

BEFORE THE
SURFACE TRANSPORTATION BOARD

AB-1305 (Sub-No. 1)

GREAT REDWOOD TRAIL AGENCY
- ADVERSE ABANDONMENT -
MENDOCINO RAILWAY IN MENDOCINO COUNTY, CA**GREAT REDWOOD TRAIL AGENCY'S EXPEDITED
MOTION TO COMPEL DISCOVERY**

Great Redwood Trail Agency ("GRTA") through counsel respectfully requests that the Surface Transportation Board (the "STB" or the "Board") issue an Order on an expedited basis compelling Mendocino Railway ("MR") to produce the single document requested by GRTA in its Request for Production of Documents, pursuant to 49 C.F.R. § 1114.31 and Fed. R. Civ. P. 37. In support of this, GRTA states the following:

I. INTRODUCTION

GRTA served its first Request for Production of Documents on MR on June 17, 2024, with a response deadline of July 2, 2024. Since serving the requests, the parties have discussed the appropriateness and scope of the discovery requests in relation to GRTA's filed Request for Extension of Time. GRTA has narrowed its original requests to one request for MR to produce a copy of a single document, which MR extensively relies on in its protest. MR has not produced any documents or provided written responses to GRTA's requests for documents. MR has repeatedly indicated that it has no intention of responding to GRTA's document production requests. Thus, GRTA seeks from the Board an Order compelling MR to produce a copy of this single document on an expedited basis, so as not to interfere with GRTA's Reply filing deadline of August 2, 2024.

II. BACKGROUND

GRTA filed an Application for Adverse Abandonment (the “Application”) on April 12, 2024. *See* Doc. No. 308189. MR was granted a 20-day extension of time for the filing of protests and comments in response to the Application with the consent of GRTA. *See* Doc. No. 52153. MR based its requested extension on the need to complete discovery. *See* Doc. No. 308321. On June 17, 2024, GRTA served MR with extensive discovery requests, attached hereto as Exhibit 1. On the same day, MR filed a protest and Motion to Strike. *See* Doc. Nos. 308410 (motion to strike); 308399 (protest). On June 18, 2024, GRTA requested an extension of time to file its Reply to protests and comments, based on the number of comments, the length of MR’s protest and its motion to strike, and the need to receive MR’s responses to GRTA’s discovery requests. *See* Doc. No. 308407. MR opposed GRTA’s requested extension. *See id.*

On June 21, 2024, MR filed a formal opposition to GRTA’s requested extension of time. *See* Doc. No. 308414. One section of this filing addressed MR’s position that “The GRTA/NCRA Request for Additional Discovery should be Denied.” *See id.* Therein, MR requested that the Board clarify that any extension of time granted to GRTA “does not implicitly authorize the service of discovery mentioned by GRTA/NCRA in its pleading.” *Id.* On June 25, 2024, GRTA filed a Reply to MR’s implicit request that the Board quash GRTA’s discovery request, raised in MR’s Reply to GRTA’s Request for Extension of Time. *See* Doc. No. 308420. GRTA primarily claimed that MR has not validly requested the Board quash GRTA’s discovery request, but filed the Reply in case the Board treated MR’s request as a valid Motion to Quash. *See id.* Prior to GRTA filing this Reply to MR’s invalidly raised Motion to Quash, GRTA offered to MR that it would withdraw all discovery requests other than the request for a copy of MR’s Railroad Rehabilitation and Improvement Financing (“RRIF”) loan application if MR would consent to the requested 30-day

extension. *See id.*; Exh. 1 at RFPD No. 2. MR rejected this request. *See* Doc No. 308420. Thus, remaining at issue is a request for a single document.

The Board granted GRTA's requested extension of time on June 25, 2024. *See* Doc. No. 52190. Therein, the Board noted that, although the parties both addressed an ongoing discovery dispute, "such dispute is not presently before the Board." *See id.* at 2 n.2. Notwithstanding the Board's clear statement that no discovery dispute had been raised before the Board, on July 2, 2024, MR filed a "Rebuttal to GRTA/NCRA Reply to Mendocino Railway's Motion to Quash the Discovery Requests of Great Redwood Trail Agency." *See* Doc. No. 308442.¹ Therein, MR justified its "reply to a reply", normally prohibited under 49 C.F.R. § 1104.13(c), on the basis that GRTA's Reply to MR's Motion to Quash was really a Motion to Compel discovery, to which MR was entitled to file a Reply. *See id.* at 4 n.2. Thus, the procedural posture of the discovery dispute between MR and GRTA in relation to the Board is unclear.

