



ADIRONDACK COUNCIL

PRESERVING WATER,
AIR AND WILDLANDS

248522

ENTERED
Office of Proceedings
September 30, 2019
Part of
Public Record

Board of Directors

Michael A. Bettmann, M.D.
Chair

Sarah C. Hatfield
Vice-Chair

Laurel Skarbinski
Vice-Chair

Daniel J. Ryterband
Treasurer

Liza Cowan
Secretary

Robert J. Kafin
Past Chair

Kurt Abrahamson

Emily M. Bateson

Jill Choate Beier

David E. Bronston

Charles D. Canham, Ph.D.

Ann E. Carmel

Georgina Cullman, Ph.D.

Thomas Curley

Philip R. Forlenza

Ethan Friedman

Lea Paine Highet

Lee Keet

Kevin McNulty

Justin Potter

Meredith M. Prime

John Reschovsky

Brian Ruder

Kate Russell

Douglas Schultz

Douglas Stewart

Curtis R. Welling

Ethan Winter

Executive Director

William C. Janeway

September 30, 2019

Ms. Cynthia T. Brown
Chief of Administration
Office of Proceedings
Surface Transportation Board
Office of Proceedings
395 E Street, SW
Washington, D.C. 20423

Re: STB Docket No. AB 1261, *New York State Department of Environmental Conservation Application for Adverse Abandonment- Saratoga and North Creek Railway in the Town of Johnsbury, NY*

Dear Ms. Brown:

The Adirondack Council appreciates the opportunity to submit its comments to the Surface Transportation Board ("STB" or "Board") on the Application for Adverse Abandonment ("Application") by the New York State Department of Environmental Conservation ("NYS DEC"), in response to the Board's decision served on August 29, 2019. The Application concerns a 30-mile segment of railroad known as the Tahawus Line located in New York's Adirondack Park between North Creek (at milepost NC 0.0) and a point near the former Tahawus Mine (at milepost NC 29.71). A significant portion of the line in question crosses state forest preserve lands, which by operation of Article 14 of the New York State Constitution are forever protected as wild forest lands. As expressed to the Board in its prior filings in this proceeding, the Adirondack Council supports the NYS DEC Application because of the long-standing failure of the Saratoga North Creek Railway ("SNCR") to institute feasible freight rail service, combined with its highly improper use of the line for storage of obsolete tank cars which placed the Park's natural resources in jeopardy.

The Adirondack Council is a not-for-profit environmental organization with two offices in New York State and with membership comprised of thousands of individuals residing in all 50 states. The mission of the Adirondack Council is to ensure the ecological integrity and wild character of the Adirondack Park for current and future generations. We envision an Adirondack Park with clean water and air and large wilderness areas, surrounded by working forests and farms and vibrant local communities.



Nearly half of the Park is publicly owned Forest Preserve, protected as “Forever Wild” by the NYS Constitution since 1894. About 1.1 million acres of these public lands are protected as Wilderness, where non-mechanized recreation may be enjoyed. Most of the public land (more than 1.4 million acres) is Wild Forest, where motorized uses are permitted on designated waters, roads and trails. The Adirondack Park preserves the largest intact temperate deciduous forest in the world and is home to at least 87 rare species, moose, eagles, loons and heritage strain brook trout. The Park is the largest in the contiguous United States, bigger than Yellowstone, Yosemite, Glacier and Grand Canyon National Parks combined. It contains six million acres (9,300 square- miles), covers one-fifth of New York State and is equal in size to neighboring Vermont.

To grant the NYS DEC Application, the Board must find that “the present or future public convenience and necessity require or permit the abandonment” of the Tahawus Line.¹ In making its determination, the Board must consider whether the abandonment will have “a serious, adverse impact on rural and community development”² and it must balance the various interests of the affected railroad, any shippers who have a need for service on the line, and the public, as well as the impact on interstate commerce.³

For the reasons stated herein and its prior filings, the Adirondack Council supports the Application because it would further the public interest by removing a rail operator who has been unable to fulfill its promise to establish viable freight rail service over the line since it assumed operating control in 2012. It would also fulfill the legitimate interest of New York State to protect and maintain its natural resources and forest preserve lands. Adverse abandonment would give state agencies and the local governments in which the line is located, in consultation with all citizens of New York, an opportunity to develop the rail right of way in a manner that is complementary to and consistent with the purposes for which the Adirondack Park was established in 1892.

As the record in this proceeding clearly shows, SNCR has been unable to develop freight rail traffic or otherwise use the rail corridor responsibly that justifies its continued operation of the Tahawus Line. While the Adirondack Council is not (and has not) opposed the possibility of a new operator establishing freight rail service on the line for the primary purpose of hauling stone from the Tahawus mine site or other potential traffic that currently does not exist, it has strongly opposed any use of the line that is not compatible with preservation of the Adirondack Park and its ecologically sensitive lands. Indeed, the Council expressed its outrage when the SNCR began storing tank cars used to haul crude oil on the line in 2017. This action was highly irresponsible and problematic given the hazardous risks associated with the tank cars and the potential adverse impacts upon state park tourism and wildlife.

¹ 49 U.S.C. § 10903(d).

² *Id.*

³ *New York Cross Harbor R.R. v. Surface Transportation Board*, 374 F.3d 1177, 1183 (D.C. Cir. 2004).

September 30, 2019

Page – 3 –

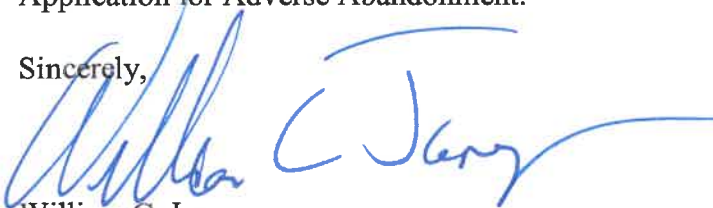
The Adirondack Council previously supported a delay of this proceeding to allow another railroad, i.e. OmniTRAX Inc. the opportunity to explore whether it could feasibly purchase the line and provide future freight rail service in an environmentally-friendly manner but OmniTRAX has since discontinued those negotiations presumably because it was not able to develop a viable plan for future use of the corridor.⁴ Further, granting the adverse abandonment would allow for a more thorough evaluation of other possible ways in which the right-of-way could be used that would best serve the public interest and it would not necessarily require removal of the trackage.

We are aware that Mitchell Stone Products is opposed to the Application based on its hope of developing future distant markets for rail shipments of stone aggregates currently stockpiled at its Essex County location within the Adirondack Park. Currently, this product moves only by truck to serve regional markets but trucking would not be economic to its targeted markets in lower NY, NJ and PA. While we are sympathetic to Mitchell's desires, the reality is that the stone aggregates to be shipped were mined many years ago between the 1940s and 1980s and the establishment of an economic freight rail business has not come to fruition. It also seems highly unlikely that Mitchell would eliminate its regional shipments by truck given the tens of millions of tonnage available for shipment. Rather those shipments would presumably be supplemented by any rail opportunities it could develop, and the alleged environmental benefits of reduced CO2 emissions would not likely be realized.

The simple fact is that no meaningful rail traffic of any kind has been transported over the Tahawus Line for decades and neither SNCR or another possible suitor of the line has been able to develop a viable commercial plan to develop such traffic. Also, an abandonment order would serve the public interest by eliminating possible future actions by SNCR that are inconsistent with and potentially harmful to the natural resources of the Adirondack Park, while allowing NYS and its municipalities to explore alternative uses for the line and environmentally-friendly economic development opportunities.

For the reasons stated herein, the Adirondack Council supports the NYS DEC Application for Adverse Abandonment.

Sincerely,



William C. Janeway
Executive Director

cc: Joshua Tallent, NYS Office of Attorney General, Environmental Protection Bureau

⁴ See OmniTRAX Inc. letter dated June 14, 2019.