here.⁴

⁴ Petitioners may argue in response that they are exempt from 49 U.S.C. § 10907 under the Common Carrier Status of the States exemption from regulation by the Board. However, this exemption only applies to 49 U.S.C. §§

Lastly, as noted, the Board could determine that the only option that USR has to purchase the Line is after it has been rail banked by Petitioners pursuant to the Trails Act. The USR would then have to file a petition to vacate the Notice of Interim Trail Use (“NITU”) and file an application to purchase the Line. See 49 C.F.R. § 1152.29(d)(2); Norfolk and Western Ry. Co. – Abandonment – St. Marys and Minister in Auglaise County, OH, 9 I.C.C. 2d 1015, 1016-1017 & n.3 (1993). As discussed above, this result does not seem to be logical because of the additional process involved and possible destruction of the rail infrastructure. USR seeks clarification if this avenue is the only way it can pursue the purchase of the Line. If it is determined to be the only path, USR asks that the Board prohibit removal of the track on the Line before USR has the chance to file a petition to vacate the NITU and an application to purchase the Line.

In any event, USR asserts that its likelihood of success here is extremely strong because the Board should find one of these ways to purchase the Line to be appropriate in this matter. As a result, there is sufficient likelihood of success here to warrant an injunction that stays the trail use process and prohibits the removal of the track until the Board has an opportunity to rule on this request by USR to purchase the Line.

10901, 10903, and 11101. Simmons v.I.C.C., 697 F.2d 326, 343 (D.C. Cir. 1982) (“The effect of the modified certificate program was to exempt states, or their operators, from the filing procedures and other restrictions contained in 49 U.S.C. §§ 10901, 10903, and 11101.”) The purpose behind this exemption was to make it easier for states to purchase and operate a rail line “in danger of immediate termination” by streamlining the regulatory process to permit them to start and stop service without regulatory approval. Id. There is no mention of exemption from the feeder line statute anywhere in Common Carrier Status of the States. In fact, the point behind the feeder line statute was also the preservation of rail lines in danger of being abandoned, so it would not make any sense to exempt the states from this provision. It makes more sense to permit this exemption and Section 10907 to act in harmony with one another.

If the Board finds that the Common Carrier Status of States exemption does somehow apply to Section 10907 or any other provision in the Interstate Commerce Act needed here to purchase the Line, USR respectfully asks the Board to revoke the exemption for the purposes of its request to purchase the Line under the feeder line provision or after the Line is rail-banked as more fully explained in its Motion for Clarification.

3. Public Interest Considerations

The public interest clearly warrants the granting of a preliminary injunction. As noted above, the Line is over forty miles long and the cost of replacing that much track or even five miles of track would make reactivation of rail service cost prohibitive. The public interest is best served by keeping the track in place while the Board determines whether USR can purchase the Line. The public interest would certainly be served by protecting the public's access to rail service in the event the Board finds in favor of a request by USR to purchase the Line from Petitioners and to operate it. See Colorado Wheat, slip op. at 6. Otherwise, it is likely the Line would never be reactivated if track is removed and it is turned into a trail.

This result would run counter to the rail transportation policy “to ensure the development and continuation of a sound rail transportation system ... to meet the needs of the public.” 49 U.S.C. § 10101(4). It also would be offensive to the policy behind the Trails Act “to preserve established rights way for future reactivation of rail service.” 16 U.S.C. § 1247(d). Moreover, “[i]t has long been the policy of the Board and its predecessor, [ICC], to encourage feeder line applications.” Keokuk Junction Ry. Co. – Feeder Line Application – Line of Toledo Peoria & Western Ry. Corp. between LaHarpe and Hollis, IL, slip op. at 3 (STB served September 26, 2003). “Indeed, the Feeder Railroad Development Program was enacted by Congress to encourage financially responsible persons to acquire and preserve feeder lines prior to their substantial deterioration and abandonment.” Id. (cites omitted). In sum, all of the public interest arguments favor maintenance of the Line over the development of a rail trail. As such, the public interest standard calls for the granting of a preliminary injunction.

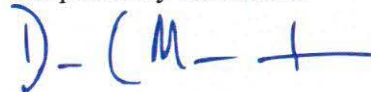
4. **No Harm to Other Interested Parties from an Injunction.**

In all likelihood, the only parties that will claim harm from a preliminary injunction here are the Petitioners. Assumedly, the Petitioners will claim that any injunction that prohibits an interim trail use agreement or the removal of tracks will hurt the public interest in the trail and the park. However, because the Trails Act's purpose is to maintain lines for future rail service, the public interest in a trail and park is clearly trumped by USR's rail plan in this context. Moreover, Petitioners have had over twenty years to convert this Line into a trail since the ICC authorized it for abandonment in 1991 or at least since it was purchased by the cities in 1995. To require Petitioners to wait another few months before the Board determines whether it can be purchased would be insignificant based on this history. Therefore, since the harm, if any, to other interested parties is de minimus, a preliminary injunction is warranted here.

CONCLUSION

As discussed above, the preliminary injunction factors lean heavily in favor of a preliminary injunction, especially the irreparable harm that would occur to USR if the track was removed by Petitioners. As a result, the Board should grant this request for a preliminary injunction.

Respectfully submitted



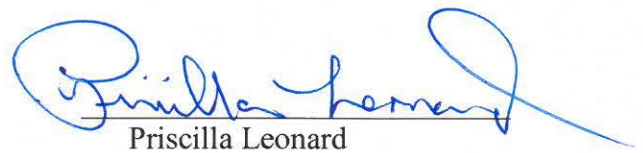
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Counsel for Movant

Dated: June 11, 2018

CERTIFICATE OF SERVICE

I, Priscilla Leonard, hereby certify that a copy of the foregoing **MOTION FOR PRELIMINARY INJUNCTION PURSUANT TO 49 U.S.C. § 1321(b)(4)** dated June 11, 2018, was sent by overnight mail to Petitioners, and U.S. Mail to the all other parties in this proceeding.


Priscilla Leonard

VERIFIED STATEMENT OF DANIELLE HALL MITCHELL

My name is Danielle Hall Mitchell, and my business address is 7846 W. Central Avenue, Toledo, Ohio 43617. I am the President of the US Rail Holdings, LLC ("USR"). I have been the President for the past year. I am extremely familiar with the line of rail at issue in Finance Docket No. 36137 and the finances of USR.

I am making this statement in support of USR's Motions for Preliminary Injunction and Clarification in this proceeding. The statements in these motions are true and correct. More specifically, this statement describes and documents that US Rail is financially responsible and the line of rail at issue could serve the needs of shippers who want rail service in this area.

This rail line is owned by the cities of Fishers, Noblesville, Ind., and Hamilton County, Ind. (collectively, Petitioners). It is a 37.56-mile rail line that runs between milepost I-2.13 at Indianapolis, Ind. and milepost I-39.69 at Tipton, Ind. ("the Line"). USR intends to buy and operate the Line as a common carrier if given the authority to do so by the Surface Transportation Board.

USR is a "financially responsible person" as that term is defined in 49 U.S.C. § 10907(a); that is, it has the financial resources to purchase the Line for the constitutionally minimum value and to provide adequate transportation over the Line for three years. USR is a Class III, short line railroad operator and provides a variety of value-added rail transportation services. It currently operates a railroad in Indiana, The Winamac Southern Railway ("WSRY"). In addition to the WSRY trackage, USR operates a 12-mile segment of track from Marion to Amboy, Indiana. This track is owned by a company called Kokomo Rail (part of the Kokomo Grain

family of companies). This track connects directly to Norfolk Southern at Marion. USR is also growing its presence in other markets by providing a variety of rail logistics services: transloading, private industrial rail car switching, track maintenance services, rail car repair, and rail car storage.

The WSRY is a Class III railroad in northern Indiana. It owns two lines radiating from Logansport to Kokomo and Bringhurst, Indiana. It hauls mainly outbound grain and inbound agricultural supplies, connecting with the Toledo, Peoria & Western Railway at Logansport and with the Central Railroad of Indianapolis at Kokomo. WSRY is comprised of approximately 59 miles of main line track.

Moreover, pursuant to the “preliminary financial responsibility” provision in 49 C.F.R. § 1152.27(c)(1)(ii) for offers of financial assistance under 49 U.S.C. § 10904, USR meets this requirement. USR has in place a quote from OmniSource for the delivery of random lengths of rail at a price of \$275.00 per gross ton dated June 11, 2018. Based upon this scrap price per ton times 132 short tons times 37.56 miles of rail, the scrap value of the line is \$1,363,428.00. The additional sum pursuant to 49 C.F.R. § 1152(c)(1)(ii) of \$4,000 times 37.56 is \$150,240 times 2 equals \$300,480.00. The total preliminary financial responsibility is \$1,663,908.00 ($\$1,363,428.00 + \$300,480.00 = \$1,663,908.00$). USR has cash available through a line of credit in excess of that amount to pay the purchase price.

Moreover, there is a need for rail service on the Line. Crown Technology, Inc. (“Crown”), Stone Spectrum (“Stone”), and The Quikrete Companies (“Quikrete”) have filed comments in this proceeding expressing a need for rail service on the Line. Crown and Quikrete are former shippers on the Line. Crown has a private sidetrack to enable rail transportation. Quikrete has buildings on both sides of the Line. Stone stated a need for 100+ railcars of service

per year. Kokomo Grain, Inc. has stated in this proceeding that based on its knowledge of the local grain market, the Line could expect to handle as many as 1900 carloads of grain per year. USR is ready to operate the Line and handle this need for rail service once it obtains proper authority from the Board.

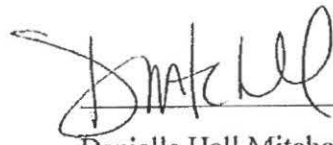
Removal of the track and other rail assets on the Line now would cause irreparable harm to USR because reactivation of the Line would become cost prohibitive if Petitioners are permitted to take this action. The finalization of the trail use process and removal of the track is imminent as the Petitioner Fishers has petitioned the Board for a Notice of Interim Trail Use in this abandonment proceeding.

However, if the track and rail assets remain in place while USR pursues the proper avenue for the purchase and operation of the Line at the Board, nobody would be harmed and the reactivation of common carrier freight rail service could be realized. The Line has been in a suspended state for over 26 years and waiting a few more months to review whether reactivation of rail service is permissible under the Board's regulations would not hurt anyone.

VERIFICATION

I, Danielle Hall Mitchell, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on June 11, 2018.


Danielle Hall Mitchell