

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34869

HONEY CREEK RAILROAD, INC.—PETITION FOR DECLARATORY ORDER

STB Docket No. AB-865X

HONEY CREEK RAILROAD, INC.—ABANDONMENT EXEMPTION IN HENRY
COUNTY, IN

Decided: June 28, 2007

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.

Roberts' reply was initially due on May 12, 2006. However, the Board extended the due date by granting a series of extension requests made by Roberts to accommodate, among other matters, ongoing discovery. Pursuant to the last decision granting an extension, which was served May 17, 2007, Roberts' reply was made due on June 18, 2007. On June 18, 2007, in addition to his reply, Roberts filed motions to consolidate this proceeding with a related docket, STB Docket No. AB-865X,² to reopen that proceeding and reconsider the decisions served in it, and to hold an oral argument in both proceedings.

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

² In that proceeding, HCR filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon the line in question. Notice of the exemption was served and published in the Federal Register on August 20, 2004 (69 FR 51751). By decision and notice of interim trail use or abandonment (NITU) served September 20, 2004, the Board reopened the abandonment proceeding and imposed a trail use condition, a public use condition, and several environmental conditions. The trail use condition and public use condition expired on March 20, 2005, but environmental conditions remain in effect. Also, the Board has extended the deadline for filing a notice of consummation until February 11, 2008.

On June 22, 2007, HCR filed a motion asking the Board for leave to file a rebuttal to Roberts' reply. The railroad claims that a rebuttal is justified because Roberts has significantly expanded the scope of the STB Finance Docket No. 34869 proceeding in its reply. HCR states that it would also reply to Roberts' motions to reopen STB Docket No. AB-865X and reconsider the decisions served in it, to consolidate that proceeding with STB Finance Docket No. 34869, and to hold an oral argument in both proceedings. HCR requests that the Board allow it to submit its filing on or before July 11, 2007. In a reply filed on June 27, 2007, Roberts, generally, states that he does not object to the Board allowing HCR to file a rebuttal so long as he may also file a response.

In the interests of a complete record, HCR will be allowed to submit a rebuttal on or before July 11, 2007, and Roberts will be allowed to file a response on or before July 23, 2007.

It is ordered:

1. HCR's request for leave to file a rebuttal is granted.
2. HCR's rebuttal, including replies to Roberts' motions, is due on or before July 11, 2007, and Roberts' response is due on or before July 23, 2007.
3. This decision is effective on its date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary