

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. AB 1242

ENTERED
Office of Proceedings
January 31, 2020
Part of
Public Record

Hartwell First United Methodist Church—Adverse Abandonment and
Discontinuance—
The Great Walton Railroad Company, Inc.,
in Hart County, GA

January 2020 Status Report

By its decision served January 31, 2018, the Board denied the application filed by the Hartwell First United Methodist Church (HFUMC) requesting that the Board authorize the adverse abandonment of approximately 0.25 miles of rail line and associated right-of-way (the Line) owned by The Great Walton Railroad Company, Inc. (GWRC). Although the Board found that “the present and future PC&N do not support the requested adverse abandonment,”¹ it directed GWRC “to submit a status report once every six months, starting on July 31, 2018, describing its progress with respect to rehabilitation and utilization of the Line.”

As reported in previously submitted status reports, as well as its pending Petition for Declaratory Order, filed November 20, 2019,² the mainline portion of the Line has been completely refurbished from Jackson Street to Athens

¹ Slip op. at 4.

² Petition for Declaratory Order, Docket No. AB 1242 (Sub-No. 1). The evidence submitted in that sub-docket are incorporated herein by reference.

Street in Hartwell, Georgia. However, it has not yet been able to complete the reconstruction of the runaround track that had long been used to move its locomotives from the front of an inbound train to the front end of the outbound trip. Instead, GWRC has been denied the statutory right to complete the reconstruction of its runaround track by the Georgia Public Service Commission and the Superior Court of Fulton County, a result that cannot be squared either with the Board's Decision that denied HFUMC's adverse abandonment application, or the literal wording of Ga. Code § 46-8-120, which explicitly, and without reservation, "authorizes and empowers any railroad company operating a railroad in the state ...to reconstruct its lines or tracks."³

Until it is able to reconstruct its track, GWRC is prevented from providing the safest and most efficient rail service to Quality Services, LLC, which recently resumed the use of rail service to its facility in Hartwell, Georgia. As Mr. Anderson has reiterated in his Supplemental Verified Statement attached hereto, GWRC has never abandoned any segment of the runaround track. As he has also verified, the licenses granted to HFUMC in 2007 and 2008 to cross over GWRC's tracks state that "Railroad reserves and accepts unto itself the paramount right to continue to occupy, possess and use

³ GWRC has timely appealed the decision of the Fulton County Superior Court that affirmed the decisions of the Public Service Commission that denied GWRC's statutory right to reconstruct its track that borders real property that HFUMC acquired in 2003 from the successors-in-interest of The Hartwell Mills. As GWRC has repeatedly noted, the tract of land that The Hartwell Mills acquired in 1937 from J. N. Mays, did not include the tract of land on which the track in question was constructed in 1913. See GWRC Ex. 30, filed July 3, 1917.

the area of the crossing for any and all railroad purposes.”⁴ It is duly noted that Joe Whittemore, who has verified HFUMC’s pleadings filed before the Board, signed the licenses in his capacity as the Chair of HFUMC’s Building Committee.

The denial of GWRC’s statutory right to reconstruct a track that was initially constructed in 1913 and thereafter converted into a segment of a runaround track is blatantly interfering with GWRC’s ability to operate in the safest and most efficient manner. Simply stated, the use of multiple locomotives and crews to move a limited number of rail cars for Quality has no economic justification. The actions taken by HFUMC and state officials that have prevented GWRC from fully reconstructing its tracks have unquestionably interfered with GWRC’s rail transportation operations. Such actions clearly conflict with the policies of the United States Government that encourage (i) the operation of transportation facilities and equipment without detriment to the public health and safety; (ii) safe and suitable working conditions in the railroad industry; and (iii) the fostering of sound economic conditions in transportation. *See* 49 U.S.C. 10101(5), (8) and (11).

HFUMC’s recent suggestion that GWRC can utilize multiple locomotives and crews to service Quality should be rejected as such operations would be inefficient while needlessly increasing labor costs and exhaust emissions. As Mr. Anderson has also explained,⁵ the locomotive that has been temporarily

⁴ *See* GWRC Exhibits 7 and 8, at ¶ 11, filed May 30, 2017.

⁵ Anderson, Supplemental Verified Statement at ¶¶ 3-5.

stationed in Hartwell will be repositioned in early February on a newly constructed spur track that extends from the Hartwell Railroad's Elberton to Toccoa Line and be primarily used for switching purposes on that Line.⁶

In conclusion, the ongoing state litigation is preventing GWRC from reconstructing its tracks in the exact location that they were constructed over 107 years ago.⁷ As such, the litigation is interfering with railroad operations at the behest of a non-governmental entity. Therefore, the Board is once again urged to confirm that GWRC has not and cannot abandon any segment of the runaround track without the Board's prior approval. State agency and court proceedings that, in effect, negate the Board's denial of HFUMC's adverse abandonment application by forcing the abandonment of the runaround track must be preempted consistent with the provisions of 49 U.S.C. § 10501(b) and the Supremacy Clause of the United States Constitution.

Respectfully submitted,

/s/ Richard H. Streeter

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Dated: January 31, 2020

⁶ Construction was delayed for nearly two years due to litigation that was recently resolved and should be completed in the next week.

⁷ The track was constructed and operated without any party claiming adverse ownership of the underlying tract of real property until November 2016.

CERTIFICATE OF SERVICE

I, Richard H. Streeter, do hereby certify that I, this 31st day of January, 2020, have served true copies of all documents filed on this date in STB Docket AB-1242 on all parties of record by email or by first-class mail, postage prepaid.

/s/ Richard H. Streeter

Richard H. Streeter

Before the
SURFACE TRANSPORTATION BOARD

STB Docket AB No. 1242

Hartwell First United Methodist Church—Adverse
Abandonment and Discontinuance—
The Great Walton Railroad Company, Inc.,
in Hart County, GA

Supplemental Verified Statement of Bennie Ray Anderson

1. My name is Bennie Ray Anderson. I am the President of The Great Walton Railroad Company (GWRC). My business address is 1096 North Cherokee Road, Social Circle, GA 30025. I have personal knowledge of the facts stated herein and am duly authorized to present this Supplemental Verified Statement on behalf of GWRC.

2. As was explained in the Petition for Declaratory Order, filed on behalf of GWRC on November 30, 2019 in Docket AB No. 1242 (Sub-No. 1), Quality Services, LLC (Quality) has recently resumed shipping by rail. In fact, GWRC delivered a car to Quality on January 28. Because the switch that is located at Quality's facility requires the inbound train to pass the switch and then push loaded cars into the spur, the locomotive, after recoupling with the unloaded cars, must pull them back onto the main line and then push them all way to Bowersville, a trip that takes approximately two hours, whereas the same distance is covered in thirty minutes when the locomotive is at the front

of the train. The difference in transit time is attributed to the need to flag each of the 45 crossing along the way. This process requires a crew member to hang for more than an hour on the front end of the empty cars in order to flag each of the 45 crossing along the way. This method of operations, which places GWRC's employees, as well as members of the general public in danger, is a cumbersome and less safe process than having the locomotive stationed at the front end of the train.

3. While it has been suggested that GWRC could use two locomotives to handle the switching and line haul service, the use of two locomotives and two crews is inefficient and would increase labor costs, as well as increase exhaust emissions. Because GWRC is seeking to provide rail service at a cost that is less than that charged by trucks, it must provide the most efficient service that is possible. The use of the runaround track, which utilizes one locomotive and one crew, is the most efficient and economical way to move the cars to and from Quality. This method was long used by the prior owners of the railroad, who were local citizens of Hartwell, and by GWRC following my purchase of the railroad in 1990.

4. Furthermore, the locomotive that has been temporarily placed near the termination of GWRC's line in Hartwell will be permanently stationed on a new track that extends from the Hartwell Railroad Company's line between Elberton and Toccoa, at a point that is near the point of interchange with the Bowersville to Hartwell line. Construction of the new track will likely be completed next week. Pursuant to trackage rights granted by the ICC, the

locomotive will be primarily utilized thereafter to perform switching operations on the Hartwell Railroad's line between Elberton and Toccoa. Because that line currently handles far more traffic than the line between Bowersville and Hartwell, the locomotive will be utilized on a continuing basis.

5. HFUMC's repeated claims that part of the runaround track was abandoned when the rails were temporarily removed is false. At no time have I ever intended to abandon any part of the tracks that were acquired from the prior owners. While the steel rails were temporarily removed, the ballast and crossties were left in place. In this regard, the Board should note that the crossing licenses that were negotiated with HFUMC in 2007 and 2008, provide that "Railroad reserves and accepts unto itself the paramount right to continue to occupy, possess and use the area of the crossing for any and all railroad purposes."¹ The Board should also note that when HFUMC signed the licenses, it agreed that it "shall not at any time own or claim any right, title or interest in or to railroad's property occupied by Licensee's crossing, nor shall the exercise of this Agreement for any length of time give rise to any title to said property or any right or interest in Licensee other than the license created hereby."²

6. While I have focused on Quality's renewed use of GWRC's service, the Board should note that GWRC has continually utilized the tracks to provide service to TTX. In addition, GWRC is actively seeking to expand rail service to other shippers that will require the future use of the runaround tracks. Hence,

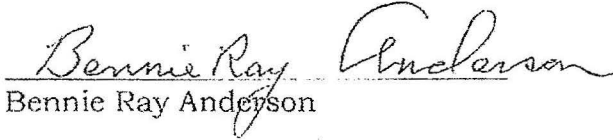
¹ See GWRC Exhibits 7 and 8, at ¶ 11, filed May 30, 2017.

² *Id.*

it is imperative that the Board act in an expedited fashion that will permit
GWRC to complete the reconstruction of its track system without further delay.

FURTHER SAYETH THE AFFIANT NOT.

I, Bennie Ray Anderson, verify, under penalty of perjury, that the
foregoing is true and correct. Further, I certify that I am qualified and
authorized to file this Supplemental Verified Statement.


Bennie Ray Anderson

Executed on January 31, 2020