

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 STATUS REPORT OF THE GREAT WALTON RAILROAD COMPANY, INC.**

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Dated: August 15, 2018

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On July 26, 2018, The Great Walton Railroad Company, Inc. (“GWRC”) filed its July 2018 Status Report (the “Status Report”) pursuant to the requirements of the Board’s January 31, 2018 Decision (the “2018 Decision”) in this proceeding. Hartwell First United Methodist Church (“Hartwell First”) is filing this Reply because it believes that the Status Report goes beyond merely reporting on the status of GWRC’s rehabilitation and utilization of the Line, seeks to submit new evidence (beyond the status update), and misrepresents the scope of the 2018 Decision. Although the Board’s 2018 Decision did not specifically mention the right of Hartwell First (or other parties) to file a reply, the Board’s regulations provide that “[a] party may file a reply or motion addressed to *any pleading* within 20 days after the pleading is filed with the Board...” 49 CFR §1104.13(a) (emphasis added).

DISCUSSION

The “Line” in this proceeding involves only the 0.25 miles of the single main line track and associated right of way (varying between 20 feet and 12 feet wide) for which Hartwell First sought adverse abandonment authority. The adverse abandonment application did not reference or include the north spur track that had previously been removed, or the Clinkscapes industrial

track that had previously been connected to the north spur (and which together GWRC contends constituted a “runaround track”) because at the time of the filing there was no north spur or runaround track, and GWRC does not have any property interest outside of the main line right of way.¹ GWRC has continuously referred in this proceeding and in front of the Georgia Public Service Commission (“PSC”) to the “runaround track” as part of the Line, and has argued that the Board’s 2018 Decision found that the Line and “runaround track” could not be abandoned. This appears to be the basis for GWRC’s assertions that Hartwell First is frustrating GWRC’s ability to construct a new spur track and restore the runaround, and its assertions that the PSC must allow GWRC to construct a new spur track.² However, the Board’s decision found only that the proposed adverse abandonment of “the Line” was being denied, because of GWRC’s argument that it intended to use the Line as part of a runaround track. The Board did not find that the proposed new track to be connected with a new crossing of Webb Street to the remaining Clinkscates industrial track, was anything other than excepted track under 49 USC 10906, or that such tracks were or would be part of “the Line.”

¹ GWRC has not shown that it has any property interest where the north spur was previously located, and the Clinkscates industrial track agreement clearly provides that Clinkscates (and its successors) own the industrial track and underlying property.

² GWRC continually refers to the north spur (and at times the runaround track) having been in place for over 100 years, although in other places GWRC has acknowledged that the Clinkscates industrial track was only connected back to the Line approximately 50 years ago. Status Report at 2, fn. 1. This ignores the facts that the north spur was originally constructed as a spur to serve a warehouse on what is now the property of Hartwell First, that it was later extended to include the Clinkscates industrial track, and that it was only at some unspecified time thereafter connected back to the Line (without any demonstrated authority) to create a runaround. More importantly, this ignores that no freight service has been provided since 1998, and the north spur track was removed by GWRC in 2008. The fact that GWRC may not have properly disposed of the original ties and instead buried them in place is of no consequence – GWRC implies that it has merely re-laid track using the old original buried ties, but in fact, as the photos previously submitted in this proceeding show, it made no use of the old buried ties and instead used all new replacement ties.

The Board found only that GWRC's proposed use of the Line in conjunction with the runaround tracks (if and when constructed) would not allow for the grant of adverse abandonment as of the time of the 2018 Decision, but did so without prejudice to Hartwell First seeking reopening should "the rehabilitation *or utilization* of the Line not occur within a reasonable period of time." 2018 Decision, at 5 (emphasis added).

While only described in general terms, it appears from the Status Report that GWRC has made some progress on the rehabilitation of the Line, including the installation of a crossing at Webb Street, and has been able to operate a locomotive (at walking speed) from the west side of the new Webb Street crossing to the east side, and back again. However, GWRC has made no progress towards the utilization of the Line as it has made no progress towards obtaining the property title necessary in order to construct the spur track across the property of Hartwell First that would be necessary to complete the proposed runaround – without the runaround tracks, GWRC has no demonstrated need to use the Line.³

As noted in the 2018 Decision the state law property rights were unresolved.⁴ There is an outstanding state court order enjoining the construction of tracks by GWRC outside of the right of way of the Line. And significantly, by a four-to-one decision announced June 14, 2018, the

³ The fact that GWRC began to build the spur track before being enjoined by the state court does not create any property rights in GWRC, and should not be deemed progress in constructing the runaround tracks. The spur track does not merely need to be connected as GWRC implies (Reply at 2); GWRC must first establish or obtain title to the property underlying the spur track.

