

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1305 (Sub-No. 1)

GREAT REDWOOD TRAIL AGENCY—ADVERSE ABANDONMENT—MENDOCINO
RAILWAY IN MENDOCINO COUNTY, CAL.

Decided: June 25, 2024

On April 12, 2024, Great Redwood Trail Agency (GRTA) filed an application (Application) under 49 U.S.C. § 10903 for third-party, or “adverse,” abandonment of an approximately 40-mile rail line owned by Mendocino Railway (MR) that extends between milepost 0 at Fort Bragg and milepost 40 at Willits, in Mendocino County, Cal. Notice of the Application was served and published in the Federal Register on May 2, 2024 (89 Fed. Reg. 35,919). The notice scheduled May 28, 2024 as the deadline for filing protests and comments in response to the Application, and June 11, 2024 as the deadline for GRTA to file replies to any such comments or protests. See id.

On May 16, 2024, MR filed a request (MR Request) to extend the deadline for filing protests and comments in response to the Application by 20 days, or until June 17, 2024. The MR Request stated that GRTA consented to the extension and that the extension would provide MR sufficient time to review discovery received from GRTA. (MR Request 1.) On May 20, 2024, the Board granted the MR Request, and on June 17, 2024, MR filed its protest. Four other interested parties also filed comments in the proceeding, and MR and another party filed motions to strike portions of GRTA’s Application.

On June 18, 2024, GRTA filed a request (GRTA Request) to extend the deadline for filing its replies to protests and comments by 30 days, or until August 1, 2024.¹ Among other things, GRTA states that the extension is warranted in light of the volume of material MR filed in connection with MR’s protest (over 700 pages of material), particularly where GRTA will also be preparing responses to other comments and the motions to strike. (GRTA Request 2.) GRTA

¹ GRTA’s responsive deadline was not addressed in the MR Request or the decision granting the MR Request. GRTA states that if the 20-day extension to the deadline for filing protests and comments “applied equally” to GRTA’s responsive deadline, GRTA’s replies would currently be due on July 1, 2024. (GRTA Request 2.) Alternatively, GRTA states that the deadline is July 2, 2024, or 15 days after June 17, 2024, as 49 C.F.R. § 1152.25 contemplates a 15-day period between the deadline to file comments and protests and the deadline to file replies (45 and 60 days, respectively, after an application is filed). (Id.) Given the regulations envision a 15-day reply period, the current deadline from which an extension will be calculated is July 2, 2024.

also argues that there is good cause to grant the extension because MR's responses to certain discovery requests from GRTA are due on July 2, 2024, MR had a total of 66 days to respond to the Application, GRTA previously consented to MR's own extension request, and GRTA's agency counsel is unavailable from June 28 to July 3, 2024. (Id.)

On June 21, 2024, MR filed a reply (MR Reply) in opposition to the GRTA Request. MR asserts that the volume of its protest does not justify an extension, noting that most of the pages in the pleading are attachments supplied for the reader's convenience. (MR Reply 9.) MR also argues that GRTA's prior consent to MR's extension request does not provide a basis to extend GRTA's responsive deadline because MR's request was, according to MR, necessitated by GRTA's own delays in discovery. (Id. at 9-10.) MR further asserts that neither GRTA's counsel's upcoming unavailability nor GRTA's pending discovery requests to MR provide a basis for the extension. (Id. at 8, 10).

Under 49 C.F.R. § 1104.7(b), the Board has discretion to extend any time period upon request and for good cause. Here, a 30-day extension is reasonable in light of the circumstances, including that GRTA is concurrently reviewing and preparing responses to MR's protest, four additional comments, and two motions to strike portions of the Application. It also appears, based on the MR Reply, that GRTA and MR have been preoccupied with a discovery-related dispute. (MR Reply 6-8.)² For these reasons, the GRTA Request will be granted, and GRTA's replies will be due on or before August 1, 2024.

It is ordered:

1. GRTA's request for an extension of time to file its replies is granted.
2. GRTA's replies are due on or before August 1, 2024.
3. This decision is effective on its service date.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

² To the extent there is an ongoing dispute related to discovery, such dispute is not presently before the Board. Should the parties be unable to resolve the issue, if any, they are free to file a motion for the Board's consideration.