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**Before the
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36629

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RAIL LINK, INC. – PETITION FOR DECLARATORY ORDER

**RAIL LINK, INC. REPLY TO
REED STATUS UPDATE AND MOTION TO CONTINUE IN ABEYANCE**

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Dated: March 26, 2025

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This matter has been in abeyance at the request of Demaree Reed (“Reed”) since a Board decision of October 28, 2022, while Reed pursued a writ of mandamus in the Texas Court of Appeals seeking to require the Texas District Court to withdraw the question referred to the Board.¹ Although Rail Link, Inc. (“Rail Link”) opposed Reed’s requested stay and motion to hold the matter in abeyance, the Board did not issue any follow up decision and so the abeyance has remained in effect. In a decision served February 20, 2025, the Board ordered Reed to file a status report of his efforts to obtain a writ of mandamus in the state courts, and whether the Board should remove this proceeding from abeyance. Accordingly, on March 13, 2025 (the deadline set by the Board), Reed filed his status report along with a motion to continue the matter in abeyance despite his inability to have the Texas District Court withdraw the question that had

¹ The question submitted to the Board was whether Rail Link is a common carrier subject to the Board’s jurisdiction. It did not refer the issue of whether Rail Link is a common carrier under Section 1 of the Federal Employers’ Liability Act, nor was the referral based on the application of “primary jurisdiction” – both of which Reed continues to assert erroneously. Rather Rail Link, in its referral motion argued that guidance from the Board would assist the District Court in making its determination regarding Rail Link’s status as a common carrier railroad and whether it is subject to FELA because the Board is the administrative agency with oversight over common carriers with the background and expertise to consider the common carrier status of Rail Link.

been submitted to the Board. Rail Link files this Reply in accordance with the Board's regulations at 49 CFR §1104.13(a) which generally allows for a reply to any pleading within 20 days.

Reply to Status Report

Reed's Status Report is a generally accurate summary of the procedural history in the various Texas courts. The District Court originally issued the referral order on July 7, 2022. Reed's request for reconsideration of the referral was denied shortly after it was filed. Reed then filed a petition with the Texas Court of Appeals for a writ of mandamus, just one week before its reply at the STB was due under the schedule established by the Board. On July 23, 2024, the Court of Appeals denied Reed's petition. On December 31, 2024, the Court of Appeals denied Reed's motion for rehearing. Then on February 14, 2025, despite having lost twice at the District Court and twice at the Court of Appeals, and without having informed the Board that its mandamus petition had been denied by the Court of Appeals, Reed filed a petition for writ of mandamus with the Supreme Court of Texas on the basis that the District Court's referral order was a clear abuse of discretion. *See* Reed Status Report at ¶¶ 2-5.

Simultaneously with his petition to the Supreme Court, Reed filed, under a quirk in the Texas State rules, to abate the proceeding before the Supreme Court in light of a changing of the District Court judge as of January 1, 2025, following the Texas judicial elections in 2024. The Supreme Court granted a temporary abatement of the mandamus petition to allow Reed to seek reconsideration of the original referral order before the new District Judge, if the Judge so chooses, but ordered the parties to file a joint status report with the Supreme Court no later than

April 7 as to any reconsideration.² Subsequent to Reed's filing of his Status Report, Reed filed his motion for reconsideration with the District Court on March 17, 2025, and the matter has been set for hearing by the District Court for April 1, 2025. Given the previous decision of the District Court to issue the referral order, and the subsequent decisions of the Court of Appeals to deny the petition for a writ of mandamus because the District Court had acted within its reasonable discretion, Rail Link does not believe that Reed is likely to succeed at the District Court (or at the Supreme Court).

Reply to Motion to Continue in Abeyance

Despite Reed's professed concern for judicial resources and unnecessary litigation, he continues to drag out this proceeding for as long, and in as many forums, as possible. Rail Link believes that the current abeyance of two and one-half years while Reed has fruitlessly pursued a writ of mandamus, being rebuffed twice at the Court of Appeals, has been more than sufficient. The Board should reinstitute the procedural schedule and require Reed to file his reply to Rail Link's opening statement on an expedited basis. (Ten days should be more than enough time.)

Rail Link recognizes that there is an impending hearing at the District Court, and that the Board may wish to continue the abeyance until after the hearing. However, if the District Court determines not to reconsider the original referral order, or reconsiders and decides not to withdraw the referral order, then the Board should immediately lift its abeyance and proceed without waiting for Reed to further delay this proceeding while he tilts at windmills at the Supreme Court.

² Contrary to the implication in Reed's Status Report, the District Court judge is not required to reconsider the original order, but is only to be given the opportunity to do so if he so chooses.

Conclusion

For the foregoing reasons, Rail Link respectfully requests that the Board deny the Motion to Continue the Matter in Abeyance, remove this proceeding from abeyance, and order Reed to file his reply statement with an expedited filing deadline that considers that his original Motion to Stay was filed only six days before the reply statement was originally due.

Respectfully submitted,



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Dated: March 26, 2025

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of March, 2025, I caused a copy of the foregoing to be served on the persons listed below by email as indicated.

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