

SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings
October 13, 2020
Part of
Public Record

Docket No. AB 1296X

**R. J. CORMAN RAILROAD PROPERTY, LLC—ABANDONMENT EXEMPTION— IN SCOTT,
 CAMPBELL, AND ANDERSON COUNTIES, TENN.**

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE**PETITION FOR RECONSIDERATION**

Arkansas-Oklahoma Railroad Co. (“AOK”) and North East Tennessee Railroad Authority (“NETRA”) respectfully petition the Surface Transportation Board (“STB” or “Board”) pursuant to 49 C.F.R. § 1115.3(a) for reconsideration of the Board’s decision denying AOK’s appeal on September 23, 2020. On June 26, 2020, the Director of the Office of Proceedings (“Director”) rejected an offer of financial assistance (“OFA”) filed by AOK, a Class III rail carrier. The Director held, based on the totality of the circumstances, that AOK failed to make the requisite showing that there is a continued need for rail service on the line in question. AOK filed an appeal on June 29, and NETRA filed an appeal on July 6, 2020. The Board denied the appeal in a decision served on September 23, 2020, treating NETRA’s filing as a comment in support of AOK’s appeal. NETRA and AOK filed a Petition for a Stay in advance of the filing of this Petition for Reconsideration pursuant to 49 C.F.R. § 1115.3(f).

THE CASE

R. J. Corman Railroad Property, LLC (“RJC Railroad Property”), filed a verified notice of exemption in the above-captioned proceeding under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon a railroad line extending from milepost 0.95 at or near Oneida, Tenn., to the end of the line at milepost 42.0 at or near Devonia, Tenn., a distance of approximately 41.05 miles in Scott, Campbell, and Anderson Counties, Tenn. (the “Line”). Notice of the exemption was served and

FILED
October 13, 2020
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
October 13, 2020
SURFACE
TRANSPORTATION BOARD

published in the Federal Register on March 9, 2020 (85 Fed. Reg. 13,696). On March 19, 2020, AOK filed a notice of intent to file an OFA under 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27, to purchase the Line. Following two extensions of the OFA filing deadline, which were requested by AOK, AOK timely filed an OFA to purchase the Line on June 23, 2020. On the same day, Campbell County, Tenn., National Coal, LLC, and NETRA each filed letters supporting the acceptance of AOK's OFA. On June 24, 2020, Evergreen Packaging also filed a letter in support. By a decision served on June 26, 2020, the Director rejected AOK's OFA because AOK had not demonstrated a "continued need for rail service" on the Line pursuant to 49 C.F.R. § 1152.27(c)(1)(iv)(E). *See R. J. Corman R.R. Prop. — Aban. Exemption — in Scott, Campbell, & Anderson Cntys., Tenn. ("Director Order")*, AB 1296X, slip op. at 2-4 (STB served June 26, 2020). AOK filed an appeal of the Director Order under 49 C.F.R. § 1011.6(b) on June 29, 2020, arguing that the Director erred because the record contained evidence of a continued need for rail service in the form of letters demonstrating community support for the offer. (Appeal 1-2.) AOK claimed that the Director further erred because the "applicable regulation does not require that communities must provide specific details demonstrating a commercial need for rail service." (Id. at 2.)

On July 2, 2020, IRail Car Services, LLC ("IRAIL"), filed public and confidential versions of a letter supporting AOK's appeal. On July 6, 2020, NETRA submitted an appeal, asking the Board to consider supplemental evidence. (NETRA Comment 2-3, July 6, 2020) NETRA included a letter from Straight Fork Forest Management LLC ("Straight Fork") regarding its desire to use the Line. (Id. at Ex. 1.) On the same day, the Tennessee Department of Transportation ("TDOT") filed a letter explaining that, while it does not desire to take a position in favor of either party, it "support[s] dialog" and "additional due diligence by both parties to assess what type of further financial investment may be needed to make this line operational" and "would be willing and compliant with either outcome once a decision is made by the [Board]." (TDOT Letter 1.)