⁴ By not appealing the 2018 Decision denying the application for adverse abandonment of the Line, Hartwell First was not conceding any of state law property issues. Instead, it choose to allow those issues to be determined by the appropriate state court and agency, and to seek reopening once it is confirmed that GWRC has no rights to construct any new tracks on the property of Hartwell First that GWRC needs in order to utilize the adjacent Line. Hartwell First has not been "interfering" with GWRC's construction of its proposed new spur track except to the extent that Hartwell First has been successful in protecting its property rights in the state proceedings.

PSC denied GWRC's application to take the property underlying the proposed track by eminent domain, finding there was no public purpose for the condemnation of the property of Hartwell First, and that a runaround in downtown Hartwell would not be in the best interest of the general public.⁵ GWRC's acknowledges the decision of the PSC, but spends much more of the Status Report setting forth the findings of the hearing examiner that were reversed by the PSC. Status Report at 3-4. The Board should ignore the discussion of the hearing examiner's findings.

The current status of the state law proceedings in court and at the PSC is that GWRC has no right or ability to construct tracks on the property of Hartwell First; there is thus no runaround track; and GWRC cannot make any use of the Line as part of a runaround move. While Hartwell First believes that the PSC decision would be grounds for reopening the Board's decision, because GWRC has indicated that it will pursue its rights of appeal, Hartwell First has not proceeded with a petition to reopen. Hartwell First fully intends to seek reopening once the PSC decision becomes final unless the parties can work out an amicable resolution.⁶

In the Status Report, GWRC disingenuously complains about the temporary walkway that Hartwell First has been using since GWRC, as part of its improper construction of the new spur track, broke apart and removed the sidewalk that had previously been installed and used for eight years to cross the Line and Hartwell First's property. Status Report at 2-3. GWRC was notified (and did not object) that Hartwell First was installing and using the temporary walkway, and that the walkway could and would be moved off of the tracks with prior notice by GWRC that it needed or wanted to use the Line. GWRC had no problem moving the temporary

⁵ The PSC has not yet issued its written decision which will set forth the full basis of its decision.

⁶ As a result of the amendments to the TORCH lease limiting the area of the lease to the area east of Jackson Street where GWRC has fee title to the property, any abandonment of the Line would not affect TORCH or the amended TORCH lease.

walkway when it did its maintenance of the Line and test run with its locomotive. Since GWRC even in its rosiest projections at most only plans to operate freight service over the Line once, and maybe sometimes twice, a month, there is little chance that the temporary walkway will interfere with any GWRC's operations. If GWRC seeks to terminate the license agreements with Hartwell First, it will be just for spite, and not for any operational reasons.

GWRC suggests that there is an additional shipper "in Hart County" that would make use of the Line; however, it provides no details about the shipper, where it is or will be located, and whether there have been any concrete discussions or commitments by the shipper to ship by rail that would require use of the Line. Based on its own inquiries, Hartwell First understands that there is a new industry locating in Hart County west of Hartwell, but that if the industry uses rail service at all, it would be from or to the GWRC connecting line between Elberton and Toccoa rather than to or from the Hartwell Line. Hartwell First does not believe that there is any such shipper that would receive or ship via rail using the Line, and the Board should not be influenced by the unsupported claims of GWRC.

Respectfully submitted,



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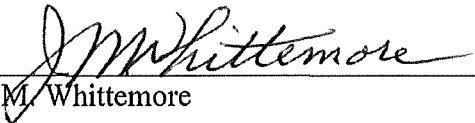
Attorneys for
Hartwell First United Methodist Church

Dated: August 15, 2018

VERIFICATION

I, Joe M. Whittemore, verify under penalty of perjury that the foregoing Reply is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on August 15, 2018.



Joe M. Whittemore

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of August, 2018, I served a copy of the foregoing

Reply on the following persons by the method indicated:

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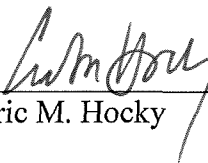
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