

SERVICE DATE – JULY 10, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34869

HONEY CREEK RAILROAD, INC.–PETITION FOR DECLARATORY ORDER

Decided: July 7, 2006

On April 21, 2006, Honey Creek Railroad, Inc. (HCR) filed a petition for declaratory order pursuant to an order of the Circuit Court of Henry County, Indiana,¹ referring a jurisdictional question to the Board involving whether HCR had abandoned a 5.9-mile rail line between Sulphur Springs and New Castle, in Henry County, IN. HCR instituted the court proceeding against Gary L. Roberts, et al. (Roberts) seeking injunctive relief and damages in connection with the removal of certain railroad track materials from HCR's rail line. Roberts filed an answer claiming that HCR's rail line was abandoned and that title had vested in Roberts as a result of the abandonment. The court referred the matter to the Board and stayed its proceedings pending Board action on the referral.

By decision served on May 12, 2006, the Board granted Roberts a 30-day extension of time for filing his reply, from May 11, 2006, to June 12, 2006. On June 8, 2006, the Board issued a decision granting Roberts a further 30-day extension of time for filing his reply, from June 12, 2006, to July 12, 2006. On the same day, HCR filed a reply in opposition to the potential delay which would result if the Board granted Roberts the additional 30-day extension and Roberts subsequently decided to seek discovery.

By petition filed on June 30, 2006, Roberts requests an additional 90-day extension of time for filing his reply. Roberts states that counsel has undertaken an investigation of the facts and has concluded that discovery will be necessary before filing a reply. Roberts asserts that 90 days is a reasonable amount of time in order to conduct discovery and to develop a factual record that satisfies the Board's requirements.

On July 6, 2006, HCR filed a reply. HCR argues that Roberts' request for a further extension of time is improper because Roberts seeks discovery on factual issues that are irrelevant and collateral to the matter before the Board.²

¹ Case No. 33C01-0506-CT-0019, Honey Creek Railroad, Inc. v. Gary L. Roberts et al.

² If HCR were to object to specific discovery requests and Roberts were to file a motion to compel with the Board, the Board would address any objections raised at that time.

Roberts' extension request to conduct discovery and file a reply is reasonable and will be granted. Roberts, however, has not justified the need for a 90-day extension. In the interest of securing a just and speedy resolution of this proceeding, Roberts will be granted a 45-day extension instead of a 90-day extension. Accordingly, Roberts' reply to HCR's petition will be due on or before August 28, 2006.

It is ordered:

1. Roberts' extension request is granted, and his reply is due on or before August 28, 2006.
2. This decision is effective on its date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary