

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36117

LRY, LLC D.B.A. LAKE RAILWAY—PETITION FOR DECLARATORY ORDER—RAIL
LINE IN LAKE COUNTY, OR. & MODOC COUNTY, CAL.

Digest:¹ The Board denies the LRY, LLC d/b/a Lake Railway petition requesting a declaratory order staying any future proceeding seeking adverse discontinuance of the railroad's service over rail line owned by Lake County, Or.

Decided: June 9, 2017

On May 2, 2017, LRY, LLC d/b/a Lake Railway (LRY), petitioned the Board for a declaratory order staying any future proceeding seeking adverse discontinuance of LRY's service over 55 miles of rail line owned by Lake County, Or. (the County), in Oregon and California. (Pet. 2-3; Pet. App. Tab A, ¶ 7.) On May 19, 2017, the County replied, urging the Board to deny LRY's petition. (Reply 1.)²

LRY states, (Pet. 4), that it currently operates over the County-owned line pursuant to a lease and operation exemption that took effect on January 1, 2010. See LRY, LLC—Lease & Operation Exemption—Rail Line in Lake Cty., Or., FD 35250 (Sub-No. 1) (STB served Dec. 18, 2009). Recently, however, LRY received notice from the County terminating LRY's lease to operate on the line. (Pet. 2-3, citing Pet. App. Tab D.) In response, LRY filed a complaint in U.S. District Court for the District of Oregon challenging that termination and seeking, among other things, a temporary restraining order enjoining the County from terminating the lease. (Pet. 3.) Pending disposition of the federal court litigation, LRY asks the Board to preserve the status quo and ongoing rail service by staying any proceeding that may be filed in the future seeking adverse discontinuance of its operations on the County's line. (Pet. 6.)

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² On May 26, 2017, LRY filed a motion to strike the County's reply to the Petition on the basis that the County's attorney is prohibited from representing it in this proceeding due to a conflict of interest under 49 C.F.R. § 1103.16. (Motion 5.) On June 7, 2017, the County replied to the motion to strike. On June 8, 2017, LRY filed a reply to the County's reply. The County's reply to the Petition was not considered in this decision and, therefore, the Board will deny without prejudice LRY's motion as moot.

The Board has discretionary authority under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321 to issue a declaratory order to terminate a controversy or to remove uncertainty.³ Here, LRY asks the Board to issue a declaratory order staying a hypothetical future adverse discontinuance proceeding before the Board. The Board declines to do so. No such order is necessary as service may not be discontinued unless and until the Board issues an order permitting it. See Thompson v. Tex. Mexican Ry., 328 U.S. 134 (1946). Should the County or any other party begin a Board proceeding seeking authority to require LRY to discontinue service over the line, LRY may petition the Board for a stay of that proceeding or argue its opposition to adverse discontinuance on the merits at that time.

It is ordered:

1. The petition for declaratory order is denied, and the proceeding is dismissed.
2. LRY's motion to strike the County's reply is denied without prejudice.
3. This decision is effective on its service date.

By the Board, Board Members Begeman, Elliott, and Miller.

³ The Surface Transportation Board Reauthorization Act of 2015, Pub. L. No. 114-110, recodified certain provisions of title 49, United States Code, redesignating 49 U.S.C. § 721 as § 1321.