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SERVICE DATE – JANUARY 22, 2024

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 768X

MOHAWK, ADIRONDACK & NORTHERN RAILROAD CORPORATION—
ABANDONMENT EXEMPTION—IN LEWIS AND JEFFERSON COUNTIES, N.Y.

Docket No. AB 180X¹

THE LOWVILLE & BEAVER RIVER RAILROAD COMPANY—ABANDONMENT
EXEMPTION—IN LEWIS COUNTY, N.Y.

Digest:² These two abandonment proceedings are placed in abeyance and the carriers are directed to provide additional information.

Decided: January 22, 2024

On September 11, 2023, Mohawk, Adirondack & Northern Railroad Corporation (MAN) filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments in Docket No. AB 768X to abandon: (1) an approximately 16-mile rail line that runs between milepost 58.1 and milepost 74.0 located between the Village of Lowville, N.Y., and the Village of Carthage, N.Y. (Lowville-Carthage Line); and (2) 0.5 miles of unused spur track and 300 feet of terminal main line all within the Village of Lyons Falls, N.Y. (Lyons Falls Track). On September 12, 2023, The Lowville & Beaver River Railroad Company (LBRR) filed a verified notice of exemption under 49 C.F.R part 1152 subpart F—Exempt Abandonments in Docket No. AB 180X to abandon a 10.44-mile rail line running from milepost 0.0 in Lowville to milepost 10.44 in Croghan, N.Y. (Lowville-Croghan Line).³ The Lowville-Croghan Line

¹ These proceedings are not consolidated but are being addressed in the same decision for administrative convenience.

² The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol’y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

³ As discussed herein, the Lowville-Croghan Line in fact extends to milepost 10.57 in Croghan.

connects with the Lowville-Carthage Line at Lowville and they are collectively referred to as the Lines. The Lyons Falls Track is not connected to either of the Lines.⁴

As explained in more detail below, the Board will place these proceedings, including the pending environmental and historic review, in abeyance.

BACKGROUND

According to MAN and LBRR, there has been no traffic on the Lowville-Carthage Line, the Lyons Falls Track, or the Lowville-Croghan Line for at least 15 years. (MAN Notice 3, AB 768X; LBRR Notice 3, AB 180X.) Both MAN and LBRR indicate that they are seeking abandonment authority because they have entered into contracts with Lewis County, N.Y., for the county to purchase portions of the Lines and the Lyons Falls Track and convert them into a recreational trail for use by the public. (MAN Notice 4, AB 768X; LBRR Notice 3, AB 180X.)

By decision issued on September 25, 2023 (September 2023 Decision), the Board identified several issues with the verified notices of exemption that required clarification. First, the Board stated that, according to its records, the Lowville-Croghan Line was owned by the Lewis County Industrial Development Agency (LCIDA) and not by LBRR. Second, the Board noted that prior descriptions of the Lowville-Croghan Line included a “1.15-mile branch” that was not mentioned in LBRR’s verified notice. Third, the Board stated that, in both cases, the mileposts for the Lines did not match the mileposts stated in prior agency decisions. Accordingly, the Board directed MAN and LBRR to file supplements clarifying these issues. The Board postponed the effective dates of the notices in these proceedings until further order of the Board.

MAN and LBRR jointly filed a supplement on September 27, 2023. The joint supplement states that the Lowville-Croghan Line was conveyed from LCIDA to LBRR pursuant to a deed on July 14, 2016. (MAN/LBRR Suppl. 1.) Regarding the 1.15-mile branch line, the joint supplement states that this line was incorrectly omitted from LBRR’s verified notice and LBRR requests that it be included as part of the notice. (Id. at 12.) On the issue of mileposts, the joint supplement states that the deed conveying the Lowville-Carthage Line identifies the Line as ending at milepost 58.1 (as stated in MAN’s current verified notice) but that the endpoint for the Lowville-Croghan Line should be milepost 10.57 (not milepost 10.44 as stated in LBRR’s current verified notice). (Id. at 2.)

Various local governmental entities, organizations, and individuals submitted comments objecting to, among other things, the proposed abandonments and Lewis County’s plan to convert the Lines into trails. MAN, LBRR, and several other parties filed replies to these objections.

⁴ MAN and LBRR are both subsidiaries of Genesee Valley Transportation Company Inc. See David Monte Verde—Continuance in Control Exemption—Falls Rd. R.R., FD 33161 (STB served Nov. 4, 1997).

DISCUSSION AND CONCLUSIONS

I. Issues in Docket Nos. AB 180X and AB 768X.

The Board finds that there remain several issues concerning the Lowville-Croghan Line and the Lowville-Carthage Line that LBRR and MAN must address, respectively, before these abandonment proceedings, including the pending environmental and historic review process, can proceed. As discussed more fully below, the Board will place AB 180X in abeyance so that LBRR may: (1) seek after-the-fact authority to acquire the Lowville-Croghan Line; and (2) serve an updated Environmental and Historic Report (E&H Report) on the parties required to receive the report and allow 20 days for responses. The Board will also place AB 768X in abeyance so that MAN may serve an updated E&H Report on the parties required to receive the report and allow 20 days for responses. Both dockets will remain in abeyance until the parties complete these processes and the Board issues a further decision.

A. Docket No. AB 180X.

Acquisition Authority. The Board's predecessor agency, the Interstate Commerce Commission (ICC), published a notice of exemption in 1991 authorizing LBRR to transfer ownership of the Lowville-Croghan Line from LBRR to LCIDA and authorizing LCIDA to lease the line back to LBRR. See Lewis Cnty. Indus. Dev. Agency—Exemption from 49 U.S.C. 10901, FD 31825 (ICC served Feb. 13, 1991). In response to the Board's request to clarify whether LBRR is the Line's owner, LBRR explains that it acquired fee ownership of the Lowville-Croghan Line back from LCIDA in 2016. (MAN/LBRR Suppl. 1.) Because the Lowville-Croghan Line is a rail line subject to the Board's jurisdiction, such a transaction requires acquisition authority pursuant to 49 U.S.C. §§ 10901-10902. LBRR does not indicate that it obtained acquisition authority for this transaction and the Board has no record of having issued such authority.

Under Board precedent, an entity that previously acquired a rail line without authority should remedy that error by later obtaining acquisition authority from the Board. See Cattaraugus Local Dev. Corp.—Aban. Exemption—in Cattaraugus Cnty, N.Y. (Cattaraugus), AB 1300X et al. (STB served Aug. 5, 2020) (directing party to seek after-the-fact acquisition authority); V & S Ry.—Acquis. & Operation Exemption—Colo. Dep't of Transp., FD 35664, slip op. at 4 (STB served Nov. 13, 2012) (approving a carrier's petition for exemption for after-the-fact acquisition authority for a rail line that it had been leasing). Because LBRR did not obtain Board authority when it purchased the Lowville-Croghan Line in 2016, the Board will hold the abandonment proceeding in Docket No. AB 180X in abeyance and direct LBRR to seek after-the-fact authority to acquire the line. See Cattaraugus, AB 1300X et al., slip op. at 3; City of Belfast, Me.—Aban. Exemption—in Belfast, Me., AB 1109X, slip op. at 1 n.2 (STB served Apr. 30, 2014).

The Beaver Falls Branch Line. As part of its filing for after-the-fact acquisition authority, LBRR should clarify the location of the 1.15-mile branch line at Beaver Falls that is referenced in Docket No. FD 31825. The maps in LBRR's verified notice of exemption to abandon do not indicate the location of this line. In the joint supplement, LBRR merely states

that the branch line should be included within its abandonment request but does not provide the location.⁵ The Federal Rail Administration (FRA) Safety Map of the rail network shows a rail line branching off from the Lowville-Croghan Line at Deveines Road, extending northward over a bridge on the Beaver River, and then terminating in Beaver Falls. See FRA Safety Map <http://fragis.fra.dot.gov/GISFRASafety/> (last visited January 17, 2024). LBRR should indicate whether the described rail line from the FRA Safety Map is the Beaver Falls branch line referenced in Docket No. FD 31825.⁶ If the line described in the FRA Safety Map is not the Beaver Falls branch line, LBRR should: (1) indicate where the Beaver Falls branch line is actually located, including mileposts (as applicable), the location of any connections with the Lowville-Croghan Line or any other line (including any ancillary track), and any structures on the line (including rail bridges), and (2) explain the regulatory status of the rail line shown on the FRA Safety Map.

