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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 MOTION OF THE GREAT WALTON RAILROAD COMPANY, INC.
FOR EXPEDITED HANDLING**

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Dated: November 20, 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. The Motion is ostensibly based on the GWRC’s “immediate need to restore its tracks in order to provide safe and reliable service for Quality.” Motion, p. 1. While Hartwell First United Methodist Church (“Hartwell First” or “Applicant”) does not oppose a prompt decision in this proceeding (which it believes should grant the adverse abandonment as requested), GWRC has not in the Motion demonstrated either a need for a runaround in downtown Hartwell, or any need for an immediate decision.

There has been no showing that Quality Holdings (“Quality”) is not currently receiving safe and reliable service. Indeed, Quality’s president testified in the related federal court litigation that he was satisfied with the service he has been receiving from GWRC. In the GWRC Response filed on October 2, 2017, Quality did indicate that it expected to increase significantly its amount of shipments – but not until 2020. *See* Colehower Supplemental Verified Statement, ¶4 attached to the GWRC Response. GWRC again makes the argument that increased traffic to a shipper not located on the Subject Line that is currently receiving good

service creates a need for use of the Subject Line (together with a runaround that no longer exists). The Hartwell First Reply filed on October 30, 2017, explained in detail how even this increase in traffic could be handled as the Quality traffic is currently handled, and provided suggestions for alternative runarounds on GWRC property that would not require the location of a runaround in downtown Hartwell. Hartwell Reply, pp. 6-7. Thus, GWRC has not shown either that there is a need to build a runaround in downtown Hartwell, or that any need is immediate.

Further, GWRC acknowledges that it does not have any title to the land where it wants to construct a piece of the runaround (where the north spur was previously located), and that title to the property is a state law issue that will not be determined by the Board.¹ Since it does not currently have any demonstrable title to the land underlying the former north spur, GWRC, on October 27, 2017, filed a condemnation action with the Georgia Public Service Commission ("PSC"). GWRC Motion, p.6, Exhibit 34. It seems disingenuous for GWRC to seek an expedited decision from the Board when it has just filed its condemnation action, and acknowledges that it cannot construct the tracks until after the conclusion of the condemnation action. GWRC Motion, p. 10. Under Georgia law, GWRC condemnation by a railroad is not automatic and requires approval from the PSC before any condemnation action can be filed in Georgia Superior Court. Hartwell First does not believe that GWRC can satisfy the state law criteria for condemnation, and intends to oppose the condemnation at the PSC. No schedule has

¹ Despite acknowledging that title is a state law issue, GWRC continues to argue about whether Hartwell First has title to the property underlying the former north spur; however, that question is irrelevant to whether GWRC has any title to the property to allow construction of a spur. (The ICC valuation documents submitted by GWRC as Exhibit 35 do nothing more than establish that the north spur existed at that time, and do not demonstrate title to the property.) Clearly, GWRC does not have such title which is why it filed the condemnation action.

yet been established by the PSC, and thus it is clear that GWRC cannot commence construction immediately.²

The balance of the GWRC Motion reads more like an impermissible reply to Hartwell First's Reply filed on October 30, 2017. However, since the arguments were included in the GWRC Motion, Hartwell First will respond briefly. The meaning and effect of the original TORCH lease to give up GWRC's control of the Line Segment, and GWRC's apparent motivation to receive profit from its rent of property to which it only has an easement for railroad purposes, have already been addressed in the GWRC Response and the Hartwell First Reply, and there is no reason to repeat those arguments here. The ultimate question here remains whether GWRC has established any demonstrated current or future need for the Line Segment. Hartwell First believes that it has demonstrated that there is not.³

Although not relevant to the current or future need for the tracks, GWRC continues to rely heavily on its claims that the north spur and Clinkscapes industrial spur were combined into a runaround almost a hundred years ago. This not the case, as the addition of the Clinkscapes industrial spur in 1919 merely extended the spur to serve the Clinkscapes warehouse and did not create a runaround. *See* Hartwell First Rebuttal filed June 13, 2017, pp. 12-13. There has been no evidence presented as to when or under what authority the Clinkscapes industrial track was tied back into the mainline track. Hartwell First does not dispute the long time existence of the

² A decision in this proceeding granting the adverse abandonment would moot the condemnation proceeding. On the other hand, if the adverse abandonment were still pending (or even if it were denied), the PSC would still need to make an independent determination of whether GWRC has met the standards for condemnation. If not, then there can be no runaround in downtown Hartwell, and GWRC will not have any need to use the Line Segment tracks that are the subject of the adverse abandonment.

³ This is particularly true when one considers that GWRC's only asserted need is to use the Subject Line as part of a runaround, the runaround does not currently exist, and GWRC does not have the title to construct and operate the missing piece of the runaround.

former north spur and the Clinkscales industrial track. However, how long the track may have been in place is not the relevant question. The undisputed facts are that the runaround has not been used to provide rail service for over 20 years, and the former north spur track was removed by the railroad over nine years ago.

It does appear that Georgia Department of Transportation will allow GWRC to install crossings at Webb Street. Given that the road was recently repaved, the installation of the crossings will not be inexpensive. Moreover, the state court injunction still prevents GWRC from constructing a spur at the location of the former north spur, or from constructing and connecting the crossing on the west side of Webb Street.

CONCLUSION

Thus, GWRC has not demonstrated an immediate need for a decision, or any current or future need for the Line Segment to continue providing rail service. For the reasons set forth in the pleadings and record before the Board, if the Board were to issue an expedited decision, Hartwell First requests that the Board grant the relief requested in the Adverse Application.

Respectfully submitted,



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Dated: November 20, 2017

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of November, 2017, I served a copy of the foregoing

Reply on the following persons by the method indicated:

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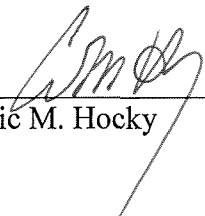
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