Despite these letters from IRAIL and Straight Fork that demonstrate a “continued need for rail service” as described in NETRA’s filing, the Board rejected the appeal of the Director Order for failing to show a continued need for rail service on the Line. In arriving at this decision, the Board explained:

NETRA argues that the Board, in assessing whether the Director’s ruling was correct, should consider additional evidence NETRA submitted after the Director Order was served. But even if that evidence were considered, the Board would still conclude that AOK had failed to demonstrate a continued need for rail service on the Line. NETRA states that an unidentified large volume importer of foreign wood “is in the process of purchasing land on the Line” and should need rail service “in the near future[,]” but explains that the “deal is subject to a non-disclosure agreement which is why NETRA cannot provide any more detail.” (NETRA Comment 3, July 6, 2020; NETRA Letter 2.) While the Board can appreciate the constraints imposed by a non-disclosure agreement, the proffered information lacks detail on the timing or extent of the projected service need and, ultimately, falls short of the “specific and concrete evidence” the Board has required of “[a]ll offerors in all OFA proceedings.” See *Offers of Financial Assistance*, EP 729, slip op. at 14-15. Likewise, while Straight Fork says generally that it is interested in the possibility of being able to utilize the Line, its letter does not indicate whether it has taken any concrete steps in exploring shipping by rail as opposed to truck.

IRAIL’s letter provides some indication of a potential need for service but without concrete evidence in support of its projections. The Board finds that for purposes of evaluating continued need, IRAIL’s claims are speculative and unsupported, and therefore, given the totality of the circumstances, they are not sufficient for the Board to conclude that it should allow the OFA to proceed in this case.

R. J. Corman R.R. Prop. — Aban. Exemption—in Scott, Campbell, & Anderson Cntys., Tenn. {“Decision”}, AB 1296X, slip op. at 5-6 (STB served September 23, 2020).

However, in this Decision by the Board, Vice Chairman Oberman filed a strong dissent, asserting that “continued need for rail service” had been demonstrated and therefore, the Board should have permitted the OFA request to proceed:

Accepting, *arguendo*, that the Director made a reasonable decision based on the evidence before her at the time, in considering the circumstances here and the additional evidence submitted since the Director’s initial decision and looking at “the totality of circumstances in evaluating the evidence submitted by offerors,” *Offers of Financial Assistance*, EP 729, slip op. at 15, in my view, the evidence now on the record is sufficient to support a finding of a continued need for rail service. The unique circumstances here, at a minimum, consist of the uncertainty concerning the proper interpretation of 49 C.F.R. § 1152.27(c)(1)(iv)(E), which justifies considering the additional evidence now on the record—in particular, the statements from potential shippers on the Line demonstrating a commercial need for service. This evidence, together with the many support statements from local and state government entities and companies operating within the communities that could be served by the Line, indicates that the public interest falls strongly in favor of allowing the OFA process to proceed. An OFA here could provide for continued rail service, which Congress has directed the Board to favor, 49 U.S.C. § 10101(4) & §§ 10904-10906, as well as economic development opportunities in the local community. As such, I would grant AOK’s appeal and allow the OFA process to proceed.

Decision, slip op. at 13 (dissent).

In arriving at this conclusion, Vice Chairman Oberman thoroughly laid out the evidence that clearly demonstrated a continued need for rail service in support of his position:

First, it is important to note that AOK is a railroad with a substantial operating history, having operated in Oklahoma for approximately 24 years. AOK, therefore, not only is willing but also appears capable of providing adequate freight rail service, were it to acquire the Line. While not a requirement under 49 C.F.R. § 1152.27, this fact distinguishes this case from previous situations in which the Board has rejected an OFA. See, e.g., Union Pac. R.R.—Aban. Exemption—in Lassen Cnty., Cal. & Washoe Cnty., Nev., AB 33 (Sub-No. 230X), slip op. at 3 (STB served Sept. 19, 2008) (rejecting OFA because offeror sought to purchase line “to initiate operation of an ‘electrified rail line’”); Burlington N. & Santa Fe Ry.—Aban. Exemption—in King Cnty., Wash., 3 S.T.B. 634 (1998) (rejecting OFA because “the record does not permit us to conclude that the offer is motivated by a desire to provide continued rail service”).

Second, AOK, the North East Tennessee Railroad Authority (NETRA), and the other supporting parties have submitted evidence of a demonstrable commercial need for service. In its confidential filing, IRAIL provides specific information on its business plan as it relates to the Line, including several specific estimates of both traffic volumes on the Line and timelines for those volumes, and numbers of potential jobs that could be created by its business plan. (IRAIL Letter 1-2; see also NETRA Comment 3, July 6, 2020 (stating that IRAIL’s operation “would add hundreds of additional rail cars annually on the Line that would be handled by AOK”).) In addition, NETRA submitted a letter from Straight Fork Forest Management, LLC (Straight Fork), a timber company, with NETRA’s July 6, 2020 comment, which refers to specific clients Straight Fork would seek to ship to, and includes some discussion of why Straight Fork would prefer to ship by rail instead of truck and a specific estimate of the volume of shipments Straight Fork would anticipate making if there were service on the Line. (NETRA Comment, Attach. at 1, July 6,

2020 (“I estimate we would average 900 to 1100 rail car shipments annually if not more”).) This is concrete and specific information from potential users of the Line that, taken together, aptly demonstrates a commercial need for service on the Line.

Third, with respect to community support for the OFA, the record here is replete with such evidence. Even before AOK filed its OFA, Anderson County, Tenn. and the Tennessee Mining Association (TMA) filed letters expressing support for AOK’s request for an extension of time and for preserving service on the Line generally. Anderson County noted that it and NETRA, of which the County is a member, are “work[ing] as quickly as possible to preserve this asset for our county and region.” (Anderson Cnty. Letter 1.) TMA underscored the economic importance of the Line in the surrounding community, stating that “[p]reservation of this rail line will protect future, affordable access by Tennessee mining companies to undeveloped coal reserves in Anderson County, in addition to supporting imminent freight needs,” and that those future mining operations could provide both critical electricity reserves and “numerous wellpaying jobs in this rural area of the state.” (TMA Letter 1.)

Several parties filed letters expressing support for AOK’s OFA, continued service on the Line, and the importance of the Line as an economic development opportunity in the community. (Campbell County Letter 1 (expressing support for “this effort that can create tremendous value within [the] county”); National Coal Letter 1 (former shipper on the Line stating that it hopes to resume use of the Line when the market recovers and that “[o]ur economy will only have access to these resources if critical infrastructure, such as this rail line, is preserved”); NETRA Comment 2-3, June 23, 2020 (describing several potential shippers and economic development opportunities on the Line and stating that “keeping this Line in the national rail system would be crucial for this area that needs more industrial development for new jobs and an influx of capital to help the local economy”); see also Evergreen Packaging

Letter.) Finally, in addition to NETRA's filing in support of AOK's appeal discussed above, the Tennessee Department of Transportation filed a letter in reply to AOK's appeal. Though TDOT does not take a position in favor of either side in this proceeding, TDOT states that it supports "additional due diligence by both parties to assess what type of further financial investment may be needed to make this line operational and preserve short line rail service." (TDOT Letter 1.) Taken together, these parties have provided specific and concrete evidence that clearly shows community support for continued rail service on this Line. I place particular weight on these numerous statements of support, especially from the local economic development authorities. Given that the only objection to maintaining the Line is from the current owner, R. J. Corman Railroad Property, LLC (RJC Railroad Property), there appear to be no public downsides to the continuation of rail service on this Line. Under these circumstances, I see no reason to second guess the stated need for the Line by these local interests.

Id. at 9-11.

In addition to these expressions of community support and continued need for rail service, NETRA and TDOT have heavily invested in the Line. NETRA was incorporated in June 2005 as a public authority created by the Tennessee State Legislature. The purpose of the Authority is to preserve and enhance the railroad system serving Anderson, Campbell, and Scott counties in Tennessee, so as to secure economic benefits for these counties. TDOT contracted with NETRA to provide funds to purchase, rehabilitate, and maintain the Line. From FY 2008 to FY 2013, NETRA received grants from TDOT and received and utilized local funds to rehabilitate the Line. The funds were utilized to perform track engineering, maintenance, track construction and rehabilitation, bridge engineering and inspection compliance, and bridge rehabilitation to include steel superstructure, concrete and reinforcing steel. Since 2008, NETRA expended over \$1.7 million in property improvements on the Line. (Source: NETRA annual financial reports filed with the Tennessee Comptroller of the Treasury; TDOT summary of

grants 2008-2013) The intent of these public dollars was to ensure continuation of rail service and provide for adequate maintenance to the Line. (See TDOT Letter.) This government investment in the Line is the strongest form of community support for continued rail service on the Line.

ARGUMENT

To prevail on a petition for reconsideration, a petitioner must demonstrate:

(b) The petition will be granted only upon a showing of one or more of the following points:

(1) The prior action will be affected materially because of new evidence or changed circumstances.

(2) The prior action involves material error.

49 C.F.R. § 1115.3. AOK and NETRA can demonstrate both new evidence and material error in the prior decision to succeed on this Petition for Reconsideration.

In 2017, in *Offers of Financial Assistance*, Docket No. EP 729, the Board amended its regulations at 49 C.F.R. § 1152.27 implementing § 10904. In doing so, the Board codified prior precedent requiring offerors to show that there is a need for continued freight rail service on the line at issue, and included in the regulations what it described as “four examples of how an offeror may demonstrate that need.” *Offers of Financial Assistance*, EP 729, slip op. at 13 (STB served June 29, 2017). Those examples are:

evidence of a demonstrable commercial need for service (as reflected by support from shippers or receivers on the line or other evidence of an immediate and significant commercial need); evidence of community support for continued rail service; evidence that acquisition of freight operating rights would not interfere with current and planned transit services; and evidence that continued service is operationally feasible.

49 C.F.R. § 1152.27(c)(1)(iv)(E).

In that rulemaking decision, however, the Board explicitly rejected any contention that evidence supporting all four, or any of the examples, is strictly required, stating that they are only “examples” and emphasizing that: “Offerors will not be strictly required to meet any one of (or all) the criteria to show a continued need for rail service. The . . . criteria are intended to provide guidance to offerors as to the types of evidence the Board will examine when considering this element of an OFA.” *Offers of Financial Assistance*, EP 729, slip op. at 14. The Board also stated that “[a]ll offerors in all OFA proceedings will be required to show specific and concrete evidence of a continued need for rail service to make the showing required by this rule” *Id.* at 14-15.

First, AOK and NETRA can establish “the prior action involves material error” based on the dissent issued in the Decision by Vice Chairman Oberman. Based on the facts quoted above, the dissent provides how AOK and NETRA have demonstrated “a continued need for rail service on the line.” 49 C.F.R. § 1152.77(c)(1)(iv)(E). As a result, AOK and NETRA respectfully ask the Board to reconsider its decision on September 23, 2020 herein based on the sound reasoning in the dissent and grant this Petition for Reconsideration finding “material error”.

Second, AOK and NETRA can show “[t]he prior action will be affected materially because of new evidence or changed circumstances”. There is new evidence that IRAIL and Straight Fork can demonstrate here about their continued need for rail service on the Line. The Board found “that for purposes of evaluating continued need, IRAIL’s claims are speculative and unsupported, and therefore, given the totality of the circumstances, they are not sufficient for the Board to conclude that it should allow the OFA to proceed in this case.” In so finding, the Board reasoned that “IRAIL’s letter provides some indication of a potential need for service but without concrete evidence in support of its projections.” However, IRAIL does have concrete support for its projections regarding the need for rail service on the Line. IRAIL’s leadership has operated nearly identical railcar repair and storage facilities at other locations like its proposed operation on the Line here. Based on these existing facilities and

IRAIL's analysis of the market in the area where the Line is located, IRAIL strongly believes that it can achieve the numbers outlined in its June 29, 2020 letter regarding use of the Line for repairs (300-600 cars annually) and storage (500-1000 cars annually). (See second letter from IRAIL attached hereto.) Therefore, this evidence is not speculative, and this new evidence from IRAIL should materially change the Board's decision to a finding of a continued need for rail service.

Moreover, AOK and NETRA can show new evidence demonstrating that Straight Fork has taken concrete steps to explore shipping by rail on the Line. The Board found that "while Straight Fork says generally that it is interested in the possibility of being able to utilize the Line, its letter does not indicate whether it has taken any concrete steps in exploring shipping by rail as opposed to truck." However, Straight Fork can demonstrate it has taken these concrete steps. Columbia Forest Products and Frank Miller Lumber (the companies mentioned in Straight Fork's letter that receive timber from Straight Fork) have both provided letters attached hereto that clearly demonstrate they have the rail infrastructure in place to accept timber from Straight Fork and these parties have seriously discussed the use of rail between them. This new evidence also will materially change the decision because Straight Fork clearly has taken concrete steps to explore rail service.

Importantly, with respect to new evidence, Great Lakes Grain & Transportation, LLC ("GLG&T") has been in discussions with AOK about locating a transload facility on the Line for organic grains and other agricultural commodities. The GLG&T has 6 similar transload facilities in different states in the US. It is anticipated based on these existing facilities that GLG&T would ship 4+ rail cars per month to the Line transload facility at first, growing to over 100 rail cars per year eventually. GLG&T is a well-established business that has used this model in other areas. For more information, see <https://www.greatlakesgt.com/home>. (See letter from GLG&T attached hereto.)

In addition, on June 24, 2020, Evergreen Packaging filed a letter in support as noted above that stated “keeping this Line in the national rail system would be crucial for our company that needs rail service and could use the Line to bring logs to the wood chip plant.” This letter provides further support of a continued need for rail service on the Line.

Importantly, as discussed above, NETRA and TDOT have provided approximately \$1.7 million in grant money to rehabilitate and maintain the Line since 2008. This type of monetary community support for the Line cannot be overlooked. It clearly demonstrates the commitment to continued rail service on this Line.

