

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1242

HARTWELL FIRST UNITED METHODIST CHURCH—ADVERSE ABANDONMENT AND
DISCONTINUANCE—THE GREAT WALTON RAILROAD COMPANY, INC.,
IN HART COUNTY, GA.

Decided: February 12, 2019.

On April 14, 2017, Hartwell First United Methodist Church (Hartwell First) filed an application under 49 U.S.C. § 10903 requesting that the Board authorize the third-party, or adverse, abandonment and discontinuance of approximately 0.25 miles of rail line and associated right-of-way (the Line) owned by The Great Walton Railroad Company (GWRC) in Hartwell, Ga. In a decision served on January 31, 2018, the Board denied the application for adverse abandonment and ordered, among other things, GWRC to submit a status report every six months, starting on July 31, 2018, describing its progress with respect to rehabilitation and utilization of the Line.

In its first status report, dated July 26, 2018, GWRC stated that most of the Line had been refurbished, but that it had been unable to complete the full restoration of its runaround track.¹ That report also noted the status of a condemnation proceeding it had initiated before the Georgia Public Service Commission (PSC) related to the runaround track. (GWRC Status Report 3-4, July 26, 2018.) In its second status report, GWRC states that the PSC denied GWRC's condemnation request and its subsequent application for rehearing, and GWRC recently filed a petition for review of the PSC's decision in state court. (GWRC Status Report 3 n.3, 5, Jan. 31, 2019.)² In the same status report, GWRC asks the Board "to enter an Order in an expedited fashion that would declare that the PSC's conclusions . . . are preempted." (GWRC Status Report 7, Jan. 31, 2019.)

¹ According to GWRC, "the runaround track . . . had long been used to move its locomotives from the front of an inbound train to the front end of the outbound trip." (GWRC Status Report 2, Jan. 31, 2019.)

² GWRC also references ongoing proceedings before Hart County Superior Court, which has not yet resolved ownership of the strip of land upon which the runaround track sits. (*Id.* at 7; see also GWRC Status Report 4, July 26, 2018.)

GWRC's request has not been properly raised before the Board, as a status report is not the appropriate place for a party to request a declaratory order.³ The Board has discretionary authority to issue a declaratory order, which it typically considers on petition by a party. See 5 U.S.C. § 554(e); 49 U.S.C. § 1321; 49 C.F.R. § 1117.1; 49 C.F.R. § 1002.2(f)(58).

If GWRC chooses to submit a petition for declaratory order, it should ensure that it addresses recent precedent regarding the issuance of declaratory orders. See, e.g., Adrian & Blissfield R.R.—Pet. for Declaratory Order, FD 36148, slip op. at 4 (STB served Jan. 31, 2018) (declining to exercise its discretionary authority to issue a declaratory order regarding preemption because the dispute was already pending in state court); Ingredion Inc.—Pet. for Declaratory Order, FD 36014, slip op. at 3 (STB served Sept. 30, 2016) (same); Norfolk S. Ry.—Pet. for Declaratory Order, FD 35950, slip op. at 4 (STB served Feb. 29, 2016) (same); see also Hartwell First United Methodist Church, Inc. v. Hartwell R.R., No. 3:16-CV-169, slip op. at 8 (M.D. Ga. Mar. 3, 2017) (remanding GWRC's preemption defense to state court, along with other issues raised by Hartwell First's state law trespass action). (See also GWRC Status Report, Jan. 31, 2019, first unnumbered attachment (GWRC's state court petition for judicial review of the PSC's decision in which GWRC raises preemption, among other arguments).)

It is ordered:

1. The request in GWRC's January 31, 2019 status report, described above, has not been properly raised before the Board.
2. This decision is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

³ Procedural questions may be directed to the Board's Rail Customer and Public Assistance (RCPA) office, which provides informal assistance to the public on a wide range of matters within the Board's expertise. The RCPA office can be reached by telephone at 202-245-0238, fax at 202-245-0461, or email at rcpa@stb.gov.