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BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-1252X

EASTERN IDAHO RAILROAD, L.L.C.
— ABANDONMENT EXEMPTION —
IN FREMONT COUNTY, IDAHO

**PETITION FOR WAIVER
OF 49 C.F.R. § 1152.29(e)(2) AND EXTENSION REQUEST**

EXPEDITED CONSIDERATION REQUESTED

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**ATTORNEY FOR EASTERN IDAHO
RAILROAD, L.L.C.**

Dated: June 5, 2020

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EXPEDITED CONSIDERATION REQUESTED

Eastern Idaho Railroad, L.L.C (“EIRR”) hereby petitions the Surface Transportation Board (the “Board”) for a waiver of the consummation notice requirements set forth at 49 C.F.R. § 1152.29(e)(2) in connection with the abandonment of the line of railroad that is the subject of the above-captioned proceeding, and, in keeping with the waiver request, for an extension of the abandonment consummation deadline until October 1, 2020.

As background, EIRR invoked the Board’s two-year-out-of-service abandonment procedures on December 21, 2018, for authorization to abandon roughly five miles of railroad line (the “Line”) extending from milepost 28.80 at Egin, Idaho, milepost 33.80 at Parker, Idaho. The Board served notice of EIRR’s invocation of the applicable class exemption on the agency’s website and in the *Federal Register* on February 8, 2019. In so doing, the Board noted that EIRR would be required to file notice of its consummation of abandonment by February 8, 2020, provided there were no legal or regulatory barriers to consummation. The abandonment

exemption took effect as of March 12, 2019. There are no legal or regulatory barriers to consummation.

Since then, EIRR has taken steps toward consummation of abandonment, including dismantling track (much of which remains stockpiled on the line), but it has not yet consummated abandonment. Additionally, EIRR is taking steps toward conveying the Line's underlying right-of-way to a third party under agreements previously negotiated, but that conveyance has not yet occurred. EIRR's undersigned counsel, having just learned of these developments, and, having discovered that the consummation notice deadline has passed, has instructed EIRR to suspend any additional track salvage and removal, and to postpone any land conveyances unless and until the consummation issues presented herein can be addressed and resolved. EIRR acknowledges that it should have requested an extension of the consummation notice deadline a few months ago, but, in part due to a transition in EIRR's legal representation, and, in part due to simple administrative oversight, it did not do so. It looks now for relief from the Board to enable EIRR to proceed with steps toward consummation, which consummation EIRR believes that it will be able to accomplish no later than the fall of this year.

EIRR takes very seriously the requirements of § 1152.29(e), and is aware that the Board expects timely notice of abandonment consummation or requests for extension of the notice deadline. On the other hand, relief by way of a waiver of the missed deadline would avoid the need for EIRR to re-start the abandonment process, thereby imposing additional costs upon EIRR, and unnecessarily consuming the Board's own resources in processing a new abandonment proceeding. Indeed, although such action should not be taken for granted, the Board has demonstrated appropriate leniency in similar situations, granting relief from the strictures of § 1152.29(e)(2) for good cause. *See, e.g., Norfolk Southern Railway Company –*

Abandonment Exemption – In Marietta, Lancaster County, PA, Dock No. AB 290 (Sub-No. 328X) (STB served Mar. 5, 2014); *South Carolina Railroad Company — Abandonment Exemption — In Chesterfield and Darlington Counties, SC*, Docket No. AB 312 (Sub-No. 3X) (STB served Apr. 3, 2013); *Union Pacific Railroad Company — Abandonment Exemption — In Shelby County, Tenn.*, Docket No. AB 33 (Sub-No. 258X) (STB served May 3, 2010).

Moreover, EIRR believes that no interested parties would be harmed by the requested waiver, and knows that the party to which the underlying right-of-way is to be transferred, post-abandonment, would be harmed by the delay resulting from denial of this waiver request.

EIRR also requests that the Board give expedited consideration to the present petition and related deadline extension request. As indicated above, EIRR has separately committed to a plan of action under which the railroad would be in a position to abandon the Line later this year and to dispose of the underlying land. If the Board were to deny the relief sought here, then EIRR would need to move promptly to initiate a new abandonment proceeding to facilitate the anticipated land transfer. If the Board were to deny EIRR the requested relief, then EIRR respectfully requests the Board’s prompt guidance regarding whether the agency would permit EIRR to rely on the environmental assessment that was prepared in this proceeding, rather than to be required to undertake the same environmental and historic resource impacts analysis anew in a separate proceeding.

WHEREFORE, EIRR respectfully requests, that the Board act promptly to waive the requirements of 49 C.F.R. § 1150.29(e)(2) so that the Board may accept EIRR’s late-filed request for an extension of the deadline for the filing of a consummation notice applicable to this abandonment proceeding until October 1, 2020.

The undersigned counsel hereby certifies that this filing has been served by first class mail – or via more expeditious means of delivery – upon all parties of record as of this date.

Respectfully submitted,

By: *R. A. Wimbish*

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