

BEFORE THE
SURFACE TRANSPORTATION BOARD

AB-290 (Sub-No. 404X)

ENTERED
Office of Proceedings
January 9, 2023
Part of
Public Record

NORFOLK SOUTHERN RAILWAY COMPANY
- ABANDONMENT EXEMPTION -
IN THE CITY OF GREENSBORO, NORTH CAROLINA

MOTION FOR LEAVE TO FILE A REBUTTAL

The City of Greensboro, North Carolina (“Greensboro”) respectfully moves the Surface Transportation Board (“STB”) for leave to file a rebuttal in the above-captioned proceeding. On December 7, 2022, Greensboro filed its petition for clarification from the Surface Transportation Board (“STB” or “Board”) that approximately 264’ of railroad right-of-way subject to the Notice of Interim Trail Use (“NITU”) in this proceeding may be narrowed to at most 50 feet in width in connection with a land sale to Kotis Properties to develop an important local grocery store that could not proceed without this transaction. As is demonstrated in the Verified Statement of James R. Blaze (“Blaze V.S.”) attached to the petition, the proposed remaining right-of-way that would continue to be subject to the NITU is sufficient to permit the future reestablishment of rail service.

Greensboro filed its petition in accordance with the recent STB guidance that when a trail use sponsor proposes to narrow the right-of-way held under the Trails Act and a certificate or notice of interim trail use, the sponsor must demonstrate “with adequate specificity that the remaining width of the right-of-way would be sufficient to support the reactivation of rail service.” *Missouri Pac. R.R. Co. – Abandonment Exemption – In Red River and Bowie Counties, Tex.* (“*Missouri Pac.*”), AB-3 (Sub-No. 137X), slip op. at 4 (STB served July 29, 2021). The Board stated “[i]n such cases, the Board will [] issue a decision clarifying that the width of the

right-of-way that the trail sponsor has demonstrated is not needed to reactivate rail service is no longer part of the NITU/CITU.” *Id.* Greensboro demonstrated in the *Blaze* V.S. that the proposed remaining right-of-way that would continue to be subject to the NITU is sufficient to permit the future reactivation of rail service. Norfolk Southern Railway Company (“NSR”), who sold the rail line at issue in this proceeding to Greensboro, does not dispute this conclusion.

Instead, NSR filed a reply in opposition to the petition arguing that Greensboro’s petition for clarification is the inappropriate method to seek Board authority when the rail carrier with the residual common carrier obligation objects to the land sale in the right-of-way even when the sale does not impact the ability to reactivate rail service if so needed in the future. NSR argues that an adverse abandonment application is the proper method despite the holding in *Missouri Pac.* NSR argues that because it opposes the petition for clarification, the holding in this recent case should not apply.

As this is the first time a railroad has argued against such a petition after it has sought abandonment and sold the rail line to the petitioner, Greensboro seeks the opportunity to reply to this novel position and counters that the railroad’s support or opposition here has no impact on the applicability of the Board’s guidance in *Missouri Pac.*

While Greensboro understands that a reply to a reply is not permitted under 49 C.F.R. § 1104.13(c), it believes this filing will only be helpful to the Board in addressing this novel argument and will not prejudice NSR or any other party. Therefore, Greensboro asks the STB to accept its rebuttal being filed simultaneously herewith into the record.

Respectfully submitted,

/s/ Daniel R. Elliott

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Dated: January 9, 2023

Certificate of Service

I certify that I have, on this 9th day of January 2023, served by email copies of the foregoing document on all parties of record in this proceeding.

/s/ Daniel R Elliott
Daniel R. Elliott