

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35918

CITY OF APPLETON—PETITION FOR DECLARATORY ORDER

Decided: June 29, 2015

By petition filed on April 2, 2015, the City of Appleton, Wis. (City), requests a Board order declaring that a railroad bridge, approximately .105 miles in length, located in Appleton has been severed from the interstate rail network and is, therefore, de facto abandoned. In this decision, the Board will institute a proceeding and, as discussed below, direct the identified railroads to file replies to address certain questions related to the ownership of the bridge.

BACKGROUND

The railroad bridge at issue runs over the Fox River. According to the petition, the bridge was built in 1918 as part of Chicago & Northwestern Railway Company's (C&NW) Ashland Division.¹ As depicted on a map of the bridge and vicinity, attached as Appendix A, the bridge had connected track to the north and to the south. The track to the north at one point connected to a mainline track. To the south, the track on the bridge connected with track on Grand Chute Island, which connected to mainline track running to Green Bay, Wis. In 1935, a portion of the track north of the bridge was conveyed by C&NW to the City, and that track was removed.²

Local industry north of the river, most recently the Foremost Dairy, referenced on the attached map, continued to be served by the trackage crossing the bridge southward. In 1987, C&NW conveyed a portion of its track in the Appleton area to the Fox River Valley Railroad Company (FRVR).³ The City states that in 1992, FRVR sold that trackage to Wisconsin Central Ltd. (Wisconsin Central), and in 2001, Wisconsin Central sold that track to Canadian National (CN). To the extent C&NW had any remaining interest in the trackage, in 1995, C&NW was

¹ Petition, Ex. B.

² The City attached a copy of the quit claim deed from C&NW to the City. Petition, Ex. C.

³ The City attached a copy of the quit claim deed from C&NW to FRVR. Petition, Ex. D.

dissolved, and Union Pacific Railroad (UP) purchased all of C&NW's remaining assets.⁴ According to the petition, the last delivery by rail to the Foremost Dairy occurred around 1992. By 2002, the Foremost Dairy had ceased all operations, and by 2012 the plant site was demolished.

As referenced on the attached map, CN continues to operate its mainline track to Green Bay. As stated above, in 1995 UP acquired the remaining assets of C&NW, the original owners of the bridge. Thus, prior to filing the petition, the City states that it contacted both UP and CN, the remaining carriers, in an attempt to identify the owner of the bridge. UP sent a letter to the City stating that the bridge had been quitclaimed to FRVR.⁵ CN replied by email and denied ownership of the bridge.⁶ The City claims that it was unable to find any records that the bridge or any of the connecting track had been authorized to be abandoned.

The City seeks a Board order declaring that the bridge is severed from the interstate rail network and is, therefore, de facto abandoned. Should its declaratory order be granted, the City would rehabilitate the bridge and convert it into a trail. The City states that it also seeks the declaratory order so it can address public safety concerns related to the condition of the bridge, which is easily accessible to pedestrians.⁷

DISCUSSION

The Board has discretionary authority under 5 U.S.C. § 554(e) and 49 U.S.C. § 721 to issue a declaratory order to terminate a controversy or remove uncertainty. In this case, there is uncertainty regarding the ownership and status of the bridge at issue. Therefore, pursuant to the Board's authority under 5 U.S.C. § 554(c) and 49 U.S.C. § 721, the Board will institute a declaratory order proceeding.

The current record is insufficient for the Board to determine the ownership of the bridge. UP's letter does not explain what assets in the Appleton area it acquired from C&NW, nor does the date of the quitclaim deed it attached correspond with the date stated in UP's letter. CN's email does not provide any specific information regarding past or present ownership of the bridge. As the remaining carriers in the Appleton area, UP and CN are in the best position to

⁴ The petition did not include a deed or any documentation of FRVR's sale to Wisconsin Central, the subsequent sale from Wisconsin Central to CN, or UP's purchase of C&NW's remaining assets.

⁵ Petition, Ex. G.

⁶ Petition, Ex. H.

⁷ The City engaged an engineering consulting firm to assess the condition of the bridge and the cost of repairs necessary to convert it into a trail. Petition, Ex. J, K.

provide further information regarding ownership of the bridge. UP and CN will be directed to file a reply in this proceeding, and to submit information and supporting documentation regarding the following: (1) a description of the lines each owns and/or owned in Appleton; (2) any records or deeds showing an ownership interest; (3) any maps that might clarify ownership of the bridge or connecting track; and (4) a specific statement as to whether it has any ownership interest in the bridge at issue and the basis for that determination. This additional information will assist the Board in making a determination on the issues raised in this declaratory order proceeding. UP and CN's replies will be due 30 days from the date of service of this decision.

It is ordered:

1. A declaratory order proceeding is instituted.
2. UP and CN shall file reply evidence, as discussed above, by July 29, 2015.
3. This decision is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.