

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-1014

DENVER & RIO GRANDE RAILWAY HISTORICAL FOUNDATION—
ADVERSE ABANDONMENT—IN MINERAL COUNTY, CO

Decided: March 3, 2008

In a prior decision, the Board authorized the sale by Union Pacific Railroad Company (UP) to the Denver & Rio Grande Railway Historical Foundation (D&RGHF) of a 21.6-mile rail line known as the Creede Branch, extending from milepost 299.3 near Derrick to the end of the line near milepost 320.9 at Creede, in Rio Grande and Mineral Counties, CO.¹ On December 17, 2007, the City of Creede, CO (the City), filed an application under 49 U.S.C. 10903,² requesting that the Board authorize the third-party, or adverse, abandonment of approximately 1.0 mile of rail line at the end of the Creede Branch, extending from near milepost 320.9 to near milepost 319.9, a run-around track, and a spur track, all located in the City, in Mineral County, CO.³

In accordance with 49 CFR 1152.26(a), D&RGHF filed a protest to the City's application on January 31, 2008. That same day, the Board also received a filing from Wason Ranch Corporation (Wason).⁴ In its filing, Wason states that it supports the City's adverse abandonment application, but also requests that this proceeding be expanded to include those portions of the Creede Branch that traverse Wason's property.⁵ According to Wason, "most of the evidence and all of the arguments" the City has advanced in its application apply with "equal

¹ See Union Pacific Railroad Company—Abandonment Exemption—in Rio Grande and Mineral Counties, CO, STB Docket No. AB-33 (Sub-No. 132X) (STB served May 24, 2000).

² In a decision served in this proceeding on October 18, 2007, the City was granted exemptions from several statutory provisions as well as waivers of certain Board regulations at 49 CFR 1152 that were not relevant to its adverse abandonment application or that called for information not available to the City.

³ Notice of the City's application was served and published in the Federal Register on January 4, 2008 (73 FR 930-31).

⁴ Wason captions its filing as a "Protest," but notes that it does so only because that is the type of filing required under the procedural schedule set forth in the notice. The Board will treat Wason's filing as a motion to expand the scope of this proceeding.

⁵ Wason did not provide specific information regarding the location and extent of the Creede Branch's crossing of Wason's property. The City states in its adverse abandonment application (at 7) that Wason's property is located two miles south of Creede.

force” to Wason’s proposal. Wason asserts that consolidation of its adverse abandonment proposal with that of the City’s application would save time and effort by the parties and would not disadvantage any party. Wason also states its intent to file evidence required by 49 CFR 1152, as well as a petition for waiver and exemption of those requirements of 49 CFR 1152 that it believes would not be necessary for its adverse abandonment proposal.

On February 5, 2008, D&RGHF filed a letter in response to Wason’s filing. D&RGHF argues that the scope of this proceeding should not be expanded because Wason has neither met, nor obtained a waiver of, the requirements of 49 CFR 1152. D&RGHF contends that there is no precedent for expanding the proceeding and that Wason has misunderstood which party has the burden of proof under the public convenience and necessity test that the Board uses to decide whether or not to grant adverse abandonment applications.

On February 14, 2008, Wason filed a motion for leave to file a reply to D&RGHF’s letter, along with a reply. D&RGHF stated by letter (also filed on February 14, 2008) that it does not object to Wason’s filing of a reply. Because D&RGHF does not object, Wason’s motion for leave will be granted and its reply entered into the record.

In its reply, Wason reiterates that it would be in the interest of administrative economy and efficiency to expand the scope of the proceeding to include additional portions of the Creede Branch. Wason argues that it is within the Board’s power to control its own dockets, that Wason intends to comply with the requirements in 49 CFR 1152, and that D&RGHF misinterprets Wason’s statements regarding which party has the burden of proof.

It is unclear from Wason’s pleadings whether it intends to wait for the Board to rule on its expansion request before filing additional pleadings to meet or waive the requirements of 49 CFR 1152. To prevent the parties from expending additional resources unnecessarily, the issues involving Wason will be addressed now.

DISCUSSION AND CONCLUSIONS

Wason’s request to have this adverse abandonment proceeding expanded will be denied. Because the cases involve different track, the City’s and Wason’s cases would present different issues and analysis. Specifically, the City is seeking abandonment of track that lies within a public, commercial area at the end of the branch, while Wason is seeking abandonment of track that lies within private property along the middle of the branch. Separate environmental analyses would also need to be performed. Accordingly, the cases should be assessed independently.

Moreover, the City is too far along in its proceeding for Wason to join in at this stage without causing undue delay. Wason has not yet sought waivers or exemptions—normally the first step in seeking adverse abandonment—while an evaluation of the City’s application is already well underway. Finally, D&RGHF opposes expanding the scope of this proceeding, and the City has not indicated that it would support adding Wason’s application to its own.

Accordingly, consolidation or broadening of this proceeding would not be appropriate and Wason's request will be denied. Wason is free to pursue adverse abandonment of those sections of the Creede Branch that run over its property, should it wish to do so, in a separate proceeding.

It is ordered:

1. Wason's motion for leave to file a reply to D&RGHF's February 5, 2008 letter is granted.
2. Wason's request to consolidate or broaden the scope of this proceeding is denied.
3. This decision is effective on its date of service.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan
Acting Secretary