

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34869

HONEY CREEK RAILROAD, INC.–PETITION FOR DECLARATORY ORDER

Decided: July 20, 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. By decision served on July 10, 2006, the Board granted Roberts an additional 45-day extension of time for filing his reply in order to provide time for Roberts to conduct discovery.

On July 18, 2006, HCR filed a motion for protective order to quash the notices of deposition served by Roberts on July 14, 2006.² HCR states that its counsel has prior commitments and court appearances that conflict with the scheduled depositions. Furthermore, HCR objects to the location of the depositions and argues that the deposition schedule is improper, unreasonable, and an abuse of the Board's discovery procedures.

On the same day, Roberts filed a reply opposing the relief sought by HCR. Roberts states that no one served with the notices has called to object to the stated date, time and place or to discuss alternatives. Furthermore, Roberts indicates that counsel is flexible with regard to scheduling the depositions and argues that HCR's real concern appears to be with discovery happening at all.

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

² Copies of the notices of deposition were attached to HCR's motion.

The motion for protective order will be denied. The Board has already granted Roberts the right to conduct discovery and has provided an expedited discovery schedule in response to HCR's opposition. The parties are expected to cooperate with each other and to fully comply with the Board's discovery rules. Consequently, the parties are urged to find a mutually agreeable time and place for the depositions.

It is ordered:

1. The motion for protective order is denied.
2. This decision is effective on its date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary