

207685

CHARLES H. MONTANGE

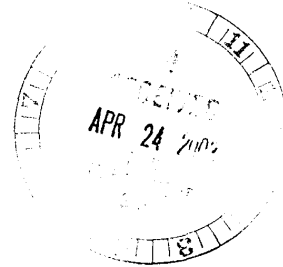
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23 April 2003

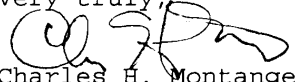
Hon. Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

Re: Georgia Great Southern Division -- Exemption --
in Terrel, et al Counties, GA, AB-389 (Sub-1X)

Dear Secretary Williams:

Enclosed for filing please find the original and ten copies of a Reply (on behalf of Rails to Trails Conservancy and South Georgia Rails to Trails) to the Petition to Intervene filed on behalf of Pioneer Railcorp, et al. The Reply opposes the Petition.

Very truly,


Charles H. Montange
for RTC and SGRT

ENTERED
Office of Proceedings

APR 24 2003

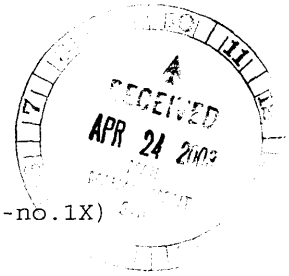
Part of
Public Record

Encls
cc. Counsel (w/encl.)

207685

Before the Surface Transportation Board

Georgia Great Southern Division --)
Abandonment and Discontinuance) AB 389 (Sub-no.1X)
Exemption -- between Albany and Dawson, GA)



Opposition
to Motion for Leave to Intervene and Participate

South Georgia Rails to Trails, Inc. (SGRT) and Rails to Trails Conservancy (RTC) hereby oppose the motion for leave to intervene and participate filed on behalf of Pioneer Railcorp ("Pioneer") and Arkansas-Oklahoma Railroad Company ("AORC").

A.

The Motion filed by Pioneer and AORC fails to disclose any indication that Pioneer has any interest at issue in this proceeding, and fails to provide sufficient information to permit an evaluation of AORC's claimed interest.

1. Pioneer. The motion contains no representation (much less evidence in the form of a verified statement or declaration) that Pioneer has ever railbanked a line under 16 U.S.C. § 1247(d) with a trail user, or that Pioneer has any specific plan to reactivate any line currently subject to § 1247(d).¹ Certainly there is no representation as to any specific property, or the nature of the underlying contractual representations involved. After diligent inquiry, including review by RTC staff of RTC records and STB records, RTC and SGRT are aware of no lines which Pioneer has railbanked, or in which

¹ The most the motion represents is that "[m]any" of the "Interested Railroads have less-specific long-range plans to restore service to short stretches of 'railbanked' right-of-way." Motion, unnumbered p. 2.

APR 24 2003

it has a reactivation interest, and on this basis can only conclude that Pioneer has no interest. Certainly Pioneer has made no showing of any actual interest, lacks standing to intervene, and is in the nature of the proverbial "officious intermeddler."

2. AORC. The moving parties represent on the unnumbered second page of their motion that AORC is "currently working with a City governments [sic] and economic development group to restore service to a stretch of 'railbanked' line which intersects its mainline...." AORC furnished no declaration or verified statement indicating the location of the alleged line; AORC did not identify interested parties; AORC failed to disclose the underlying contractual relationship. AORC has no website that could be uncovered via the Google search engine. There is no basis to evaluate the veracity of AORC's unsubstantiated claims. After diligent inquiry (of RTC files and STB records), RTC could find no line that AORC has ever railbanked. RTC is unaware of any railbanked line that is of interest to AORC. If AORC has an interest in some line, it may well not be railbanked. In any event, AORC has supplied insufficient information to show standing, and basically is in the same position as Pioneer, which is to say devoid of any interest in this proceeding.

B.

