

SERVICE DATE – JUNE 18, 2020

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1252X

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

Decided: June 17, 2020

Eastern Idaho Railroad, L.L.C. (EIRR), filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon a five-mile rail line located between milepost 28.80 at Egin and milepost 33.80 at Parker, in Fremont County, Idaho (the Line). Notice of the exemption was served and published in the Federal Register on February 8, 2019 (84 Fed. Reg. 2943). The exemption became effective on March 12, 2019, and the deadline for EIRR to file its notice of consummation of abandonment was February 8, 2020, one year after notice of the exemption was served.¹

On June 5, 2020, EIRR filed a petition seeking a waiver of the notice of consummation requirements under 49 C.F.R. § 1152.29(e)(2) and requesting an extension of the deadline to file its notice of consummation until October 1, 2020. EIRR states that it has taken steps toward consummating the abandonment, including dismantling track, and it is taking steps toward conveying the Line's underlying right-of-way to a third party under previously negotiated agreements. (Pet. 2.) EIRR acknowledges that it should have requested an extension of the notice of consummation deadline sooner but states that it did not do so in part because of a transition in EIRR's legal representation, and in part because of administrative oversight. (*Id.*) EIRR asserts that no interested party would be harmed by granting the requested waiver but that the third party to which the underlying right-of-way will be transferred post-abandonment would be harmed by the delay resulting from a denial of the waiver request. (*Id.* at 3.)

¹ Under 49 C.F.R. § 1152.29(e)(2), if a notice of consummation of abandonment is not filed within (i) one year of the service date of the decision permitting abandonment (provided there are no legal or regulatory barriers to consummation), or (ii) 60 days after the satisfaction, expiration, or removal of the last legal or regulatory barrier to consummation, whichever is later, the abandonment authority automatically expires. Here, by decision served March 11, 2019, the exemption was made subject to an environmental consultation condition regarding salvage. This condition is not a barrier to EIRR's consummation of the abandonment of the Line. See Consummation of Rail Line Abans. Subject to Historic Pres. & Other Env'tl. Conditions, EP 678, slip op. at 4 (STB served Apr. 23, 2008) (stating that a salvage condition is typically not a regulatory barrier to the filing of a notice of consummation).

Under 49 C.F.R. § 1152.29(e)(2), a railroad may, for good cause, file a request for an extension of the consummation deadline in abandonment proceedings. Here, EIRR failed to file its extension request before the consummation deadline expired. However, EIRR has provided adequate justification for its delay and has shown good cause to extend the time to consummate the abandonment of the Line and file a notice of consummation. Accordingly, EIRR'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 EIRR's abandonment authority on February 8, 2020. See 49 C.F.R. § 1011.7(a)(2)(xiv). The deadline for EIRR to file its notice of consummation will be extended to October 1, 2020.

It is ordered:

1. The provision at 49 C.F.R. § 1152.29(e)(2) is waived, to the extent discussed above.
2. EIRR'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 must be filed on or before October 1, 2020.
3. This decision is effective on its service date.

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