

ORIGINAL

Before the ²⁰⁶⁵⁸¹
SURFACE TRANSPORTATION BOARD



Docket No. AB-448 (Sub-No. 2X)

SF&L RAILWAY, INC.--ABANDONMENT EXEMPTION--
IN HANCOCK, McDONOUGH, FULTON AND PEORIA COUNTIES, IL

REPLY TO MOTION TO SUBSTITUTE

ENTERED
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Public Record

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Preliminary Statement

McDonough County, City of Macomb, and Joseph C. Szabo,^{1/}
submit this reply to the motion by Toledo, Peoria and Western Rail-
way Corporation (TP&W), filed October 30, 2002, wherein TP&W seeks
to substitute itself in lieu of petitioner SF&L Railway, Inc. (SF&L),
so that TP&W would be the petitioner in this proceeding, hereinafter
designated SF&L Abandonment.

TP&W would thus reverse the decision of the Surface Transportation
Board (Board), which recently ruled that the instant SF&L Abandonment
be dismissed. See: Finance Docket No. 33995, SF&L Railway, Inc.-Acquis-
ition and Operation Exemption-Toledo, Peoria and Western Railway Corp-
ation Between La Harpe and Peoria, IL, pp. 3-4. (served October 17,
2002) (SF&L Acquisition). Although TP&W was a party participant in SF&L
Acquisition, TP&W is not a party to the instant SF&L Abandonment, and
did not file a reply or seek to intervene in this proceeding.^{2/}

^{1/} Illinois Legislative Director for United Transportation Union, with
offices at 8 So. Michigan Avenue, Chicago, IL 60603.

^{2/} Replies were due October 15, 2002. SF&L Abandonment (Decision,
Sept. 23, 2002, at p. 2).

The Board should reject (as a non-party) or deny TP&W's motion to substitute itself for SF&L as the petitioner in this proceeding. The Board should go forward with its decision to dismiss SF&L's petition for abandonment exemption, due to mootness. SF&L Acquisition, supra.

ARGUMENT

I. TP&W'S MOTION IS IMPROPER; ABANDONMENT IS PERSONAL TO THE PETITIONING RAIL CARRIER.

TP&W seeks to expedite abandonment of this extensive 71.5-mile line by utilizing the time frame already consumed by petitioner SF&L. However, abandonment is personal to the involved carrier, for different carriers may have different traffic patterns. This is particularly true where, as here, much of the traffic originating or terminating on the line is agricultural products which can move to different markets or channels of trade dependent upon the carrier involved. Further, traditionally, considerable TP&W traffic has moved to or from Fort Madison, Iowa, or Keokuk, Iowa, via the Peoria-La Harpe line segment.

Abandonment cannot be authorized for one railroad on the basis of evidence presented by an entirely different railroad. Department of Pub. Serv. Reg., Etc., Mont. v. United States, 344 F.Supp. 1386, 1387-90 (D. Mont. 1972) (three-judge). Even where carriers merge during the course of an abandonment proceeding, the preferred course is to reopen for additional evidence and findings. Black v. ICC, 737 F.2d 643, 654-55 (7th Cir. 1984); People of State of Ill. v. United States, 666 F.2d 1066, 1081 (7th Cir. 1981).

An abandonment proposal by TP&W requires data at least as comprehensive as that advanced by SF&L; indeed, TP&W's required information should be more extensive than that advanced by SF&L, for TP&W has a long history of operations and experience in the involved area, whereas

SF&L has less than a single year's experience.

II. TP&W DOES NOT CORRECTLY STATE THE POTENTIAL
OPPOSITION TO A TP&W ABANDONMENT PROPOSAL.

TP&W in its motion to substitute, presumes that responses to SF&L's September 3, 2002 (as amended) petition for an abandonment exemption constitutes the only opposition to any TP&W request for abandonment. (Motion, 10/30/02, pp. 4-6, 9). This is an incorrect presumption, untested by an actual TP&W abandonment application or exemption request. The public had expressed opposition to abandonment over a 20-months period in the SF&L Acquisition proceeding; that proceeding was an attempt by TP&W to dispose of its 71.5-mile line to SF&L, and was tantamount to abandonment of service by TP&W. There was no requirement by the public, after September 3, 2002, to again renew opposition to the proposed abandonment. Although various docket numbers employed by the Board may embrace separate proceedings from a technical standpoint, it appeared the public assumed the Board understood the many objections to abandonment of the line.

McDonough County, City of Macomb, and Joseph C. Szabo, on September 19, 2002, replied to the SF&L abandonment petition, and supplemented that reply on October 15, 2002.

TP&W asserts that no shipper opposed abandonment, and that McDonough County has not questioned the inability of the Line to cover its maintenance or operating costs while operated by SF&L or TP&W. (Motion, 10/30/02, p. 9). TP&W adds that City of Macomb is not located on the line. (Ibid.). TP&W is dead wrong concerning opposition to abandonment. Many shippers oppose abandonment and, as highlighted by the Board in its October 17, 2002 SF&L Acquisition, at p. 19 n.35, there is no assurance that an Offer of Financial Assistance (OFA)

would go through following an abandonment. The fact that shippers did not renew opposition to abandonment again after SF&L filed for abandonment on September 3, 2002, may indicate dissatisfaction with SF&L service, but by no means can such silence be imputed as a lack of opposition to any forthcoming TP&W abandonment filing. This is particularly true in light of the Board's October 17, 2002 warning that there is no assurance of an OFA going through after abandonment. SF&L Acquisition, p. 19 n.35.

McDonough County objected to the SF&L abandonment proposal, by its September 19 and October 15, 2002 filings. McDonough County saw no need to go into a detailed examination of SF&L's abandonment petition, and neither did the Board, which on October 17, 2002 voted to dismiss SF&L Abandonment. McDonough County was not presented with any analysis by TP&W, contrary to TP&W's contention otherwise. (Motion, 10/30/02, p. 9).

City of Macomb opposes abandonment, even though TP&W does not serve the community. The reasons for this opposition, and the effect of abandonment upon Macomb, were the subject of verified material in SF&L Acquisition.

III. TP&W'S CASE FOR ABANDONMENT IS
TOTALLY INADEQUATE.

TP&W offers a 2-page "TP&W's Analysis of the Line." (Motion, 10/30/02, pp. 6-8). Such a minimal showing of data is insufficient to make required findings under the rail transportation policy for 49 U.S.C. 10502.

IV. THE BOARD SHOULD REOPEN FINANCE
DOCKET No. 34143 FOR CONSOLIDATION
WITH ANY TP&W ABANDONMENT REQUEST.

In the event the Board grants the motion to substitute, over our objection, the Board in establishing any procedural schedule, on its own motion, should reopen Finance Docket No. 34143, Keokuk Junction Railway Co.-Acquisition and Operation Exemption-West End of the Toledo, Peoria and Western Railway Corporation.^{3/} (Jan. 11, 2002), and consolidate the proceedings. These parties were precluded from timely seeking revocation of the exemption in early 2002, inasmuch as the Board had advised a final decision in SF&L Acquisition was imminent.

It is clear that TP&W's sale of its line between La Harpe and Lomax, IL, with trackage rights over Burlington Northern and Santa Fe Railway Company (BNSF) between Lomax and Ft. Madison, IA, is an important element in TP&W's effort to abandon the adjoining 71.5-mile segment.

The facts surrounding the TP&W sale of its West End to Keokuk Junction Railway are critical to an evaluation of the TP&W abandonment effort east of La Harpe.

V. THE CITED BOARD PRECEDING IS
WHOLLY OFF-BASE.

TP&W claims Board precedent for its unusual request for substitution. (Motion, 10/30/02, pp. 8-9).

base, and without value. This is not an unopposed abandonment. There has been no TP&W submission of a formal request with the necessary data, and no notice to the general public.

^{3/} The Board's Chairman denied a stay, by decision served December 26, 2001. 67 Fed. Reg. 1535-36 n.1 (Jan. 11, 2002).

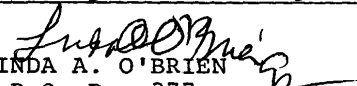
CONCLUSION

TP&W's motion to substitute should be rejected or denied.

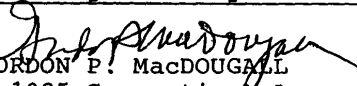
Respectfully submitted,


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Certificate of Service

I hereby certify I have served a copy of the foregoing upon
all parties of record by first class mail postage-prepaid.

Washington DC


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