

FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208

Phone: (312) 252-1500
Fax: (312) 252-2400
www.fletcher-sippel.com

ROBERT A. WIMBISH

(312) 252-1504
rwimbish@fletcher-sippel.com

October 19, 2023

307327

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

ENTERED
Office of Proceedings
October 19, 2023
Part of
Public Record

Re: *Alabama Railroad, LLC – Abandonment Exemption – In Escambia, Conecuh, and Monroe Counties, Ala., AB 1324X*

Request for extension of abandonment consummation notice deadline

Dear Ms. Brown:

Alabama Railroad, LLC (“ARL”) hereby respectfully requests that the Board grant a six-month extension of the abandonment consummation notice deadline in the above referenced proceeding, from October 24, 2023, to until April 24, 2024.

As background, the Surface Transportation Board (the “Board”) granted ARL’s abandonment petition for exemption in a decision served in this docket on October 24, 2022 (the “*October 2022 Decision*”). The *October 2022 Decision* (at 5, Ordering Paragraph 5, and citing to 49 C.F.R. § 1152.29(e)(2)) provides that, “If [ARL does not file formal notice of abandonment] consummation by October 24, 2023, and there are no legal or regulatory barriers to consummation, [ARL’s] authority to abandon will automatically expire.” ARL has confirmed that there are no legal or regulatory barriers to consummation. So, as of now, October 24, 2023 is the operative deadline for ARL to timely file an abandonment consummation notice.

ARL submits that good cause exists for the Board to waive the current abandonment consummation notice deadline, and to grant the requested six-month extension. ARL has arranged for the salvage of the track along the majority of the subject Line (consisting of roughly 47.5 route miles of railroad line, extending from milepost 607.73 at Flomaton, Alabama, to milepost 655.2 near Tunnel Springs, Alabama). But ARL has retained a portion of the Line closest to Flomaton for potential railroad service opportunities. Relatedly, ARL has not

FLETCHER & SIPPEL LLC

Ms. Cynthia T. Brown
October 19, 2023
Page 2

yet decided whether to salvage all of the track along the Line, and to consummate the abandonment of some of the Line, all of it, or none of it, based upon the following:

- If ARL were to consummate abandonment of all of the Line according to mandatory, governing Board processes, it would prefer to do so after removing of all of the rail and track material to avoid any prospective (but specious) state law claims by others to any of the track material still in place following the e-filing of formal notice of consummation. Such additional track removal, if it were to be pursued, would not be completed by or before October 24, 2023.
- As previously indicated, ARL is exploring offering (and providing) rail service over the portion of the Line closest to the railroad's Flomaton interchange with CSX Transportation, Inc., which could lead to ARL opting to retain a portion of the Line for such purposes going forward, thus limiting the scope of ARL's abandonment consummation notice. ARL would benefit from additional time to assess this strategic option that would preserve a portion of the Line for interstate commerce.
- ARL is actively engaged in discussions with prospective interim trails use sponsors interested in assuming sponsorship of some or all of the Line under an appropriate notice of interim trails use ("NITU"). Those discussions have been complicated, quite understandably, by troublesome Alabama common law that, in the eyes of prospective sponsors, puts trails use arrangements at risk. This complication remains, despite the Board, in its *October 2022 Decision* (at 2-3 n. 4), having properly and helpfully called out the pertinent holding of the Alabama Supreme court in *Monroe County Commission v. Nettles*, 288 So. 3d 452 (Ala. 2019) ("*Nettles*") as being "flatly inconsistent with the Board's exclusive and plenary authority over the abandonment of rail lines" under 49 U.S.C. §§ 10501(b)(2), 10502, and 10903.

Because ARL has yet to file notice of abandonment consummation for any of the Line, and ARL may yet negotiate trails use terms with an interested sponsor covering some or all of the Line (as ARL remains willing to do), ARL understands that Board precedent and practice will permit for a late-filed petition for issuance of an NITU where, as here, the railroad line in question has not been abandoned pursuant to a timely-filed consummation notice. See *October 2022 Decision*, 4 n. 6. The requested extension would facilitate interim trails use discussions as among the options for the future disposition of the Line, particularly in the ongoing, but dubious, presence of *Nettles*, which remains a significant factor for the future of the Line and others in Alabama, notwithstanding the Board's clear repudiation of that state court decision.

FLETCHER & SIPPEL LLC

Ms. Cynthia T. Brown
October 19, 2023
Page 3

For the foregoing reasons, ARL respectfully submits that good cause exists for granting ALR's request for a six-month extension of the Board's abandonment consummation notice deadline at 49 C.F.R. § 1152.29(e)(2), and, if extent needed, a waiver of this regulation. Accordingly, ARL urges prompt consideration and favorable action on this consummation notice deadline extension request.

Respectfully submitted,

/s/ *R. A. Wimbish*

Robert A. Wimbish
Counsel for Alabama Railroad, LLC

cc: All parties of record