

SERVICE DATE – APRIL 29, 2020

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 463 (Sub-No. 2X)

ALABAMA RAILROAD CO.—ABANDONMENT EXEMPTION—IN ESCAMBIA,
CONECUH, AND MONROE COUNTIES, ALA.

Decided: April 29, 2020

Alabama Railroad Co. (ALAB) filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon approximately 47.5 miles of rail line, extending from approximately milepost 607.73 at Flomaton, Ala., to approximately milepost 655.2 near Tunnel Springs, Ala., including all sidings and the MR Junction Spur between valuation stations 0+00 and 90+81 in Escambia, Conecuh, and Monroe Counties, Ala. (the Line). Notice of the exemption was served and published in the Federal Register on April 18, 2019 (84 Fed. Reg. 16,310). The exemption became effective on May 18, 2019.

The deadline for ALAB to file its notice of consummation of abandonment was April 18, 2020, one year after notice of the exemption was served.¹ However, on April 8, 2020, ALAB submitted a request pursuant to § 1152.29(e)(2) to extend the consummation deadline until April 18, 2021. ALAB states that it is considering whether to consummate abandonment for part of the Line, retain part of the Line, and continue to pursue rail banking of other parts, but is also undertaking preparations for salvage in the event trail use does not occur.

ALAB's request will be granted, and 49 C.F.R. § 1152.29(e)(2) will be waived to the extent it would have resulted in the expiration of ALAB's abandonment authority on April 18,

¹ Under 49 C.F.R. § 1152.29(e)(2), if a notice of consummation of abandonment is not filed within (i) one year after the service date of the decision permitting abandonment (provided there are no legal or regulatory barriers to consummation), or (ii) 60 days of the satisfaction, expiration, or removal of the last legal or regulatory barrier to consummation, whichever is later, the abandonment authority automatically expires. Here, a previously imposed interim trail use/rail banking condition under the National Trails System Act expired on November 13, 2019, a public use condition under 49 U.S.C. § 1905 expired on November 14, 2019, and a historic preservation condition under Section 106 of the National Historic Preservation Act was removed by decision served September 3, 2019.

2020.² The deadline for ALAB to file its notice of consummation will be extended to April 18, 2021.

It is ordered:

1. The provision at 49 C.F.R. § 1152.29(e)(2) is waived in this instance, to the extent discussed above.

2. ALAB's request for an extension of time to consummate the abandonment of the Line is granted; the authority to abandon must be exercised and the notice of consummation filed on or before April 18, 2021.

3. This decision is effective on its service date.

By the Board, Allison C. Davis, Director, Office of Proceedings.

² See 49 C.F.R. § 1011.7(a)(2)(xiv) (delegating to the Director of the Office of Proceedings "authority initially" to "wave the regulations at 49 CFR part 1152, subpart C," which includes 49 C.F.R. § 1152.29(e)(2), on "appropriate petition"); see generally GTE Serv. Corp. v. FCC, 782 F.2d 263, 273-74 & n.12 (D.C. Cir. 1986) (affirming agencies' inherent power to control their own dockets).