

Before the
SURFACE TRANSPORTATION BOARD

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December 12, 2017
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Public Record

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 MOTION OF THE GREAT WALTON RAILROAD COMPANY, INC.
TO REBUT ERRONEOUS STATEMENT AND CLARIFY LEGAL POSITION**

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Dated: December 12, 2017

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On November 3, 2017, The Great Walton Railroad Company, Inc. (“GWRC”) filed a Motion to Expedite the handling of this adverse abandonment proceeding, and Hartwell First United Methodist Church (“Hartwell First” or “Applicant”) filed a Reply on November 20, 2017. By further motion filed on November 28, 2017, GWRC has again, as it has done previously in this proceeding, filed a “Motion to Rebut” seeking to make yet an additional filing not permitted under the Board’s rules, spending five pages to rebut a single purported erroneous statement, and to use the opportunity to reargue once again state law title issues that are not within the Board’s purview to decide. The proposed sur-rebuttal does nothing to create a more complete record, and is merely another attempt to muddy the waters before the Board with what are clearly state law issues. Accordingly, GWRC’s proposed sur-rebuttal should be rejected; however, if the Board were to accept the proposed sur-rebuttal, then the Board should also accept this further reply of Hartwell First.

ARGUMENT

A. The proposed sur-rebuttal should be rejected.

The Board's regulations which limit the available filings (*see, e.g.*, 49 CFR 1104.13(c)) are meant to control its docket, and to establish an end to filings so that a decision can be issued. *Waterloo Railway Company – Adverse Abandonment – Lines of Bangor and Aroostook Railroad Company and Van Buren Bridge Company in Aroostook County, Maine* (“*Waterloo Railway*”), STB Docket No. AB-124 (Sub-No. 2) (served May 6, 2003), slip op. at 3 (“the pleading process ends with the reply, and replies to replies are not permitted”). While the Board will allow additional replies, and sur-replies if necessary, for “good cause” or when additional information is necessary to provide a complete factual record, *id.*, GWRC's proposed sur-rebuttal adds nothing new or relevant to the record, and accordingly should be rejected. *See Peter Pan Bus Lines, Inc. – Pooling – Greyhound Lines, Inc.*, STB Docket Nos. MC-F-20904, *et al* (served April 20, 2011), slip op. at 3 (record not incomplete based on representations / alleged misstatements in other party's reply; repetition of same arguments made in Petition rejected). *See also Waterloo Railway, supra.* As GWRC has not introduced any additional facts, there is no reason to accept the proposed sur-rebuttal.

B. If the Board accepts the proposed sur-rebuttal then it should also accept the following as a reply thereto.

The suggested material misstatement is the Applicant's contention that GWRC acknowledges that it does not have title to the land where it wants to construct track where the north spur was previously located. Motion to Rebut, p. 1. However, GWRC acknowledges that it cannot produce a deed of the property to GRWC or its predecessor railroad (Motion to Rebut, p. 1), so it is indeed true that GWRC does not have any record title to the property in question. Accordingly, the Applicant does not believe there is any material misstatement to correct.

GWRC goes on to argue once again that it has title to the disputed property based on Georgia law of prescription. Motion to Rebut, pp. 1-3. Notwithstanding this claim, GWRC has not sought to have any prescriptive rights confirmed by a state court. Hartwell First does not believe that GWRC would in any event be able to satisfy the requirements of prescription under Georgia law as GWRC has not had continuous, exclusive or uninterrupted control of the property at least since it removed the spur tracks in 2009. Although GWRC disagrees, Hartwell First believes that GWRC's pursuit of a state law condemnation (discussed in more detail below) is an acknowledgement that establishing title by prescription or otherwise would not be as clear cut as GWRC claims in its Motion to Rebut.

GWRC also continues to argue that previously submitted Exhibits demonstrate that its predecessor Hartwell Railway has title to the property where the north spur was located for over 100 years. Motion to Rebut, pp. 2-3. However, this is not the case. Both referenced documents indicate that anything the railroad owned was within its acknowledged 20-foot right of way. The valuation map included in prior filings as GWRC Exhibit 1 shows a spur track within the right of way, and the ICC valuation documents, p. 7, included in prior filings as GWRC Exhibit 35 describe the "storage track" as being only 7' from the centerline of the main line - i.e., within the 20-foot right of way. Neither demonstrates title to or ownership of any property outside of the 20-foot right of way where the north spur was located.

In its Motion to Rebut, GWRC also reargues once again whether it abandoned any rights that it had to the north spur track when it voluntarily removed the rails in 2009. GWRC makes the erroneous claim that Board authority would have been required for GWRC to have abandoned any portion of the "runaround" track. Motion to Rebut, p. 3. However, as Hartwell First has previously addressed, this is not the case. *See* Rebuttal of Applicant filed June 13, 2017

at pp. 13-14. The track in question was constructed as a storage track / side track. *See* GWRC Exhibit 35. It was later connected to the Clinkscales industrial track – maintaining its status as ancillary track. Even if later used as a runaround, that use would not be inconsistent with its status as ancillary track. Under 49 U.S.C. §10906, no prior authority is required to abandon ancillary tracks.

Whatever its motivation, GWRC has now opted to file a condemnation action with the Georgia Public Service Commission (“PSC”) in order to obtain title to the property where the north spur was located. The initial hearing has been set for January 23, 2018. A recommended decision of the hearing officer is to be issued within 30 days after conclusion of the hearing. After that, either party can seek reconsideration by the full PSC. The parties would also have appeal rights.

CONCLUSION

For the foregoing reasons, the Board should deny the motion and reject the proposed sur-rebuttal as it adds nothing of substance to the factual record, and merely reargues issues of Georgia state law that are more properly resolved by the Georgia courts and agencies. However, if the Board accepts the sur-rebuttal, it should also accept the reply of Hartwell First set forth herein.

Respectfully submitted,


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Dated: December 12, 2017

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of December, 2017, I served a copy of the foregoing

Reply on the following persons by the method indicated:

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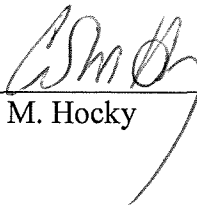
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