In his cover letter to counsel for RTC and SGRT (attached as Exhibit A), counsel for GSR admits that neither of his

clients has any interest in GSR, and states that his clients "will not be offering any information as to this particular situation, only general industry comments." Unfortunately, the motion to intervene contains statements and representations concerning the underlying facts which are simply false. For example, Pioneer and AORC in their motion state, evidently as a factual conclusion, that RTC is "demanding undeserved compensation" or is "delaying the process to make it economically unfeasible." Motion at unnumbered page 2. At unnumbered page 3, Pioneer and AORC similarly suggest that "'Rails to Trails' groups" (presumably RTC and SGRT) are holding up the service restoration process and demanding "unjust 'compensation'" for the property GSR is demanding. These are factual statements, not statements on public policy issues involved. Pioneer and AORC offer absolutely no basis for any of these false statements, which are categorically denied by RTC and SGRT. Pioneer and AORC are not involved and have never been involved in the transaction concerning Albany to Sasser and have no personal knowledge about it. No representative of Pioneer or AORC contacted any representative of RTC or SGRT to ascertain any facts relating to this proceeding. The failure to make contact is indeed essentially admitted in the cover letter attached as Exhibit A. Pioneer and AORC, with no knowledge of any facts, are simply engaged in unfounded speculation based on overheated imagination to the extent they purport to make factual statements or conclusions in their petition to

intervene.

SGRT has supplied verified statements and other evidence showing that GSR's former owners represented that the property at issue in this proceeding was worth \$1.83 million. Indeed, we again attach (Ex. B) a letter dated November 18, 1997, in which RailTex indicates that the appraised value for the line was \$1.83 million. Indeed, RailTex in that letter seeks RTC's support for that position. (This letter was attached to the S. Sidamon-Eristoff Declaration in SGRT's Reply to GSR.) It is passing strange for GSR to ask RTC to support a \$1.83 million valuation for property but then for anyone in the rail industry to accuse RTC and SGRT of unrighteous conduct for seeking that sum on reactivation. But in fact RTC and SGRT have not sought that sum, but lesser amounts. Instead, RTC and SGRT have consistently sought to make a deal at a lesser amount. This amply demonstrates that RTC and SGRT have sought only just compensation. The problem is that GSR is acting unreasonably in demanding a donation. Even if RTC and SGRT wanted to give the property away, a § 501(c)(3) organization like RTC or SGRT would violate U.S. Treasury regulations and its own articles of incorporation if it made such a donation to a for-profit entity like GSR. Moreover, such an action would jeopardize the tax benefits which railroads obtain from making otherwise tax-deductible donations of rail property for rail trails.

Once it is recognized that Pioneer and AORC have no basis at all for the factual mis-assumptions they propagate throughout

their pleading, it is clear that the parties seeking intervention have nothing meaningful to contribute other than confusion and misdirection. Such misinformed applicants for intervention should be denied intervention because they have failed to provide a meaningful argument, wholly apart from their failure to substantiate any interest.

Pioneer and AORC compound their confusion by seemingly suggesting that RTC (and SGRT) oppose reactivation of rail service on rail trails. RTC does not oppose bona fide reactivation provided that compensation is paid in accordance with the underlying contractual interests between the railroad which railbanked the line and the railbanking entity. No one's interest, and certainly no Class III railroad's interest, is served by neutering 16 U.S.C. § 1247(d). Yet exactly that would happen if, as apparently advocated by Pioneer and AORC, trail managers could be divested of the property at the whim of any entity purporting to be a "railroad" regardless of the underlying contracts and property interests.

Counsel for Pioneer and AORC accuse RTC (and implicitly SGRT) of unreasonable delay. Any delay here is due to GSR's refusal to negotiate fair and reasonable compensation for a line it previously represented to RTC and evidently the IRS was worth \$1.83 million. Moreover, SGRT understands that Georgia Department of Transportation (GDOT), which has heavily subsidized GSR, has at least \$500,000 available for purchase of the property at issue. As SGRT's pleadings indicate, SGRT

through its counsel has approached GDOT both by telephone and in writing to do a deal for rail reactivation, but GDOT has declined to engage in any negotiation. On this record, the only possible factual conclusion is that GSR and GDOT are unreasonably delaying rail reactivation if anyone is. Pioneer and AORC have the facts backwards and are again speaking speculative nonsense.

This raises another point. Pioneer and AORC complain that Class III carriers lack resources to pay compensation for property they wish to employ for rail purposes. Even if this were true (certainly Pioneer and AORC provide no basis to believe it), STB and its predecessor have heretofore never regarded lack of resources as grounds to order rail property to be transferred without just compensation, either under 49 U.S.C. § 10904 ("offers of financial assistance") or § 10907 ("development"). Pioneer/AORC's argument is thus a complete nonstarter. Additionally, even if shortlines were underfunded, they can always turn to state departments of transportation for funds for both acquisition and rehabilitation. That is what GSR did below. So far as SGRT and RTC can tell, all GSR's real estate and track costs are being borne by Georgia taxpayers through subsidies provided GSR by Georgia DOT. GSR produced no evidence that it could not make arrangements for similar support to pay for the property from Albany to Sasser. In any event, Pioneer and AORC offer no rationale for requiring non-profit land conservation organizations, or state and local park

departments, to give shortlines a hand-out. The only obligation of 16 U.S.C. § 1247(d) is that trail managers keep the corridors intact and bear tort and tax liability for same at no on-going cost to the railroads. If the railroads otherwise transferred title to the trail manager, then a shortline coveting it must buy it back, unless the underlying contractual provisions provide for a discounted transfer (in which case no tax deduction presumably could be taken).

Pioneer and AORC claim that RTC's position would render STB's jurisdiction illusory and railbanking fraudulent. This is propaganda, not argument. STB's regulations provide how lines may be reactivated. See 49 C.F.R. § 1152.29. This does not mean, nor does it require, that prior conveyances of rail property must be deemed fraudulent, or otherwise nullified, voided, or somehow set aside or ignored. One may have a regulatory right to do something, but one must still acquire the property interests necessary for the exercise of that regulatory right. Thus, a railroad may have the regulatory right to operate, but it still must acquire the property necessary for that purpose. Similarly, it may have a regulatory right to reactivate, but it still must acquire the property necessary for the reactivation. Contrary to their rhetoric, it is the Pioneer/AORC/GSR interpretation which would nullify 16 U.S.C. § 1247(d) as a means of preserving rail corridor.

Finally, Pioneer and AORC argue that loss of rail service to small towns and rural areas is a problem, and claim that

extending rail service to these communities will help attract and retain jobs. In certain cases, extending rail service will be helpful in this regard. But simply returning to the 1950's with redundant railroad track everywhere is not an economic answer. The reason that small towns and rural areas have lost rail service is that trucks provide more economic service for smaller businesses, and for shorter hauls. Additionally, automobiles allow citizens of rural areas to access larger urban markets to obtain discounts from high volume suppliers located there. New little Class III rail lines everywhere will not address these issues, but instead will result in a host of bankrupt little Class III shortlines and embarrassed State DOT rail sections for encouraging a new round of over-building.

16 U.S.C. § 1247(d) offers a much more efficient means of keeping the transportation options open for small communities. Trails cost less than rails. Moreover, under § 1247(d), the small communities in the interim can enjoy the benefits of a local park and trail, which constitutes a local amenity and also a stimulus for a local tourist industry. In short, rail trails under § 1247(d) preserve corridor for free at no cost to the rail industry, shippers, or state transportation departments' rail budgets. Yet rail trails provide a variety of local benefits from their park-like nature. While RTC and SGRT certainly concur with the desire to foster the economies of small towns and rural areas (one of the undersigned counsel grew up in exactly such a small town/rural area environment), RTC and

SGRT do not believe that Pioneer or AORC have even a remotely realistic or economically plausible suggestion to address that desire, at least insofar as Pioneer and AORC have set anything forth in their motion to intervene.

Lee County Development Authority supplied a letter (Ex. C) directly to this Board (already on the STB website, and annexed hereto) noting that both rails and trails supply local benefits. Lee County says that both GSR and SGRT are "strong allies in our effort to bring commercial and industrial base to the 9th poorest congressional district in the Country."² But as Lee County Development Authority recognizes, there should be adequate compensation for corridor rights.³

Congress certainly tired of requiring un-used and under-utilized rail lines to be retained in active rail service long ago, due to all the railroad bankruptcies. It would be passing strange for this Board, which under national transportation policy is supposedly interested in fostering market rationality, to wish to return to the pre-World War II regulatory era.

² Lee County Development also suggests that the impact of GSR's proposed rail reactivation on "transportation, residential and retail growth" on the eastern side of the industrial park has also raised some questions. Evidently these are still under consideration for the Development Authority seems to say it is now taking no position, other than that if rail is reactivated, SGRT should be compensated.

³ Lee County Development notes that Mr. Small [GSR] "has mentioned that he has attempted to negotiate fair and reasonable compensation." SGRT's attorney has attempted to obtain a proposal and to initiate negotiations with both GSR through its counsel and/or with Georgia Department of Transportation. Both have declined to discuss fair and reasonable compensation.

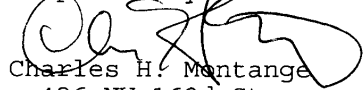
Finally, the interim trail manager/railbanker in all freight rail reactivations to date of railbanked lines to the knowledge of RTC and SGRT has received compensation (either cash or land swap) for its property used in the reactivation, or continued to own the property while making it available (by lease or other acceptable arrangement). Indeed, SGRT's counsel has been involved in one capacity or another in connection with both the reactivations cited by GSR in its petition, and in neither case did the trail managers owning the railbanked corridors surrender property for free, or suffer a voiding of their deeds. Respecting the property interests of the trail managers in the railbanked railroad corridors did not impede rail reactivation, did not delay it, did not somehow render 16 U.S.C. § 1247(d) fraudulent, and did not have any of the other deleterious effects Pioneer/AORC hypothesize. In other words, actual experience to date belies all Pioneer/AORC's arguments.

Conclusion

Pioneer and AORC fail to disclose sufficient facts to indicate their interests or standing; compound this lack of information with false information and unfounded allegations evidently based on lack of any research on the subject matter on which they discourse; and propound notions with no legitimate premise, rational argument, or reasoned conclusion. The manifestly defective Pioneer/AORC motion to intervene should be denied, and certainly its assertions are all denied and should

be given zero weight.⁴

Respectfully submitted,



Charles H. Montange
426 NW 162d St.
Seattle, WA 98177
(206) 546-1936
for South Georgia Rails to Trails, Inc.

Andrea Ferster
General Counsel
Rails to Trails Conservancy
1100--17th St., N.W., 10th Floor
Washington, D.C. 20036
for Rails to Trails Conservancy

Certificate of Service

I hereby certify service of a copy of the foregoing Reply by U.S. Mail, postage pre-paid first class upon the following counsel of record this 23d day of April, 2003:

Daniel A. LaKemper
P.O. Box 185
Morton, IL 61550 (Pioneer/AORC)

Louis P. Warchot
Dennis J. Starks
Association of American Railroads
50 F Street, N.W.
Washington, D.C. 20001

Karl Morell
Ball Janik
1455 F St., N.W., Suite 225
Washington, D.C. 20005



⁴ RTC and SGRT do not oppose the intervention of AAR. AAR's members have railbanked many lines and have an interest in developing 16 U.S.C. § 1247(d) so it will work over the long haul. Moreover, AAR through its members actually did inquire into some of the underlying facts.

Exhibit A

PIONEER RAILCORP
LAW DEPARTMENT
P.O. BOX 185
MORTON, ILLINOIS 61550
LAKEMPER@MTCO.COM
TEL: (309) 678-6048

April 3, 2003

Andrea Ferster, Esq.
General Counsel
Rails to Trails Conservancy
1100 17th St., N.W., 10th Fl.
Washington, D.C. 20036

Charles Montange, Esq.
426 NW 162nd St.
Seattle, WA 98177

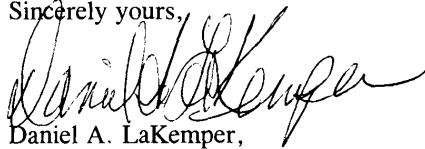
RE: STB No. AB-389 (Sub-No. 1X) - Georgia Southwestern Railroad

Counsel:

Enclosed please find my Motion for Leave to Intervene and Participate in the above-referenced proceeding. Unfortunately, I was unaware of this proceeding until this week, and did not have authorization to file from my clients until today, which I have been given to understand is the deadline for such submissions. I, therefore, was unable to call either of you to introduce myself. Suffice it to say that none of my clients have any interest whatsoever in the Georgia Southwestern Railroad. Our concern is entirely with the public policy issues involved, and so we will not be offering any information as to this particular situation, only general industry comments.

Please do not hesitate to call me if you have any questions.

Sincerely yours,



Daniel A. LaKemper,
General Counsel.