Because the Board rejected the appeal on the ground that AOK and NETRA had not shown a continued need for rail service, this new evidence regarding GLG&T, IRAIL, Straight Fork and substantial grant money clearly should demonstrate this need. While AOK and NETRA believed the evidence these companies previously submitted regarding their need for rail service was sufficient¹, it has now addressed the Board’s above-quoted concerns in a manner that should change its Decision on the appeal herein.

THE DECISION IS CONTRARY TO THE BOARD’S STATUTORY DUTY TO PRESERVE AND PROMOTE CONTINUED RAIL SERVICE, THEREBY DEMONSTRATING MATERIAL ERROR.

The Board has a statutory duty to preserve and promote continued rail service. *New York Cross Harbor RR v. STB*, 374 F.3d 1177, 1187 (DC Cir, 2004) (“*NY Cross Harbor*”), citing *Western Stock Show Ass’n – Aban. Exempt. – in Denver, CO*, 1 STB 113 (1996), *Salt Lake City Corp. – Adverse Abandonment – in Salt Lake City, UT*, 2002 WL 368014 (STB 2002); and *Chelsea Property Owners – Abandonment*, 8 ICC 2d 773, 779 (1992).

¹ AOK and NETRA urge the Board to consider this new evidence in these new letters and regarding the grant money. As noted in Vice Chairman Oberman’s dissent, the Board has not established in prior decisions what evidence is needed to demonstrate a continued need for rail service. NETRA and AOK in good faith submitted substantial evidence in support of the appeal only to be told by the Board that more evidence is needed. Therefore, it provides this new evidence to comply with the Board’s new standard.

That duty is embodied in both 49 U.S.C. § 10903 conferring authority on the Board to rule on proposed abandonments, and 49 U.S.C. § 10904 conferring authority on the Board to rule on Offers of Financial Assistance for continuation of rail service. There is a *statutory presumption in favor of maintaining rail service* as a result of the National Rail Policy favoring continuation of a sound rail transportation system to meet the needs of the public and the national defense (49 U.S.C. § 10101[4]), and fostering sound economic conditions in transportation (49 U.S.C. § 10101[5]). See *NY Cross Harbor, supra*, 374 F.3d at 1188, note 10, quoting from *Consol. Rail Corp. v. ICC*, 29 F.3d 706 at 712:

... (T)he aim of section 10905 (the OFA statute) is not simply the maintenance of rail lines but the continuation of rail service.

The policy objective of the Board's OFA process is to promote the statutory purpose of 49 U.S.C. § 10904: preserving rail lines for continued service. See *Redmond-Issaquah R.R. Pres. Ass'n v. STB*, 223 F.3d 1057, 1061 (9th Cir. 2000) ("Beginning with [§ 10904]'s title, 'Offers of Financial Assistance to Avoid Abandonment and Discontinuance,' Congress signals its interest in **the continued operation of railroad lines where possible**. This signal gains resonance in the various parts of § 10904.") (emphasis added)); see also *Roaring Fork R.R. Holding Auth. – Aban. Exemption – in Garfield, Eagle, & Pitkin Cntys., Colo.*, AB 547X, slip op. at 4 (STB served May 21, 1999) (finding that "[t]he OFA process is designed for the purpose of continuing to provide freight rail service"), *aff'd sub nom. Kulmer v. STB*, 236 F.3d 1255 (10th Cir. 2001); *Offers of Financial Assistance*, EP 729, slip op. at 2, 15.

The Board lost sight of that statutory duty to promote the continuation of rail service in *NY Cross Harbor*, leading to one of the few instances in which a Board decision has been set aside on judicial review, viz 374 F.3d at 1187-1188:

... The Board failed to assess the abandonment's impact on rail service or on interstate commerce generally. . . .

In the case under consideration, as noted, the proponents of continued rail service have proffered substantial and credible evidence that specific shippers have a need for and would utilize the subject Line. The Court in *NY Cross Harbor* made it clear that such evidence is sufficient to preclude abandonment and presumably to warrant granting an OFA, *viz* 374 F.3d at 1186:

... (T)he Board has regularly used either objections from the active railway's shippers, or the 'potential for continued rail freight service' - i.e., potential future shippers - to reject adverse abandonment applications. *See, e.g. Salt Lake City*, 2002 WL 368014 at *6 (footnote omitted).

As Board Member Oberman emphasized in his perceptive dissent quoted earlier (Decision at 9):

... (I)t is important to note that AOK is a railroad with a substantial operating history, having operated in Oklahoma for 24 years. AOK, therefore, not only is willing but also appears capable of providing adequate freight rail service, were it to acquire the line. . .

