

SERVICE DATE – MARCH 4, 2022

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1313

NORTH COAST RAILROAD AUTHORITY
—ADVERSE DISCONTINUANCE OF LEASE & OPERATING AUTHORITY—
NORTHWESTERN PACIFIC RAILWAY CO.,
IN HUMBOLDT, TRINITY AND MENDOCINO COUNTIES, CAL.

Digest:¹ This decision grants exemptions from certain statutory provisions and waives certain regulatory requirements that normally apply when filing an application for discontinuance authority but are either unnecessary here or would be difficult or impossible for North Coast Railroad Authority to comply with should it file an application for adverse discontinuance.

Decided: March 4, 2022

In a petition filed on March 9, 2021, the North Coast Railroad Authority (NCRA),² an agency of the State of California, seeks exemptions from certain statutory provisions and waivers of certain regulatory requirements regarding the filing of a third-party, or “adverse,” application for discontinuance. NCRA states that it intends to ask the Board to terminate the operating rights of Northwestern Pacific Railway Company (NWPY) over an NCRA rail line in Mendocino, Trinity, and Humboldt Counties, Cal. On April 22, 2021, the Timber Heritage Association (THA) filed a notice of intent to participate with comments partially opposing NCRA’s petition, to which NCRA replied on April 30, 2021. As discussed below, the Board will partially grant NCRA’s petition.

BACKGROUND

NCRA states that it owns a rail line extending from milepost 142.5, at Outlet Station, to the end of the line at milepost 302.86, at Fairhaven, on the Samoa Branch, including the

¹ 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. Pol’y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

² NCRA notes that the State of California has changed NCRA’s name to Great Redwood Trail Agency, effective March 1, 2022. (NCRA Notice 7.)

entireties of the Korblex/Korbel Branch³ and the Carlotta Branch in Mendocino, Trinity, and Humboldt Counties, Cal. (the Line). (Pet. 2, 11.) NCRA states that it intends to file an application for adverse discontinuance authority to terminate NWPY's authority to operate over the Line. (*Id.* at 4.) According to NCRA, it originally acquired the Line in 1992 from the Eureka Southern Railroad. (Pet. 6); see also N. Coast R.R. Auth.—Acquis. & Operation Exemption—Eureka S. R.R., FD 32052 (ICC served Apr. 23, 1992). NCRA states that thereafter it contracted with Rail-Ways, Inc., owned by John Darling, to operate the Line.⁴ (Pet. 6.) According to NCRA, Rail-Ways went into bankruptcy in 2001 and Mr. Darling organized a new company, NWPY, to operate the Line. (*Id.*); see also Nw. Pac. Ry.—Lease & Operation Exemption—N. Coast R.R. Auth., FD 33998 (STB served Feb. 6, 2001). NCRA asserts further that Mr. Darling announced a cessation of NWPY's rail services, effective September 17, 2001, due to, among other things, apparent disputes over payment for rehabilitation and maintenance expenses.⁵ (Pet. 6.) NCRA states that NWPY's lease terminated on October 31, 2005, pursuant to an agreement dated June 23, 2005, and Mr. Darling, the last known Chief Executive Officer and last stated agent for service of process listed with the California Secretary of State, is

³ In a separate docket, NCRA filed a verified notice of exemption to abandon 175.84 miles of rail line from milepost 139.5 at Commercial Street in Willits, to milepost 284.1 near Eureka, including appurtenant branch lines extending to milepost 267.72 near Carlotta, milepost 295.57 near Korblex, milepost 300.5 near Samoa, and milepost 301.8 near Korbel. See NCRA Verified Notice 1, N. Coast R.R.—Aban. Exemption—in Mendocino, Trinity & Humboldt Cntys., Cal., AB 1305X. There, among other things, NCRA describes uncertainty about whether the rail segment that extends between Korblex and Korbel (the Arcata & Mad River subsidiary) is still an active line of railroad, and therefore has raised uncertainty about the Board's jurisdiction over that portion of line. *Id.* at 1 n.1, Ex. B.

Subsequently, by decision served on August 26, 2021, the Board directed NCRA to provide further comment on the jurisdictional issue related to the Arcata & Mad River subsidiary. See N. Coast R.R. Auth.—Aban. Exemption—in Mendocino, Trinity, & Humboldt Cntys., Cal., AB 1305X, slip op. at 2, 5 (STB served Aug. 26, 2021). The decision also stated that there appeared to be a discrepancy regarding the endpoint of the Samoa branch. *Id.* at 3, 5. Specifically, here, NCRA asserts that it intends to file a petition for “adverse” discontinuance of NWPY's operating authority on the Line and notes that the endpoint of the Samoa branch is milepost 302.86. (NCRA Pet. 2.) However, in Docket No. AB 1305X, NCRA indicates that it received acquisition and operation authority (and now seeks abandonment authority) on the Samoa branch extending to milepost 300.5. See NCRA Verified Notice 1, 3, N. Coast R.R., AB 1305X; see also N. Coast R.R. Auth.—Acquis. & Operation Exemption—Eureka S. R.R., FD 32052, slip op. at 1 (ICC served Apr. 23, 1992). This discrepancy raised, among other questions, whether abandonment of the Line would isolate a segment of track from the interstate rail network. The endpoint of the Samoa Branch and the jurisdictional issue related to the Arcata & Mad River subsidiary will be addressed in a separate decision.

⁴ NCRA states that, in 1998, due to various weather events, an emergency order was imposed by the Federal Railroad Administration (FRA) prohibiting railroad operations on the Line. (Pet. 4-5.)

⁵ In its petition, NCRA states that NWPY never provided freight rail service or any other operations on the Line due to, among other things, the 1998 FRA embargo. (Pet. 7.)

deceased as of June 27, 2010. (*Id.* at 7.) Thus, NCRA asserts that NWPY cannot voluntarily seek termination of its operating authority. (*Id.* at 8.)

DISCUSSION AND CONCLUSIONS

The discontinuance of rail service by common carriers is governed by 49 U.S.C. § 10903, and the Board's regulations governing discontinuance applications are found at 49 C.F.R. part 1152 subparts B & C. In appropriate circumstances, however, such as the filing of a third-party, or "adverse," discontinuance application, the Board may waive inapplicable and unneeded regulations and grant exemptions from statutory provisions. See, e.g., Port of Benton, Wash.—Adverse Discontinuance of Rail Serv.—Tri-City R.R., AB 1270, slip op. at 3 (STB served Oct. 31, 2018); Bos. & Me. Corp.—Adverse Discontinuance of Operating Auth.—Milford-Bennington R.R., AB 1256, slip op. at 2-3 (STB served June 23, 2017). NCRA requests waiver of the following regulations, as addressed below:

System Diagram Map. NCRA requests waiver of 49 C.F.R. § 1152.22(a)(5), which requires reference to the inclusion of the rail line subject to the abandonment request on the rail carrier's system diagram map (SDM) or narrative, the date on which the line was first listed there for abandonment or discontinuance, and a copy of the line description that accompanies the carrier's map, in compliance with 49 C.F.R. §§ 1152.10-.13. NCRA also requests waivers of 49 C.F.R. §§ 1152.10-.14, which govern the filing and amending (and providing notice to the public) of a carrier's system diagram map (SDM) and establish a two-month waiting period between the filing of SDM amendments and a corresponding discontinuance application. In support, NCRA asserts that NWPY no longer exists and that NCRA has no access to NWPY's SDM, if it ever had one. (Pet. 9.) THA does not comment on these requests.

The Board will grant NCRA's requests to waive 49 C.F.R. §§ 1152.10-.14 and 1152.22(a)(5). In addition, although NCRA does not specifically request it, the Board will waive 49 C.F.R. § 1152.24(e)(1), which also relates to SDM requirements. Waiver of the SDM requirements is customary in adverse proceedings because the applicant generally does not have access to the SDM. See Port of Benton, AB 1270, slip op. at 4. And, as explained in the exemption analysis below, the Board will exempt NCRA from the related requirements of 49 U.S.C. § 10903(c)(2).

Physical Condition of the Line. NCRA seeks a waiver of 49 C.F.R. § 1152.22(b), which requires a description of the present physical condition of the line, including any operating restrictions and an estimate of deferred maintenance and rehabilitation costs. NCRA argues that such information is generally unavailable to third-party applicants such as NCRA, and that the information is irrelevant where, as here, NCRA is attempting to terminate operating authority of a lessee due to termination of a lease agreement. (Pet. 9.) THA does not comment on this request. The Board will grant NCRA's request. While it is clear from NCRA's petition that NCRA has certain information available to it (i.e., information regarding the physical condition of the Line), that information does not appear to be particularly relevant here, where NCRA is attempting to terminate the operating authority of the former operator of its line due to the termination of a lease agreement. For this reason, the waiver request from 49 C.F.R.

§ 1152.22(b) will be granted. See Lake Cnty., Or.—Adverse Discontinuance of Rail Serv.—Modoc Ry. & Land Co., AB 1035, slip op. at 3 (STB served June 15, 2009).

Other Line Attributes. NCRA seeks a waiver of 49 C.F.R. § 1152.22(c), (d), and (e), which require a description of service provided, revenue and cost data, and rural and community impact. (Pet. 9-10.) NCRA asserts that there is no need for this information as the Line has been embargoed since 1998 and NWPY has never provided service on it. (*Id.* at 10.) THA does not comment on the need for this information. Because the record reflects that there is currently no service being provided on the Line, and because this information is not typically available to adverse discontinuance applicants or has otherwise not been required of them, the Board will grant these waivers. See Port of Benton, Wash., AB 1270, slip op. at 4-5.

Posting of Notice at Agency Stations and Terminals. NCRA seeks waiver of the requirement at 49 C.F.R. § 1152.20(a)(3) to post notice at each station and terminal, and seeks an exemption from the related statutory provision at 49 U.S.C. § 10903(a)(3)(B). (Pet. 12, 14.) NCRA argues that no stations or terminals for or on the Line have been open in over two decades and, thus, they are all now defunct. (Pet. 12.) NCRA also asserts that the posting requirements were intended to apply in cases where “carriers are seeking voluntary discontinuance, which is not the case here.” (*Id.* (citing South Dakota—Adverse Discontinuance of Operating Auth.—Napa-Platte Reg’l R.R. Auth., AB 1253, slip op. at 4 (STB served May 31, 2017)).) In lieu of such posting, NCRA requests permission to instead post a copy of the petition on its website. (Pet. 12.) THA does not comment on this request. The Board finds NCRA’s request for waiver of 49 C.F.R. § 1152.20(a)(3) to be reasonable and will grant it. See N.Y. State Dep’t of Env’t Conservation—Adverse Aban.—Saratoga & N. Creek Ry. in Town of Johnsburg, N.Y., AB 1261, slip op. at 4 (STB served Feb. 27, 2018). And, as explained below, the Board will also exempt NCRA from the corresponding requirement at 49 U.S.C. § 10903(a)(3)(B).

Notice of Intent. NCRA requests that its petition for waiver and exemption be permitted to serve as NCRA’s notice of intent to seek adverse discontinuance of service as required under 49 C.F.R. § 1152.20. (Pet. 10.) THA does not comment on this request. The Board finds that service of the current petition is sufficient notice of the forthcoming application and therefore will waive the requirements of 49 C.F.R. § 1152.20(a)(1) and (b)(1). See Town of N. Judson, Ind.—Adverse Discontinuance of Serv.—in Laporte, Porter & Starke Cntys., Ind., AB 1232, slip op. at 4-5 (STB served July 27, 2015); Riverview Trenton R.R.—Adverse Aban.—in Wayne Cnty., Mich., AB 1230, slip op. at 4 (STB served Apr. 10, 2015); Lackawaxen-Honesdale Shippers Ass’n—Adverse Discontinuance of Operating Auth.—in Wayne & Pike Cntys., Pa., AB 1110, slip op. at 3-4 (STB served Jan. 23, 2014).

NCRA also seeks waiver of the requirement to serve the notice of intent on all parties listed in 49 C.F.R. § 1152.20(a)(2). (Pet. 10-11.) Specifically, NCRA asks that it be permitted to serve its petition only on the following entities: California State Clearinghouse—Office of Planning and Research, California State Transportation Agency (CalSTA), and Northwestern

Pacific Railroad Company (NWPCO), the current connecting carrier for the Line.⁶ (Pet. 10-11.) NCRA argues that service of its petition on these entities, combined with three weeks of newspaper publication and a Federal Register notice, satisfies procedural due process. (Id. at 11.) NCRA also argues that there is no need to serve the notice of intent on other state agencies and commissions, as NCRA is a state agency. (Id.) In addition, NCRA certifies that no duly certified labor organizations represent employees on the Line. (Id.) THA submitted no comments regarding this request. The Board will grant the requested waiver of 49 C.F.R. § 1152.20(a)(2) to allow NCRA to serve its petition (as its notice of intent) on a reduced service list. See South Dakota, AB 1253, slip op. at 4.

