

SERVICE DATE – AUGUST 16, 2024

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1339X

WALKERSVILLE SOUTHERN RAILROAD, INC.—DISCONTINUANCE OF SERVICE
EXEMPTION—IN FREDERICK COUNTY, MD

Digest:¹ The Board finds good cause to grant Maryland Transit Administration’s petition for leave to late file an administrative appeal.

Decided: August 15, 2024

On March 18, 2024, Walkersville Southern Railroad, Inc. (WSRR) filed a verified notice of exemption to discontinue service over an approximately 2.21-mile rail line known as the Frederick Secondary Track (the Line), which is owned by the Maryland Transit Administration (MTA). On the same day, Frederick County, Md. (the County) filed a request for issuance of a notice of interim trail use or abandonment (NITU) for the Line under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and explained that it had engaged with MTA to further this goal. Also on March 18, 2024, MTA filed a reply noting its consent to the County’s request for a NITU. By decision served on May 24, 2024 (May 24 Decision), the Director of the Board’s Office of Proceedings denied the County’s NITU request, finding that the Board lacked jurisdiction to issue a NITU because the Line had previously been abandoned.

On June 7, 2024, MTA filed a petition for leave to late file an administrative appeal of the May 24 Decision. On June 13, 2024, MTA and the County jointly filed an appeal (Joint Appeal) of the May 24 Decision with the Board.² On July 22, 2024, MTA filed a petition for review of the May 24 Decision with the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit or Court). See Pet. for Review, Md. Transit Admin. v. STB, No. 24-1257 (D.C. Cir. July 22, 2024).

The deadline to file an administrative appeal of the May 24 Decision was June 3, 2024, 10 days after service of the decision. See 49 C.F.R. § 1011.2(a)(7), § 1152.25(e)(1)(iii). However, the Board may accept a pleading filed after its due date if good cause is shown.

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

² MTA and the County requested that the Board accept the June 13, 2024 filing as a petition to reopen under 49 C.F.R. § 1152.25(e)(4) if it was not accepted as a late-filed administrative appeal. (See Joint Appeal 2 n.1.)

49 C.F.R. § 1152.25(d)(5). In its petition for leave to late file, MTA stated that its counsel initially believed that the proper administrative appeal process would be to file a petition for reconsideration within 20 days after service of the decision being appealed, pursuant to the Board's general appellate procedures. (MTA Pet. for Leave 3 (citing 49 C.F.R. § 1115.3(e).) MTA asserted that when it realized its error, it promptly filed its petition for leave to late file an administrative appeal. (Id.) MTA further stated that it needed additional time to coordinate with the other parties to the proceeding and that it planned to file its administrative appeal as quickly as possible and no later than June 13, 2024. (Id.) Consistent with MTA's statements, MTA and the County filed their Joint Appeal with the Board on June 13, 2024.

The Board finds that good cause exists to grant MTA's petition for leave to late file an administrative appeal and will accept for consideration the late-filed Joint Appeal. MTA acted quickly to address its error regarding the appropriate regulatory deadline for the administrative appeal, and the Board's consideration of the Joint Appeal will not unduly delay the proceeding.³ The Board will accept for consideration the Joint Appeal of the May 2024 Decision and will address the merits of the Joint Appeal in a subsequent decision.

It is ordered:

1. MTA's petition for leave to late file its administrative appeal is granted, and the June 13, 2024 Joint Appeal of the May 24 Decision is accepted for consideration.
2. Any reply to the Joint Appeal is due 10 days from the service date of this decision.
3. This decision is effective on its service date.

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

³ On June 10, 2024, the National Association of Reversionary Property Owners (NARPO) filed a reply to MTA's petition for leave to late file an appeal. NARPO claims that some of its members are property owners who have been waiting for over 30 years to exercise their reversionary rights to the underlying property in the Line's right-of-way. NARPO states generally that these property owners will be prejudiced by any extension of the proceeding. However, NARPO provides no argument or evidence to support its position that consideration of the appeal is prejudicial, which is questionable in any event given that MTA's request to late file an appeal at the Board is one of several routes through which MTA has sought review of the May 24 Decision.