AOK is to be contrasted with abusive OFA filers in the past, who have sought to use OFA procedures to acquire rail lines for non-rail use.

Moreover, the STB is required to "consider whether the abandonment or discontinuance will have a serious, adverse impact on rural and community development". 49 U.S.C. § 10903(d). Distressed counties rank among the 10 percent most economically distressed counties in the nation. Each year, the Appalachian Regional Commission prepares an index of county economic status for every county in the United States. Economic status designations are identified through a composite measure of each county's three-year average unemployment rate, per capita market income, and poverty rate. Based on these indicators, each county is then categorized as distressed, at-risk, transitional, competitive or attainment. Currently, Scott County is listed as "Distressed", Campbell is "At-Risk", and Anderson is in "Transition". The loss of the Line, which was in past years the leading economic engine for this region, will have a long-term effect on all efforts to strengthen and get these counties back to

competitive or attainment status. The business plan and current efforts to add new shippers to the Line has been shown to have a \$15 to 20 million annual economic impact. (See letter from Tennessee Department of Economic and Community Development attached hereto.) By granting this Petition, the Board would be supporting the public interest of preserving this Line that is so desperately needed in this rural area as Congress intended.

In sum, reliable shippers have come forward with specific credible evidence of their need for, and intent to use the subject Line, and an experienced Class III rail carrier well known by the Board has shown its ability and willingness to acquire and continue to operate the subject Line. Moreover, as noted, NETRA and TDOT have invested approximately \$1.7 million in this Line since 2008 to continue rail service on it. It would be inherently wrong now to allow this Line to be abandoned and allow RJC Railroad Property to scavenge the Line for its “harvestables”. In those circumstances, the Board has a statutory obligation to preserve and promote rail service over the Line by granting this Petition. *NY Cross Harbor, supra.*

CONCLUSION

Clearly, AOK and NETRA have demonstrated the need for continued rail service on the Line as required. Accordingly, they respectfully ask the Board to grant this Petition for Reconsideration in order to save this vital railroad Line.

Respectfully submitted,

/s/ Daniel R. Elliott
Daniel Elliott PLLC
2000 Pennsylvania Avenue NW
Suite 7000
Washington, DC 20006
danelliottiii@outlook.com
Counsel for NETRA

/s/ Thomas F. McFarland
Thomas F. McFarland, P.C.
208 S. LaSalle St., #1666
Chicago, IL 60604-1228
mcfarland@aol.com
Counsel for AOK

October 13, 2020

CERTIFICATE OF SERVICE

I hereby certify that on October 13, 2020, I served the foregoing Petition for Reconsideration using the below email addresses on all parties of record in this proceeding:

Daniel A. LaKemper, Esq.
General Counsel
Arkansas-Oklahoma Railroad Co.
P.O. Box 185 Morton, IL 61550
Email: lakemper@mtco.com

Robert Weber
Chairman
Cumberland Trails Conference
409 Thurman Ave #102
Crossville, TN 38555
Email: weber9985@att.net

Mark Bevelhimer
President
Tennessee Citizens for Wilderness Planning
P.O. Box 6873
Oak Ridge, TN 37830
Email: bigelowt2@mindspring.com

Christopher J. Schroeck
Counsel for National Coal, LLC
302 S. Jefferson St.
Roanoke, VA 24011
Email: chris.schroeck@bluestone-coal.com

Catherine S. Wright
110 North Main Street
Nicholasville, KY 40356
Email: cwright@irvinrigsby.com

Chuck Laine
Tennessee Mining Association
12227 S. Fox Den Drive
Knoxville, TN 37934
info@tnmining.com

Mario C. Bush, Sr.
IRAIL Car Services
P.O. Box 97
Maricopa, AZ 85139
mbush@irailcs.com

/s/ Daniel Elliott

VERIFICATION

I, Terry Frank, Mayor of Anderson County and Chairman of the North East Tennessee Railroad Authority, hereby verify under the penalty of perjury that to the best of my knowledge, the foregoing Petition for Reconsideration is true and correct. Further, I certify that I am qualified and authorized to make such verification on behalf of Anderson County and the North East Tennessee Railroad Authority in connection with this proceeding before the Surface Transportation Board.

Executed this 13 day of OCT, 2020



Terry Frank
Mayor, Anderson County;
Chairman, North East
Tennessee Railroad Authority



Department of Economic and Community Development

Bob Rolfe
Commissioner

Bill Lee
Governor

Allison Davis, Director
Surface Transportation Board
Office of the Managing Director
395 E Street SW
Washington, DV 20423

10/01/2020

SUBJECT: Docket Number AB-1296X

Director Davis:

Our office has recently been informed of your decision to allow the abandonment of the RJ Corman's line in Scott, Campbell, and Anderson Counties in Tennessee. If this line is removed it will have an adverse impact on these rural communities and their prospects for economic development.