Endpoint of the Lowville-Croghan Line. In the September 2023 Decision, the Board noted that agency records describe the Lowville-Croghan Line as extending to milepost 10.57, not milepost 10.44 as was stated in LBRR's verified notice. See September 2023 Decision, AB 768X et al., slip op. at 2 (citing Lewis Cnty. Indus. Dev. Agency—Exemption from 49 U.S.C. 10901, FD 31825 (ICC served Feb. 13, 1991)). In the joint supplement, LBRR states that the endpoint for the Lowville-Croghan line is in fact milepost 10.57. (MAN/LBRR Suppl. 2.) Accordingly, LBRR should refer to this endpoint when describing the Lowville-Croghan Line in future filings.

Environmental and Historic Report. Aspects of LBRR's E&H Report require clarification before the Board's Office of Environmental Analysis (OEA) can complete the statutorily required environmental and historic review. LBRR will therefore be directed to update the E&H Report included with its verified notice. Specifically, LBRR should provide clear, legible maps showing the location of the Lowville-Croghan Line in its entirety, including the Beaver Falls branch line and any ancillary track. The maps should identify what portions of the Lowville-Croghan Line and Beaver Falls branch line (including ancillary track) LBRR intends to convey to Lewis County. For any portions that it does not plan to convey to Lewis County, LBRR should explain what salvage activities it intends to conduct.

In response to comments that have been raised about the Lowville-Croghan Line's potential eligibility for listing in the National Register of Historic Places (National Register),⁷

⁵ The map provided by LBRR in Docket No. FD 31825 shows an arrow pointing generally to the branch line, but the map does not specifically identify where the branch line begins and ends.

⁶ The length of this track identified in the FRA Safety Map is roughly 0.40 miles, whereas the Beaver Falls branch line as described in 1991 by the ICC in Docket No. FD 31825 is 1.15 miles.

⁷ In their environmental and historic reports, MAN and LBRR state that there are no structures other than bridges on the Lines. (MAN Notice, Ex. 3; LBRR Notice, Ex. 3.) The Railway Historical Society of Northern New York (RHSNNY) filed a comment in both dockets claiming that there are structures on the Lowville-Croghan Line that are eligible for historic

LBRR also should indicate what structures exist within the right of way or immediately adjacent to the right of way of the Lowville-Croghan Line and Beaver Falls branch line (including rail bridges), provide information about the approximate age of these structures, and identify which structures (if any) it intends to convey to Lewis County.⁸ LBRR will also be directed to address any prior removal of track and track materials on the Lowville-Croghan Line and, if applicable, the Beaver Falls branch line.⁹ Specifically, LBRR should identify any actions of which it is aware where track or track materials were removed or ground disturbances occurred. LBRR should identify the location of any such actions on the newly submitted maps, who performed such actions, when they occurred, and whether any materials or soil were disposed of (and if so, how).

In addition to filing an updated E&H Report with the Board, LBRR will be required to serve the updated E&H Report on the parties listed in 49 C.F.R. §§ 1105.7(b) and 1105.8(c) and allow those parties 20 days to submit comments to OEA. LBRR must also file a certificate of

designation. (See RHSNNY Comment 1-2, Sept. 15, 2023, AB 180X & AB 768X.) In a reply (submitted only in Docket No. AB 180X), LBRR states that the structures that RHSNNY has identified as potentially historic are not involved in the abandonment proceeding and will not be sold to Lewis County. (LBRR Reply 2, Sept. 20, 2023, AB 180X.) RHSNNY filed another comment in Docket No. AB 180X arguing that the track itself is a “structure” eligible for historic designation and attached an eligibility determination from the Commissioner of the New York Parks, Recreation, and Historic Preservation Office (State Historic Preservation Office or SHPO) indicating that the entire Lowville-Croghan Line—including track, switches, signals, rolling stock, culverts, bridges, depots, turntables, and other structures—is eligible for listing in the National Register as the Lowville and Beaver River Railroad Historic District. (RHSNNY Comment 1, Oct. 4, 2023, AB 180X.)

