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Before the
SURFACE TRANSPORTATION BOARD

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STB Docket No. AB 1242

**HARTWELL FIRST UNITED METHODIST CHURCH
- ADVERSE ABANDONMENT AND DISCONTINUANCE -
THE GREAT WALTON RAILROAD COMPANY, INC., IN HART COUNTY, GA**

**REPLY OF
HARTWELL FIRST UNITED METHODIST CHURCH
TO RESPONSE OF THE GREAT WALTON RAILROAD COMPANY, INC.
TO DECISION OF BOARD DATED AUGUST 31, 2017**

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Dated: October 30, 2017

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On April 14, 2017, Hartwell First United Methodist Church (“Hartwell First” or “Applicant”) filed an application (the “Adverse Application”) seeking authority from the Board for the adverse abandonment and discontinuance of the approximately 0.25 miles of railroad tracks and associated right of way owned by The Great Walton Railroad Company, Inc. (“GWRC”) between Athens Street and the end of line at South Forest Avenue, in Hartwell, Hart County, Georgia (the “Line Segment”). Included in the evidence submitted by Hartwell First in support of the proposed adverse abandonment was a 2015 lease between GWRC and TORCH (the “2015 Lease Agreement”) which Hartwell First argued demonstrated that GWRC had surrendered its rights to the Line Segment, and had no intention to reactivate rail service over the Line Segment. By decision served August 31, 2017 (the “August 31 Decision”), the Board directed GWRC to respond to these arguments and to explain how the terms of the 2015 Lease Agreement reserved sufficient rights for GWRC to conduct common carrier operations over the Line Segment. GWRC filed its response (the “GWRC Response”) on October 2, 2017, together with an amendment to the 2015 Lease Agreement (the “2017 Lease Amendment”), and some “new supplemental evidence.”

Hartwell First submits this Reply in accordance with the Board's August 31 Decision. As explained below, neither the 2017 Lease Amendment, nor the supplemental evidence submitted by GWRC in the GWRC Response, negate the evidence submitted by Hartwell First demonstrating that the Line Segment has not been used for or in connection with any local freight service for over 20 years, that the former north spur was removed and abandoned by GWRC approximately 9 years ago (severing any runaround), that GWRC does not have the property rights to establish and construct a runaround track in downtown Hartwell adjacent to the Subject Line, and that there is no present or future need for GWRC to use the Line Segment for GWRC to meet its common carrier obligations.

REPLY ARGUMENT

A. Effect of the 2017 Lease Amendment

It is not worth responding to the self-serving preamble of the 2017 Lease Amendment that attempts to re-write the history of the purpose of TORCH and scope of the project that was anticipated at the time of the 2015 Lease Agreement. It is also not worth responding to the contortions that GWRC goes through to explain why the 2015 Lease Agreement did not say what it clearly said – that TORCH was given the full right to use the right of way between Athens Street and South Forest Avenue, and that GWRC did not reserve the right to operate freight service over the Line Segment. As the sections of the 2015 Lease cited by Board in the August 31 Decision demonstrate, and as the significant revisions of the 2017 Lease Amendment confirm, GWRC clearly did not retain sufficient rights to reactivate common carrier service over the Line Segment. While the TORCH lease may not be evidence of GWRC's intent to abandon

the Line Segment, it certainly is evidence that GWRC did not have any intent to restart rail service at least by 2015.¹

As indicated in the Board's August 31 Decision, slip op. at 3, in similar situations where the railroad transferor failed to retain sufficient rights, the Board and its predecessor have retroactively authorized the acquisition of a rail line by a non-carrier, while generally exempting the non-carrier from the requirements of Title 49 Subchapter IV. *See Southern Pacific Transportation Company – Abandonment Exemption – Los Angeles County, CA*, 8 ICC 2d 495, 1992 WL 125050 (1992), *reconsideration denied in pertinent part*, 9 ICC 2d 385 (1993). The Board certainly would be justified in treating the lease by TORCH in the same manner. Moreover, given that TORCH does not have the ability or desire to act as a common carrier, that there are no local customers (and has not been any local service for over 20 years), and that there is no through traffic, the Board would also be justified in relieving TORCH from any common carrier obligations by granting the abandonment requested by the Adverse Application. *See Southern Pacific, supra*, 1992 WL 125050, at *510-513.

Hartwell First acknowledges that the 2017 Lease Amendment, if permitted by the Board, would largely address the transfer issues raised by the Board, primarily by removing most of the Line Segment from the 2015 Lease Agreement.² This does not change what GWRC's intent was in 2015 when it first entered into the lease (to monetize its interest in the entire Line Segment) by

¹ This was acknowledged by GWRC's former General Manager in the related federal court litigation. The former General Manager who negotiated the original TORCH lease agreement conceded that GWRC had not retained the right to continue to use the track for commercial railroad operations. *See* testimony of David Bishop, attached to Adverse Application as Appendix 8, pp. 141-143.

² With respect to the portion of the Line Segment east of Jackson Street, GWRC has reserved the right to maintain the tracks if needed for future use, although it appears to be only for future potential *passenger* service. 2017 Lease Amendment, ¶7 (amending §8.2). Applicant notes that previous attempts to run passenger excursions from Hartwell were not successful.

allowing non-rail use. Moreover, while the 2017 Lease Amendment may restore GWRC's right to operate over the mainline between Athens and Jackson Streets, it was only one piece of the evidence supporting abandonment, and the amendment does not negate any of the other evidence presented that demonstrates both GWRC's inability to conduct runaround operations in downtown Hartwell and the lack of any current or future need to use the Subject Line for common carrier service, and that supports the proposed adverse abandonment. Significantly, GWRC still has not demonstrated that it has any interest in or to the property under the former north spur that would allow it to construct a new spur there. Nor does the 2017 Lease Amendment give GWRC any additional rights to use the Clinkscapes industrial track (which is terminable on 60 days' notice). Even outside of the 2015 Lease Agreement, there remains substantial other evidence supporting the adverse abandonment request.

B. Effect of the 2017 letter from Georgia Department of Transportation.

GWRC attaches to its response a September 14, 2017, letter from the Georgia Department of Transportation ("GaDOT") that GWRC summarily states affirms GWRC's right to restore the Webb Street crossings for GWRC's mainline and between the north spur and the Clinkscapes industrial spur. *See* GWRC Response, at 6 and Attachment 2. However, a closer look at the GaDOT letter makes it clear that the authorization is not as absolute or as broad as GWRC would have the Board believe. As noted in bold (in the original) on page 2 of the letter, the letter clearly is *not* an authorization to install either or both crossings. While GaDOT may not be requiring a formal permit application, in lieu thereof, GaDOT is requiring GWRC to provide a significant amount of information and material as detailed in the listing of 30 items that must be submitted to GaDOT's satisfaction before any construction can be started. GWRC has

not indicated that it has submitted any of the required information, or that it has even begun to collect such information (and Hartwell First can only assume it has not).

Significantly, the letter requires GWRC to identify its right of way (items 2, 11, 15, and 16.g), and to detail existing facilities (items 6, 10 and 16.f). As has been demonstrated previously, GWRC's right of way and current facilities are limited by recorded deed, and as shown on its valuation map, to its mainline, with a 20 foot right of way west of Webb Street, and a 12 foot right of way east of Webb Street. The Georgia State Court enjoined GWRC from constructing a new spur track on the church's property where the north spur used to be, finding that it was likely that Hartwell First would prevail in its claim that GWRC did not have any title to the property. Adverse Application, pp. 12-14, and Appendix 15. Accordingly, since GWRC does not have any demonstrable right of way or the right to construct a spur track (or to connect a crossing) on the church's property, GWRC will not be able to satisfy GaDOT's requirements as set forth in the letter, and will not be able to install a crossing between the former north spur and the Clinkscapes industrial track. And without the crossing or the construction of the north spur, there can be no runaround track, and GWRC's professed need to retain the Line Segment fails.

C. Effect of the potential increase in traffic to Quality Holdings.

As has been previously discussed in this proceeding, the only need expressed by GWRC to support use of the Line Segment is to use it as part of a runaround in downtown Hartwell to provide service to Quality Holdings ("Quality"), a customer located approximately 1 mile west of Athens Street. *See* GWRC Reply to Adverse Application at p. 6. GWRC had previously introduced projections that Quality intended to increase its rail traffic from approximately 20 cars per year to 24-25 cars per year. In the GWRC Response, GWRC has introduced different

projections that over the next several years, Quality may increase its traffic not to 25 cars per year, but up to 100 cars per year. GWRC Response at pp. 14-15 and Attachment 5.

Applicant has no interest in interfering with the rail service to Quality; however, it does not believe the use of the Line Segment, or of a runaround in downtown Hartwell even if one could be created, is necessary for Quality to continue to receive safe, satisfactory service. While the proposed increase in traffic would increase the frequency of service to Quality from an average of 2 cars per month, to an average of 2 cars per week, it will not increase the length of the trains, or the method of service, used to serve Quality. Quality has a short industrial track on its property that can only hold up to four cars at a time for unloading, and trains making deliveries to or pulling empties from Quality therefore will not be longer than four cars. GWRC has over the years been providing safe service to Quality with trains varying from 2 to 4 cars without any need to use a runaround in downtown Hartwell. Given that, even if the estimated increase were to be fully realized, the increase in traffic would only require GWRC to provide service once a week or once every other week. Not having a runaround in downtown Hartwell should not increase the per car costs of serving Quality. Quality has been served without a downtown runaround since at least 2008, and there is no reason that the costs of serving Quality should increase.

While GWRC has raised concerns about the safety of its crews, FRA regulations permit shoving moves as safe operations. *See* 49 C.F.R. §218.99. Moreover, if GWRC is concerned about crew safety, the FRA regulations permit alternatives such as the use of cameras that would provide visuals of the crossing. *See* 49 C.F.R. §218.99(b)(3). There are also exceptions when the railroad can see that no traffic is approaching the crossing, and the train's speed does not exceed 15 miles per hour. *See* 49 C.F.R. §218.99(e)(4)(iv)(C). Hartwell First believes that the

track between Quality and Bowersville is either FRA excepted or class 1 track, neither of which would allow track speed in excess of 10 miles per hour.

Moreover, if GWRC wants to use a runaround, Hartwell First continues to believe that there are locations that are closer and more convenient to Quality, located between Quality and Bowersville, where either there is a runaround or where one could be created, neither of which would involve the 2.0 mile trip to and from downtown Hartwell, or the installation or upgrade of at least three crossings at heavily used federal and state roadways.³ As discussed previously, there is a runaround track (and various spur tracks) at Airline, approximately halfway between Quality and Bowersville where GWRC has previously elected to keep some cars awaiting repair.⁴ GWRC Surrebuttal at pp. 5-6; Applicant Reply to Surrebuttal at pp. 10-11. *See* the map attached hereto for the location of Quality and the Airline tracks.

Additionally, Hartwell First has recently learned of another potential location for a runaround. At one of the recent public TORCH meetings at which lease amendments were being discussed, GWRC's local counsel mentioned that there are auxiliary tracks in GWRC's right of way approximately 300 yards west of Quality (just on the other side of the trestle across the lake) that had previously been used by the railroad as a runaround. Upon investigation, Hartwell First believes that the property included a "hump" track, a spur track that was used for the delivery of propane (the "propane spur") and a third runaround track (that may have been at least partly outside of the railroad's right of way) that was used for the delivery of sand (the "sand spur").

³ GWRC's plans to reactivate rail service over a runaround in downtown Hartwell would require improvement of the crossing of Athens Street, and the installation of two crossings of Webb Street. Depending on the clearance needed by the locomotive to clear the switch to access the Clinkscapes industrial track, it also possible that the Jackson Street crossing would need to be improved.

⁴ Applicant notes that the Airline runaround track is currently clear of any cars, and would appear to be available for use as a runaround for the handling of Quality's traffic.

See the map attached hereto for the location of Quality and the propane spur. Hartwell First does not know how long it has been since the tracks located on the property were used for service or as a runaround. Although Hartwell First believes that the hump track and the sand spur were previously used to move the locomotives from one end of the train to the other, it understands that there might now be some regulatory restriction on the use of a hump track near the trestle that spans the lake between the spur and Quality. However, while it appears that the switch to the propane track, as well as part of the track, have been removed, it seems that it would not be a difficult task for the propane spur to be reconstructed within GWRC's existing 100 foot right of way at that location just 300 yards west of Quality, and connected at both ends to the GWRC mainline to create a runaround track. A propane spur runaround would not have any of the crossing, conflicting public uses or right of way title impediments that are involved with GWRC's attempts to create a runaround in downtown Hartwell.⁵

⁵ The work (and cost) to construct a runaround in downtown Hartwell appears to be substantially greater than what would be required to reconfigure the propane spur into a runaround. *See* Adverse Application at p. 25; Applicant Rebuttal at pp. 7-8. Additionally, GWRC would not be required to upgrade the mile of track between Quality and Athens Street.

CONCLUSION

For the reasons set forth in the Adverse Application, Applicant's Rebuttal, Reply to Surreburrall and this Reply, Hartwell First requests that the Board grant the relief requested in the Adverse Application.

Respectfully submitted,



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Dated: October 30, 2017

VERIFICATION

I, Joe M. Whittemore, verify under penalty of perjury that the foregoing Reply is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on October 30, 2017.



Joe M. Whittemore

National Rail Network Map

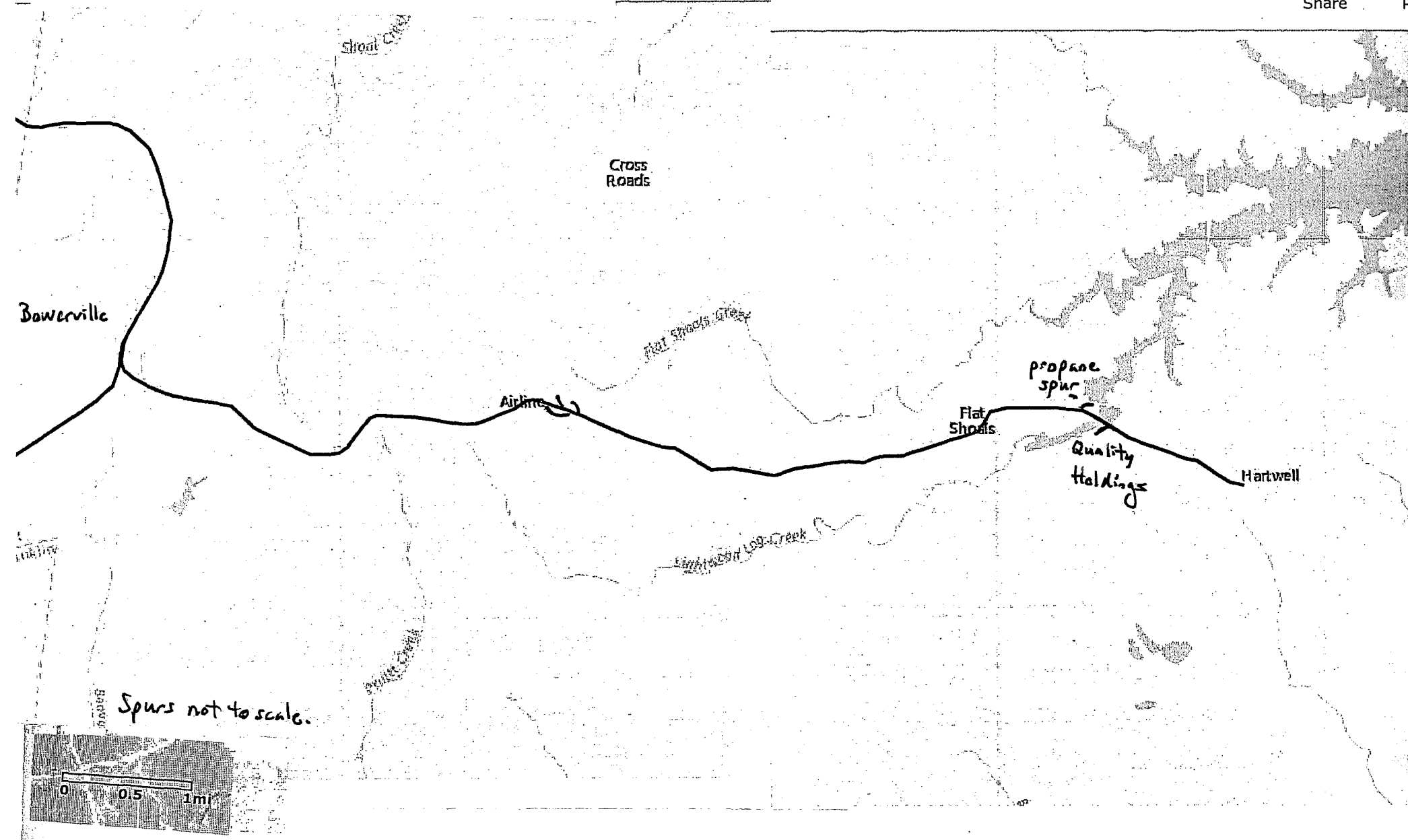
Source: www.stb.gov - Resources - Railroad Map Depot

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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of October, 2017, I served a copy of the foregoing

Reply on the following persons by the method indicated:

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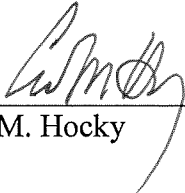
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