Scott County is classified by the Appalachian Regional Commission (ARC) as "Distressed", and Campbell County is classified as "At-Risk" of becoming distressed. Distressed counties are those that rank in the bottom 10% of the nation in economic attainment. The loss of this line, which in years past has been a leading economic engine for this region, will have a long-term effect on our efforts to help these counties set forth on a path to prosperity. The business plan for this rail line, along with efforts to add new shippers to the line, are expected to have a significant annual economic impact.

We know many examples of lines being put up for abandonment that have been saved and restored to become a vital economic driver. One example of this is the rail line in Etowah, TN. CSX planned to abandon the line to Copperhill, TN in 2001. A public-private partnership saved the line, and now it provides tremendous economic value to rural Southeastern TN. The Tennessee Valley Authority (TVA) subsequently needed this line to move transformers to the Apalachia Powerhouse in 2003. This would not have been possible if the line had been unavailable.

As you know well, the United States has seen a sharp drop in economic output due to the pandemic. These unprecedented economic times could take many years for to recover from. The abandonment and removal of RJ Corman's line in rural Scott, Campbell, and Anderson Counties in Tennessee will have a serious negative impact on these communities and damage their prospects for growth and development. We would respectfully ask that you consider this in your decision.

Sincerely,

Sammie Arnold
Assistant Commissioner of Rural & Community Development
Tennessee Department of Economic & Community Development



IRAIL CAR SERVICES, LLC

**P.O. Box 97
Maricopa, Arizona 85139
(520) 390-8841
www.irailcs.com**

June 29, 2020

The Honorable Ann D. Begeman
Chairman
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

The Honorable Patrick J. Fuchs
Member
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

The Honorable Martin J. Oberman
Vice Chairman
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

**Re: Docket No. AB 1296X, R. J. Corman Railroad Property, LLC – Abandonment
Exemption – in Scott, Campbell, and Anderson Counties, Tennessee**

Dear Chairman Begeman, Vice Chairman Oberman, and Commissioner Fuchs:

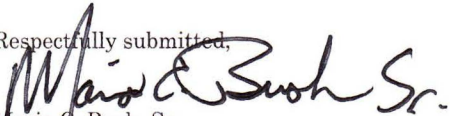
IRail Car Services, LLC respectfully submits this letter in support of the motion for reconsideration of the Board's decision rejecting the appeal related to the offer of financial assistance ("OFA") filed by Arkansas-Oklahoma Railroad Co. ("AOK") in the above referenced Docket.

For the second time, it was with great distress that we received news of the rejection of AOK's appeal regarding its OFA. We are in full agreement with Vice-Chairman Oberman's dissent, specifically with regard to our plans being "speculative." As was referenced in our previous confidential letter, our team has over 120 years' worth of collective experience in the railroad industry. That experience includes both management and hands-on experience in railroad operations (including new ventures), railcar repair and maintenance, car storage brokerage, railroad employee/craft education and certification, and new traffic development. With respect to our proposed operations on this line, we are actively engaged with railcar storage operations and brokerage in other locations. We maintain active relationships with several railroads (one regional and several shortline partners). The specific business model/plan we intend to implement (subject to the ultimate resolution of this line's fate) on this line is directly related to our experience and has been successful on another shortline by one of our team members who is the general manager of that road. Much like this line, the St. Mary's Railroad had limited traffic prospects after the loss of its primary customer, a paper mill, in St. Mary's, Georgia. It has since developed a robust storage and running repair shop business and is currently in the process of expanding the car repair business with full AAR M-1003 car repair designation.

While it is true that we do not currently have storage contracts, nor have we purchased land and constructed a repair facility, we already have the "pieces of the puzzle" in place to implement our planned business operations. We have conducted due diligence: We have identified 3-4 potential locations for shop facilities. We have worked/are working with AOK's team, including local government and economic development officials and agencies and their local consultant who is intimately familiar with the line with respect to economic development opportunities and operating

plan development. We have spoken with both existing and prospective customers about the prospective business opportunities if AOK is ultimately successful. Considering the line's current status, we're not sure just how much less "speculative" the Board should expect our business plans to be. In business, nothing is certain. Even transactions subject to contract can and regularly do fail to occur, thus sometimes spurring legal actions. However, based on the experience of those involved with IRail's proposed venture, we have no reason to be anything other reasonably confident in our success.