⁸ As noted above, MAN and LBRR included with their notices of exemption correspondence from the SHPO indicating that the proposed abandonments “involved a National Register [of Historic Places] eligible railroad line” and requested documentation of the properties immediately adjacent to the rail rights-of-way. (MAN Notice, Ex. 4; LBRR Notice, Ex. 4.) MAN and LBRR responded that “[t]here are no remaining buildings on the lines in question that remain the property of the railroads” and offered to conduct a tour for the New York SHPO’s staff identifying the buildings that they no longer own. (MAN Notice, Ex. 5, LBRR Notice, Ex. 5.)

⁹ RHSNNY alleges that MAN and LBRR have undertaken activities that involve the removal of track and track materials in several locations. (RHSNNY Pet. for Stay 1, Oct. 16, 2023, AB 180X & AB 768X.) MAN and LBRR filed a joint reply on October 24, 2023, stating that they will not remove any track or structures from the Lines. (MAN/LBRR Reply 1, Oct. 24, 2023, AB 180X & AB 768X.) They further state that the removal of track mentioned in RHSNNY’s letter was done by Lewis County without their consent prior to any agreement having been entered into. (*Id.*) They further explain that they filed an action in the United States District Court for the Northern District of New York to have Lewis County restore the track that it removed and that the suit is still pending but would be dismissed as part of the sale agreement between the railroads and Lewis County. (*Id.*)

service with the Board indicating that it has served those parties.¹⁰ LBRR may file and serve its updated E&H Report at the same time it seeks after-the-fact acquisition authority. LBRR must satisfy both requirements before the Board will consider taking Docket No. AB 180X out of abeyance.

Two-Year Out-of-Service Requirement. If LBRR obtains after-the-fact acquisition authority, it will not have had Board-authorized ownership of the Lowville-Croghan Line for at least two years and therefore would no longer qualify for the Board's two-year out-of-service class exemption under 49 C.F.R. part 1152 subpart F. See Tulare Valley R.R.—Aban. Exemption—Kings and Tulare Cntys., Cal., 9 I.C.C.2d 1205 (1993). However, if the Board grants after-the-fact acquisition authority, LBRR may file a motion in this docket seeking a waiver of the two-year ownership requirement so that it may still avail itself of that class exemption. See V & S Ry.—Acquis. & Operation Exemption—Colo. Dep't of Transp., FD 35664, slip op. at 4 (STB served Nov. 13, 2012) (waiving requirement for two-year Board-authorized ownership where the petitioning carrier had, in fact, owned the line for more than two years); cf. V & S Ry.—Aban. Exemption—in Kiowa Cnty., Colo., AB 603 (Sub-No. 3X), slip op. at 4 (STB served Oct. 23, 2014) (rejecting notice of exemption to abandon where carrier had less than two years of Board-authorized ownership).

B. Docket No. AB 768X.

Endpoint of the Lowville-Carthage Line. The Board noted in the September 2023 Decision that agency records describe the Lowville-Carthage Line as extending to milepost 57.1, yet MAN indicated in its verified notice that it sought to abandon only up to milepost 58.1. See September 2023 Decision, AB 768X et al., slip op. at 2 (citing Mohawk, Adirondack R.R.—Acquis. & Operation Exemption—Consol. Rail Corp., FD 31846 (ICC served Mar. 22, 1991)). In the joint supplement, MAN states that its deed for the Lowville-Carthage Line from Conrail indicates that the line extends only to milepost 58.1. (MAN/LBRR Suppl. 2-3.) The Board understands LBRR's intent is to abandon the line where it terminates, regardless of whether it is milepost 58.1 or 57.1.¹¹ Accordingly, no additional action is needed to resolve this discrepancy.