Service of the Application. NCRA seeks a partial waiver of 49 C.F.R. § 1152.24(c), which requires the applicant to serve the application on the Governor, the Public Service Commission (or equivalent agency), and the designated state agency of each state in which the line is situated. (Pet. 12.) NCRA requests that it be required to serve its adverse discontinuance application only on the California State Clearinghouse—Office of Planning and Research, CalSTA, and NWPCO. (Id.) THA does not comment on this request. The Board finds NCRA’s request that the Board waive service on the Governor and state agencies to be reasonable given that NCRA, which has submitted this petition, is also a state agency. See South Dakota, AB 1253, slip op. at 4. Therefore, the Board will grant the partial waiver of 49 C.F.R. § 1152.24(c).

Notice of Intent and Newspaper Publication. NCRA seeks a limited waiver of 49 C.F.R. § 1152.21, which governs the form of the notice of intent to abandon or discontinue service, and the newspaper publication regulation at 49 C.F.R. § 1152.20(a)(4). (Pet. 12-13.) NCRA requests that it be permitted to use the notice of intent form set forth in Attachment 2 of its waiver request for purposes of its newspaper publication notices. (Id. at 13.) NCRA argues that its draft notice uses the form and substance of the notice of intent found at 49 C.F.R. § 1152.21 but removes material that is not necessary for this proceeding. (Pet. 13; see id. Attach. 2.) THA does not comment on this request. The Board finds that NCRA’s substitute notice is in substantial compliance with the requirements of 49 C.F.R. § 1152.21 and that the proposed changes are reasonable in the context of NCRA’s forthcoming application. See Paulsboro Ref. Co.—Adverse Aban.—in Gloucester Cnty., N.J., AB 1095 (Sub-No. 1), slip op. at 3 (STB served July 26, 2012). The Board will therefore grant NCRA’s waiver request as to 49 C.F.R. § 1152.21. The Board will also grant NCRA’s request for partial waiver of 49 C.F.R. § 1152.20(a)(4) to the extent necessary to permit NCRA to use its proposed substitute notice in the required newspaper publications.

⁶ The Board notes that, in a separate docket, NWPCO received authority to discontinue service over an approximately 53.5-mile rail line extending between milepost NWP 142.5, near Outlet Station, and milepost NWP 89, near the Sonoma-Mendocino County border, in Mendocino County, Cal. See Nw. Pac. R.R.—Discontinuance of Serv. Exemption—in Marin, Napa, & Sonoma Cntys., Cal., AB 1310 (Sub-No. 1X) (STB served Aug. 31, 2021). NWPCO also discontinued operations over a connecting rail segment extending between milepost NWP 89 and milepost SP 63.4. See Nw. Pac. R.R.—Discontinuance of Serv. Exemption—in Marin, Napa, & Sonoma Cntys., Cal., AB 1310X (STB served June 11, 2021).

Federal Register Notice. NCRA seeks a limited waiver to modify the draft Federal Register notice form, set forth at 49 C.F.R. § 1152.22(i), that an applicant must submit to the Board along with its adverse discontinuance application. (Pet. 13.) Specifically, NCRA requests that it be permitted to utilize the draft Federal Register notice form set forth in Attachment 3 of its petition. (*Id.*) NCRA argues that the substitute notice uses the form and substance of the draft Federal Register notice found at 49 C.F.R. § 1152.22(i) but removes material not necessary for this proceeding. (Pet. 13.) THA does not comment on this request. The Board finds that the substitute notice is in substantial compliance with the requirements of 49 C.F.R. § 1152.22(i). The Board will therefore grant NCRA’s request. *See Lake Cnty.*, AB 1035, slip op. at 5.

Labor Protection Notice Text. NCRA seeks a waiver of the requirement that the notices it provides pursuant to 49 C.F.R. §§ 1152.21 and 1152.22(i) contain text referring to the mandatory imposition of labor protective conditions. (Pet. 13.) NCRA argues that “[w]hen issuing abandonment or discontinuance authority for rail lines that constitute a carrier’s entire system, the Board does not generally impose protection.” (*Id.* (quoting *South Dakota*, AB 1253, slip op. at 5).) NCRA states that the Line is the entirety of NWPY’s system. (Pet. 13.) Moreover, NCRA asserts that NWPY has never conducted rail operations under its operating authority, due to the 1998 embargo, and has no rail employees. (*Id.*) THA does not comment on this request. The Board will grant NCRA’s request to waive 49 C.F.R. §§ 1152.21 and 1152.22(i) to the extent that the notices required by those regulations include text referring to the mandatory imposition of labor protective conditions. *See South Dakota*, AB 1253, slip op. at 5-6.

Offers of Financial Assistance. NCRA asks for an exemption from 49 U.S.C. § 10904 and a waiver of the corresponding regulations set forth at 49 C.F.R. § 1152.27, which govern offers of financial assistance (OFAs) to continue rail service. (Pet. 13.) NCRA argues that waiver is appropriate in light of the “defunct nature” of NWPY. (*Id.* at 14.) Indeed, NCRA asserts that, since 1998, there has been no rail service over the Line by NWPY or any other carrier. (*Id.* at 13-14.) According to NCRA, if the Board were to permit the adverse discontinuance, an OFA to subsidize would in effect nullify the Board’s decision. (*Id.* at 14 (citing *Town of N. Judson*, AB 1232, slip op. at 5).) THA opposes this requested exemption, arguing that interested parties should be afforded the opportunity to submit proposals given the unique relationship between the port and rail in, and around, the Port of Humboldt Bay. (Comment 4-5.) In reply, NCRA argues, among other things, that any OFA in this proceeding would be inappropriate and irreconcilable with a Board decision granting adverse discontinuance. (NCRA Reply 3-4 (citing *Metro-N. Commuter R.R.—Adverse Discontinuance of Trackage Rts.—Housatonic R.R.*, AB 1311, slip op. at 5 (STB served Apr. 20, 2021)).) The Board agrees that an OFA to subsidize a current operator would be irreconcilable with a Board decision granting adverse discontinuance. *See Port of Benton, Wash.*, AB 1270, slip op. at 6; *Town of N. Judson*, AB 1232, slip op. at 5. For this reason, the Board will waive the OFA regulations at 49 C.F.R. § 1152.27, and, as discussed below, the Board will also grant exemption from § 10904.

Environmental and Historic Impacts. NCRA requests waivers of the environmental and historic reporting requirements set forth at 49 C.F.R. §§ 1152.20(c), 1105.7, and 1105.8, as well as any additional waivers or exemptions that may be necessary to confirm these reporting

requirements are inapplicable in this proceeding. (Pet. 10.) According to NCRA, waiver is appropriate because the Line has been embargoed since 1998, and any discontinuance would not result in “changes that exceed the thresholds set forth in sections 1105.7 and 1105.8.” (*Id.* (citing *Town of N. Judson*, AB 1232, slip op. at 4).) NCRA further states that it has no intention of salvaging the Line or disrupting any potentially historic structures on the Line. (Pet. 10.) THA opposes this exemption request, in part, arguing that no activity should be waived by the Board that would state or imply exemption from any historic impacts. (Comment 5-6.) Replying to THA’s opposition, NCRA reasserts its intention not to salvage the Line or disrupt any potentially historic structures on the Line. (NCRA Reply 3.) It further argues that Board precedent supports waiver of the historic reporting requirements, and, in any event, historic impacts would be considered—to the extent appropriate—in an abandonment proceeding. (*Id.*) The Board agrees that waiver of these requirements is appropriate here and will waive 49 C.F.R. §§ 1152.20(c) and 1105.7. *See Town of N. Judson*, AB 1232, slip op. at 4. Moreover, NCRA has asserted that it does not intend to salvage or alter the Line or disrupt historic structures. Therefore, the historic report requirements under 49 C.F.R. § 1105.8 will also be waived for this proceeding.⁷ *Lackawaxen*, AB 1110, slip op. at 3.

Exemption Criteria. As indicated, NCRA seeks exemption from the following statutory provisions corresponding to Board regulations discussed above: 49 U.S.C. § 10903(c)(2) (SDMs); 49 U.S.C. § 10903(a)(3)(B) (posting); and 49 U.S.C. § 10904 (OFAs). The Board will grant these exemptions because full compliance with the Interstate Commerce Act is not necessary here to carry out the rail transportation policy (RTP) of 49 U.S.C. § 10101. These exemptions would promote the RTP by eliminating unnecessary procedures and thus would expedite regulatory decisions (§ 10101(2)) and foster sound economic conditions in transportation (§ 10101(9)). Other aspects of the RTP would not be adversely affected. Additionally, application of the statutory provisions from which the Board is granting exemptions is not necessary to protect shippers from an abuse of market power because, as previously stated, the Line has not been used for rail service for over twenty years, since the 1998 embargo.

It is ordered:

1. The petition for waivers and exemptions is granted to the extent discussed above.
2. This decision is effective on its service date.

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

⁷ The Board notes, however, that any environmental or historic impacts would be considered during an abandonment proceeding for the Line.