We would respectfully ask the Board to consider this letter as further "specific information" noted as lacking in the previous decision(s).

Respectfully submitted,

Mario C. Bush, Sr.
President/Owner
Independent Rail Associates
IRAIL Car Services



Terry Frank
Chair
North East Tennessee Railroad Authority

9/29/2020

RE: Receiving shipments by Rail to our Facility in North Carolina

Chairman Frank,

Straight Fork Timber Company is a client of ours and currently ships their raw products to us by truck to our manufacturing facility outside of Old Fort North Carolina. This letter is to confirm we have active rail service in and out of our plant there. We currently ship finish products out via NS to our clients. If Straight Fork Timber Company has the opportunity to ship by rail to us, we have the infrastructure in place to receive it as we have done with other timber suppliers.

We look forward to being able to receive logs from them if you are able to make it possible. This form of delivery is more effective for us over trucking.

Sincerely,

A handwritten signature in black ink that reads "Greg Decker".

Greg Decker
Timber Manager
Columbia Forest Products

Innovating
Responsibly.™

PO Box 1148
369 Columbia Carolina Road
Old Fort, NC 28762

[P] 828.724.9495
[F] 828.724.4517
[T] 888.737.0514

cfpwood.com



10/01/2020

Terry Frank
Chair
North East Tennessee Railroad Authority

RE: Rail Access to our Facility in Union City, Indiana

Chairman Frank,

This is in response confirming we have rail service, via transload, about three miles from our plant, in Union City, Indiana. Straight Fork Timber Company currently provides hardwood logs to our facility, by truck. Though they have never shipped to us by rail, we have received logs by rail from another logging company, in the past. We could accommodate shipments from them if this option was available and cost effective for both of our companies.

Please let me know if you need any further information from me.

Regards,

Robert A. Miller

Director of Strategic Planning

Frank Miller Lumber Company, Inc.



GREAT LAKES GRAIN & TRANSPORTATION, LLC

October 12, 2020

Ms. Terry Frank
Chairman
North East Tennessee Rail Authority
100 North Main Street, Suite 208
c/o Anderson County Mayor's Office
Clinton, Tennessee 37716

Dear Ms. Frank:

In recent months, we have been engaged in discussions with representatives of Arkansas-Oklahoma Railroad regarding our desire to locate a transload facility for organic grains and other agricultural commodities of which we are engaged in marketing and distributing. Based on our previous experience, we anticipate 4 or more cars per month once facilities are in place and operations commence, increasing that as business growth and customer demand dictates. For evidence of that, we can look to our other locations to provide examples of our successes.

First, a little background: I have been involved in the consolidating, marketing, and distribution of agricultural commodities via rail for 47 years beginning in 1973. I served on the first Board of Directors of the Tuscola & Saginaw Bay short line railroad, the first short line railroad in Michigan. GLGT currently has rail transload terminals on 5 short line railroads and one on NS direct. We have shipper authority and credit with all Class I railroad. GLGT is registered and grain dealer licensed in 7 states. GLGT was founded in 2017 in Saginaw, Michigan to take advantage of market opportunities related to rail organic grain marketing and distribution. We partner with local short line railroads that demonstrate a sincere interest in building traffic for mutual benefits. We always have a goal and have been successful to build traffic to greater than 100 cars loads per year.

With specific regard to our interest in Tennessee using AOK's planned line acquisition, I would like to draw attention to why we would utilize an operation under their management when we've heretofore not indicated interest in the Oneida rail line or other operations in the area. The reasons are several, including (1) we have been looking to expand our customer base into the Mid-south, and hadn't located a suitable shortline partner that we felt comfortable in pursuing a business relationship. (2) Our ongoing discussions with AOK's team has provide a professional management comfortable level that demonstrates a successful relationship for growth. (3) We genuinely believe AOK's management is very customer-focused with a drive to succeed. (4) We believe that the support of your Rail Authority and the various economic development agencies creates a very business friendly environment for entrepreneurs like AOK and us. Finally, while market demand creates impetus to enter into business ventures, it is usually relationships with others that make some ventures more likely to succeed than others where no relationships exist. It is our relationship and familiarity with some of AOK's representatives that have served us well in the past that has provided the impetus for us to expand southward.

In summary, we would like to develop a commercial interest for service on the Oneida rail line that AOK is seeking to acquire. We look forward to working with them and you going forward.

Regards,

Phil Hageman, CEO

702 Salzburg Avenue, Bay City, MI 48706

Our Mission and Commitment: Great Grains Delivering Great Ingredients.