Encs.

Exhibit B

In Reply Refer To:
WF 11181

RECEIVED

LOOKS LIKE ITS WORKING
PLEASE CALL WHEN TIME
PERMITS

November 18, 1997

Via Fax

Mr. Richard C. Keene
800-C Third Street
Neptune Beach, Florida 32666

Mr. William Spencer Lee, IV
504 N. Jackson Street
Albany, GA 31701

Mr. Simon Sildaman-Eristoff
Rails to Trails Conservancy
1100 17th Street, N.W., 10th Floor
Washington, DC 20036

Re: GSWR Conveyance to RTC: Albany to Sasser, Georgia

Gentlemen:

Please be advised that the Release Deed submitted to us with Richard Keene's letter of November 15th is acceptable to the GSWR.

We are also in receipt of Simon Eristoff's telephone message indicating that the RTC is willing to conclude this transaction prior to the end of November. Therefore, in anticipation of the consummation of this transaction, we require the following:

1. Amendment of the Dawson to Sasser Option Agreement to provide for a increase in sale price to \$200,000, and an extension of the closing/contingency date to June 30, 1998.
2. Also, we would appreciate the RTC signing a closing statement supporting RailTex's position for its donation in the amount of \$1.83 M. This is the documented appraised value of the Albany to Sasser corridor (not including track and other track materials).

As we have agreed, RTC will pay RailTex \$100,000 as the total cash consideration for all trackage located within the Premises, and RailTex (GSWR) will forgive the additional \$200,000 debt, thereby donating the land to RTC in its entirety.

4040 Broadway • Suite 200 • San Antonio • TX • 78209 • Tel. 210-841-7600 • Fax 210-841-7629

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101

11. 18. 07 01:45 PM * LEE & LEE * ALBANY, GA.

Mr. Richard C. Keene
Mr. William Spencer Lee, IV
Mr. Simon Sidaman-Eristoff
November 18, 1997
Page 2

We are prepared to conclude this matter as soon as possible, and appreciate Richard's assistance in coordinating GSWR's actions this week.

Sincerely,



Todd N. Cecil
Director - Real Estate

TNC/dn

cc: Mr. Brad Lafavers

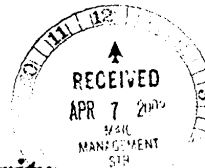
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11. 18. 07 01:45 PM *LEE & LEE A I B I CA.

Exhibit C

27553



Lee County Development Authority

Fred Finney
Chairman
Neil Thompson
Vice Chairman
Tony Brett
Eddie Hinman
Judy Pate
John Wright
Darryl Quinn
Dr. Robert Moss
Lewis Harris, ex-officio

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Web: www.lee.ga.us

Brad Lofton
Director
Catherine Schulz
Assistant

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Office of Proceedings

APR 07 2003

Part of
Public Record

March 28, 2003

The Honorable Vernon Williams
Surface Transportation Board
1925 K Street NW
Suite 715
Washington, DC 20423-001

Re: Docket No. AB-389 (Sub-No. 1X), Petition To Vacate a Notice of Interim Trail Use or Abandonment

Dear Secretary Williams:

Please allow this letter to serve as an addendum to the letter written on March 20, 2003. The Chamber and Development Authority of Lee County is following the petition from Georgia Southwestern Railroad to reactivate the rail line between Albany, GA and Sasser, GA. The Chamber considers both Terry Small of GSWR and the not-for-profit trails organization strong allies in our effort to bring commercial and industrial base to the 9th poorest congressional district in the Country. Certainly with an industrial park within 1/4 mile, we believe rail service will assist with economic development and industrial recruitment. Questions have arisen as of late regarding the impact of the rail on transportation, residential and retail growth on the Eastern side of the industrial park. We have not studied the issue in-depth, and cannot take an immediate position.

After discussions with both sides, however, we do encourage adequate compensation for the corridor rights. Mr. Small has mentioned that he has attempted to negotiate fair and reasonable compensation. If the rail is reactivated, and the not-for-profit is compensated, they could look to develop other trails in the Albany MSA for the benefit of the citizenry of Southwest Georgia. This would be a win-win for all parties. Please call if I can ever be of assistance, and thanks for your time.

Best regards,


Brad Lofton
Executive Director