Environmental and Historic Report. As with LBRR, there are aspects of MAN's E&H Report that require clarification before OEA can complete the required environmental and historic review. MAN seeks to abandon the Lowville-Carthage Line in Carthage starting at milepost 74.0, but the exact location of the milepost is unclear from the E&H Report. This is

¹⁰ RHSNNY submitted an uncaptioned filing on October 16, 2023, requesting “an intervention and stay” of the abandonment proceedings, which the Board will treat as a petition for stay. (RHSNNY Pet. for Stay 1, Oct. 16, 2023, AB 180X & AB 768X.) RHSNNY's request does not address the criteria that must be satisfied for the Board to grant a stay. See Ind. Harbor Belt R.R.—Trackage Rights—Consol. Rail Corp., FD 36099 et al., slip op. at 4 (STB served Mar. 14, 2017) (citing Wash. Metro. Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977)) (discussing the requirements for a stay under 49 U.S.C. § 1321(b)(4)). In any event, RHSNNY's stay request is moot in light of this decision.

¹¹ It appears that MAN's reference in Docket No. FD 31846 to milepost 57.1 may have been an error.

significant because there appears to be a rail bridge over the Black River in close proximity to milepost 74.0, but it is unclear if the rail bridge is north of the milepost (and thus not part of the proposed abandonment) or south of the milepost (and thus part of the proposed abandonment).

Accordingly, MAN will be directed to update its E&H Report to include clear, legible maps showing the entirety of the Lowville-Carthage Line from milepost 58.1 to milepost 74.0, including the precise location of milepost 74.0 in relation to the rail bridge over the Black River. The maps should identify what portions of the Lowville-Carthage Line (including ancillary track) it intends to convey to Lewis County. For any portions of the Lowville-Carthage Line that it does not plan to convey to Lewis County, MAN should explain what salvage activities it intends to take. MAN should indicate what structures exist that may be eligible for listing in the National Register (including rail bridges), provide information about the age of these structures, and identify which structures (if any) it intends to convey to Lewis County. MAN will also be directed to address the prior removal of track and track materials, if any, on the Lowville-Carthage Line. MAN should identify the location of any such actions on the newly submitted maps, who performed such actions and when they occurred.

In addition to filing an updated E&H Report with the Board, MAN will be required to serve its updated E&H Report on the parties listed in 49 C.F.R. §§ 1105.7(b) and 1105.8(c) and allow those parties 20 days to submit comments to OEA. MAN also must file a certificate of service with the Board indicating that it has served those parties.

Avoiding Stranded Lines. Based on the current record, the Board’s understanding is that MAN’s Lowville-Carthage Line provides the only connection to the national rail network for LBRR’s Lowville-Croghan Line (and, likely, for the Beaver Falls branch line). The Board has consistently held that “so long as there is a common carrier obligation attached to a particular segment of track, the Board will not allow that segment to become isolated from the rail system as a result of the abandonment of the adjoining segment.” R.J. Corman R.R. Prop.—Aban. Exemption—in Scott, Campbell, & Anderson Cntys., Tenn., AB 1296X, slip op. at 3 (STB served Nov. 17, 2022) (quoting Cent. Or. & Pac. R.R.—Aban. & Discontinuance of Serv.—in Coos, Douglas, & Lane Cntys., Or., AB 515 (Sub-No. 2), slip op. at 12 (STB served Oct. 31, 2008)). Because the Board will not permit LBRR’s segments to become stranded from the national rail network, MAN should be aware that any eventual authority for abandonment of the Lowville-Cathage Line is inextricably tied to the status of the Lowville-Croghan Line.

The Board will remove the proceedings from abeyance in a future decision after the parties provide the information and take the required steps outlined above.