It is, however, clear that a discovery dispute exists. GRTA has served discovery requests to MR which MR has made clear it does not intend to answer. *See* Doc. Nos. 308414; 308442. It is also clear that the Board does not consider a Motion to Quash or a Motion to Compel to have been raised before the Board. *See* Doc. No. 52190. Notwithstanding that fact, both parties have raised a number of arguments in various pleadings relating to discovery. Thus, GRTA formally moves now for the Board to compel MR to produce a copy of its RRIF loan application.

III. ARGUMENT

Per 49 C.F.R. § 1114.30(a)(1):

¹ MR also announced that "the discovery issue is now ripe for decision by the Board." *See* Doc. No. 308442. GRTA is not under the impression that the Board has taken the discovery dispute under advisement given that the Order granting the Request for Extension of Time was issued the same day that GRTA filed a Reply to MR's implicit request to quash discovery, to the extent the Board treated it as such. *See* Doc. No. 308420.

Any party may serve on any other party a request: To produce and permit the party making the request to inspect any designated documents (including writings, drawings, graphs, charts, photographs, phonograph records, tapes, and other data compilations from which information can be obtained, translated, if necessary, with or without the use of detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which are in the possession, custody, or control of the party upon whom the request is served, but if the writings or data compilations include privileged or proprietary information or information the disclosure of which is proscribed by the Act, such writings or data compilations need not be produced under this rule but may be provided pursuant to § 1114.26(b) of this part;...

The Board issued a protective order in this case on September 25, 2023. *See* Doc. No. 51882.

On June 17, 2024, GRTA served to MR discovery requests seeking the production of documents with a responsive date of July 2, 2024. *See* Exhibit 1. Since that time, GRTA has narrowed its requests for production of documents to a request for a single document – MR’s RRIF loan application. That document can be produced subject to the protective order to avoid any disclosures of privileged or proprietary information, to the extent that is necessary. MR refuses to produce this document on the basis that the request is untimely and that the requested document is not relevant. *See* Doc. No. 308442. First, MR claims that GRTA should have requested the RRIF loan application before filing the Application. However, no STB rule precludes the Board from ordering the production of this single requested document at this juncture in the proceedings. MR’s heavy reliance on the RRIF loan in its protest increases the significance of this document.

Second, the RRIF loan application is relevant both to MR’s protest and GRTA’s reply thereto. GRTA has claimed in its Application that no interstate rail shipments have originated or terminated on the MR line since it was purchased out of bankruptcy by MR in 2004. *See* doc No. 308189. GRTA has further pointed out in its Application that MR cannot operate the full length of MR’s line at issue in the Application or rehabilitate it as a result of a tunnel collapse. *See id.* It is relevant for the Board’s consideration what MR estimates the cost of that endeavor would be and

whether the RRIF loan can fully address the future use of the rail line from end to end. A copy of the RRIF loan application and information contained therein is relevant so that GRTA can address how the RRIF loan will be used to repair the collapsed tunnel and the remainder of the rail line. If that loan will not in fact permit MR to properly rehabilitate the rail line, the Board should have the benefit of that information in making its adverse abandonment determination.

MR could have easily produced this single document. As noted, GRTA served discovery on June 17 and significantly narrowed the request to a single document on June 24. In other words, MR has had nearly a month to provide one document. Therefore, as MR relies on the RRIF loan throughout its reply, the document is clearly relevant. Moreover, this request for a single document places little burden on MR. The Board should Order MR to produce this document on an expedited basis so that GRTA can submit it for the Board's consideration in its Reply.

IV. CONCLUSION

WHEREFORE, for all the reasons stated above, GRTA requests that the Board issue an Order compelling MR to produce a copy of the RRIF loan application.

Dated: July 23, 2024

Respectfully Submitted,

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Certificate of Service

I hereby certify that on this 23rd day of July 2024, I caused the foregoing pleading to be served by First Class Mail or more expedient method on the following:

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