II. Local Community Comments.

The Board has received several comments from local governmental entities, organizations, and individuals where the Lines are located. Many commenters oppose the proposed abandonment of the Lines, arguing that they may be needed for future rail service and the reduction of carbon emissions. Lewis County filed a reply in which it, among other things, disputes the need for rail service. (Lewis Cnty. Reply 1, Oct. 10, 2023, AB 180X & AB 786X.) The Board also received a letter from Representative Elise M. Stefanik on November 7, 2023,

requesting an update on the abandonment proceedings. The Board will address these filings when the abandonment proceedings are no longer in abeyance.

In a September 26, 2023 filing, RailStar Corporation (RailStar) states that it intends to file an Offer of Financial Assistance (OFA) for the Lines. (RailStar Letter, Sept. 26, 2023, AB 180X & AB 768.) MAN and LBRR jointly filed a reply, in which they argue that RailStar's letter does not meet the regulatory requirements in 49 C.F.R. § 1152.27(c)(2)(i) for a formal notice of intent to file an OFA. (MAN/LBRR Reply 1-2, Oct. 3, 2023, AB 180X & AB 768X.) The Board agrees. RailStar's filing does not in fact meet the requirements for a formal notice of intent to file an OFA—including the provision of information on the type of financial assistance the offeror wishes to provide (i.e., subsidy or purchase) and a demonstration of preliminary financial responsibility—and therefore will not be considered as such. See Kiski Junction R.R.—Aban. Exemption—in Armstrong & Westmoreland Cntys., Pa., Docket No. AB 1317X, slip op. at 2 (STB served Sept. 30, 2021).¹²

Finally, a few commenters have raised concerns that would more properly be considered as part of the Board's environmental and historic review. (See, e.g., Dicob Comment 1, Sept. 18, 2023, AB 180X & AB 768X (addressing flooding concerns); Krug Comment 1, Sept. 26, 2023, AB 180X & AB 768X (addressing agricultural land use); Bishop Comment 1, Sept. 26, 2023, AB 180X (addressing land use and impact of track removal); MAN/LBRR Reply 1, Sept. 28, 2023, AB 180X & AB 768X (responding to agricultural land use claims); Lyndaker Comment 1, Oct. 10, 2023, AB 180X & AB 768X (addressing concerns regarding contaminated soil); Mooney Comment 1-2, Oct. 10, 2023, AB 180X & AB 768X (addressing concerns regarding tribal lands); Dicob Comment 1, Oct. 10, 2023, AB 180X & AB 768X (responding to Lewis County's statements regarding flooding concerns).) OEA will consider these comments as part of the environmental record when these proceedings are no longer in abeyance.

It is ordered:

1. Docket Nos. AB 768X and AB 180X, including the environmental review, are held in abeyance pending further Board order.
2. LBRR is directed to file for after-the-fact authority to acquire the Lowville-Croghan Line.
3. LBRR is directed to file an updated version of the E&H Report in Docket No. AB 180X as described in this decision, serve the updated E&H Report on the parties listed in 49 C.F.R. §§ 1105.7(b) and 1105.8(c), and allow those parties 20 days to submit comments to OEA. LBRR shall file a certificate of service indicating that it has served its updated E&H Report on the required parties specified in 49 C.F.R. §§ 1105.7(b) and 1105.8(c).

¹² Parties (including RailStar) are free to pursue an OFA once the abandonment proceedings have been reactivated. See 49 C.F.R. § 1152.27(c)(2)(i) (requiring potential offerors to submit to the carrier, and file with the Board, a formal notice of intent no later than 10 days after publication of a notice of exemption in the Federal Register).

4. MAN is directed to file an updated version of the E&H Report in Docket No. AB 768X as described in this decision, serve the updated E&H Report on the parties listed in 49 C.F.R. §§ 1105.7(b) and 1105.8(c), and allow those parties 20 days to submit comments to OEA. MAN shall file a certificate of service indicating that it has served its updated E&H Report on the required parties specified in 49 C.F.R. §§ 1105.7(b) and 1105.8(c).

5. RHSNNY's request for a stay of the abandonment proceedings is denied.

6. This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.