

52271
EB

SERVICE DATE—JANUARY 14, 2025

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 768X

MOHAWK, ADIRONDACK & NORTHERN RAILROAD CORPORATION—
ABANDONMENT EXEMPTION—IN LEWIS AND JEFFERSON COUNTIES, N.Y.

Docket No. AB 180X¹

THE LOWVILLE & BEAVER RIVER RAILROAD COMPANY—ABANDONMENT
EXEMPTION—IN LEWIS COUNTY, N.Y.

Digest:² The Board removes these proceedings from abeyance, grants a request by The Lowville & Beaver River Railroad Company to waive the requirement that a rail carrier have Board-authorized ownership of a rail line for at least two years in order to use the expedited procedures for terminating operations on out-of-service lines, denies requests to reject the verified notices of exemption filed in these dockets, and authorizes publication of the verified notices in the Federal Register.

Decided: January 7, 2025

On September 11, 2023, Mohawk, Adirondack & Northern Railroad Corporation (MAN) filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments in Docket No. AB 768X to abandon (1) an approximately 16-mile rail line that runs between milepost 58.1 and milepost 74.0 located between the Village of Lowville, N.Y., and the Village of Carthage, N.Y. (Lowville-Carthage Line); and (2) 0.5 miles of unused spur track and 300 feet of terminal main line, all within the Village of Lyons Falls, N.Y. (Lyons Falls Track). On September 12, 2023, The Lowville & Beaver River Railroad Company (LBRR) filed a verified notice of exemption under the same subpart of the Board's regulations, in Docket No. AB 180X, to abandon a 10.57-mile rail line running from milepost 0.0 in Lowville to

¹ These proceedings are not consolidated but are being addressed in the same decision for administrative convenience.

² 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).

milepost 10.57 in Croghan, N.Y. (Lowville-Croghan Line).³ The Lowville-Croghan Line connects with the Lowville-Carthage Line at Lowville, and they are collectively referred to as the Lines. The Lyons Falls Track is not connected to either of the Lines.⁴

In this decision, the Board removes both abandonment proceedings from abeyance, grants a motion for waiver sought by LBRR that would allow it to use the class exemption process, and addresses comments opposing the verified notices of exemption. Because the Board finds that the comments do not provide a basis for rejecting the verified notices, the verified notices will be published in the Federal Register.

BACKGROUND

According to MAN and LBRR, there has been no traffic on the Lowville-Carthage Line, the Lyons Falls Track, or the Lowville-Croghan Line for at least 15 years. (MAN Notice 3, AB 768X; LBRR Notice 3, AB 180X.) Both MAN and LBRR indicate that they are seeking abandonment authority because they have entered into contracts with Lewis County, N.Y., for the county to purchase the Lines and the Lyons Falls Track and convert portions into recreational trails for use by the public. (MAN Notice 4, AB 768X; LBRR Notice 3, AB 180X; see also Lewis County Reply 1, 3, AB 768X et al., Oct. 10, 2023 (stating that the county intends to purchase MAN's and LBRR's rail lines subject to them being formally abandoned and convert them into multi-use trails).)

As discussed in more detail below, the Board received several comments from local governmental entities, organizations, and individuals. Many commenters oppose the proposed abandonments or oppose Lewis County's plan to convert portions of the Lines and the Lyons Falls Track into recreational trails, arguing that those lines may be needed for future rail service. Conversely, several commenters, including Lewis County, filed in support of the abandonments. In addition, some commenters raised environmental and historic concerns.

By decision served on September 25, 2023, the Board identified several issues with the verified notices of exemption that required clarification. Mohawk, Adirondack & N. R.R.—Aban. Exemption—in Lewis & Jefferson Cntys. (September 2023 Decision), AB 768X et al. (STB served Sept. 25, 2023). Among other things, the decision stated that, according to the agency's records, the Lowville-Croghan Line was owned by the Lewis County Industrial Development Agency (LCIDA) and not by LBRR.⁵ September 2023 Decision, 768X et al., slip

³ In its verified notice of exemption, LBRR states that the Lowville-Croghan Line terminates at milepost 10.44. (Notice 2, AB 180X.) In a subsequent filing, LBRR clarifies that the endpoint is milepost 10.57 in Croghan. (Suppl. 2, Sept. 27, 2023, AB 180X.)

⁴ MAN and LBRR are both subsidiaries of Genesee Valley Transportation Company Inc. See David Monte Verde—Continuance in Control Exemption—Falls Rd. R.R., FD 33161 (STB served Nov. 4, 1997).

⁵ Specifically, the Board noted that in 1991, its predecessor agency, the Interstate Commerce Commission (ICC), published a notice of exemption authorizing LBRR to transfer ownership of the Lowville-Croghan Line from LBRR to LCIDA and for LCIDA to lease the line

op. at 2. Accordingly, the effective dates of the notices in these proceedings were postponed and MAN and LBRR were directed to file supplements clarifying this and other issues. Id. MAN and LBRR jointly filed a supplement on September 27, 2023. The joint supplement stated that the Lowville-Croghan Line was conveyed from LCIDA to LBRR pursuant to a deed on July 14, 2016. (MAN/LBRR Suppl. 1, AB 768X et al., Sept. 27, 2023.)

By decision served on January 22, 2024, the Board held both abandonment proceedings in abeyance and directed MAN and LBRR to take certain actions. Mohawk, Adirondack & N. R.R.—Aban. Exemption—in Lewis & Jefferson Cntys. (January 2024 Decision), AB 768X et al., slip op. at 3-4, 8 (STB served Jan. 22, 2024). The Board placed AB 768X in abeyance so that MAN could update its Environmental and Historic Report (E&H Report) to include additional information, serve that updated report on the parties required to receive it, and allow 20 days for responses. Id. at 3. The Board also stated that LBRR had not indicated that it obtained acquisition authority for its 2016 acquisition of the Lowville-Croghan Line and that the agency had no record of having issued such authority. Id. Accordingly, the Board placed AB 180X in abeyance so that LBRR could (1) seek after-the-fact authority to acquire the Lowville-Croghan Line and (2) update its E&H Report, serve that updated report on the parties required to receive it, and allow 20 days for responses. Id. The Board stated that both dockets would remain in abeyance until the parties completed these requirements and the Board issued a further decision. Id. It also stated that it would address the comments regarding the verified notices when the proceedings were no longer in abeyance. January 2024 Decision, AB 768X et al., slip op. at 7-8.⁶

On April 4, 2024, in The Lowville & Beaver River Railroad Company—Acquisition Exemption—Lewis County Industrial Development Agency, Docket No. FD 36763, LBRR filed a verified notice of exemption pursuant to 49 C.F.R. § 1150.41 for after-the-fact authority to acquire the Lowville-Croghan Line. Notice of the exemption was served and published in the Federal Register on April 19, 2024 (89 Fed. Reg. 28,840), and the exemption became effective on May 4, 2024.

On April 5, 2024, MAN and LBRR each submitted a verified supplement and amendment to their verified notices of exemption to abandon in their respective dockets, which included updated E&H Reports and notice that service had been made to the required agencies, as directed by the Board in the January 2024 Decision. LBRR and MAN, on April 29 and May 13, 2024, respectively, submitted additional revisions to their E&H Reports and stated that they had

back to LBRR. September 2023 Decision, AB 768X et al., slip op. at 2 (citing Lewis Cnty. Indus. Dev. Agency—Exemption from 49 U.S.C. 10901, FD 31825 (ICC served Feb. 13, 1991)).

⁶ The Board also noted that comments raising environmental and historic preservation issues would be considered by its Office of Environmental Analysis (OEA) as part of its environmental and historic preservation review once the proceedings were no longer in abeyance. January 2024 Decision, AB 768X et al., slip op. at 8.

provided OEA with digitized copies of the original valuation maps⁷ of the MAN and LBRR systems.⁸

DISCUSSION AND CONCLUSIONS

Abeyance Order. The Board finds that LBRR and MAN have satisfied the conditions imposed in the January 2024 Decision. Specifically, LBRR has obtained the necessary after-the-fact authority to acquire the Lowville-Croghan Line, and LBRR's and MAN's revised E&H reports and supplements contain the information needed for OEA to conduct the statutorily required environmental and historic review. Accordingly, the Board will remove these proceedings from abeyance.

Waiver of the Two-Year Board-Authorized Ownership Requirement. In its January 2024 Decision, the Board explained that if LBRR obtained after-the-fact acquisition authority for the Lowville-Croghan Line, it would not have had Board-authorized ownership of that rail line for at least two years and therefore would not qualify for the Board's two-year out-of-service class exemption under 49 C.F.R. part 1152 subpart F. See January 2024 Decision, AB 768X et al., slip op. at 6 (citing Tulare Valley R.R.—Aban. Exemption—Kings & Tulare Cntys., Cal., 9 I.C.C.2d 1205 (1993)). The Board noted, however, that LBRR could file a motion seeking a waiver of the two-year ownership requirement so that it may still avail itself of that class exemption. Id. On June 26, 2024, LBRR filed such a motion.⁹ LBRR states that a waiver is warranted because “there has been no service nor request for service for at least fifteen (15) years on this line and there would seem to be no reason to wait an additional two years now that the Board has granted the Acquisition Exemption in this docket.” (LBRR Motion 2, June 26, 2024, AB 180X.)

The Board finds good cause to grant LBRR's motion for waiver. LBRR has owned the Lowville-Croghan Line since 2016. It does not appear that LBRR's failure to seek acquisition authority at that time was based on an intent to evade the Board's regulations. See V & S Ry.—

⁷ The maps were submitted to OEA as environmental comments, which are available on the Board's website at: <https://www.stb.gov/proceedings-actions/search-stb-records/> (select “Environmental Comments” in the Search For field). (See Map from John Herbrand (General Counsel, Genesee Valley Transp. Co. Inc.) to OEA (Apr. 19, 2024) (Env't Comment EI-33433), AB 180X; Email from John Fiorilla (Counsel for Genesee Valley Transp. Co. Inc.) to OEA (May 9, 2024) (Env't Comment EI-33576), AB 768X.)

⁸ On November 15, 2024, MAN and LBRR filed a letter regarding the status of the proceedings. On November 21, 2024, a local resident who previously had filed objections to the abandonments filed a reply, stating that the Board should continue a thoughtful and deliberate approach to these proceedings.

⁹ LBRR states in its motion for waiver that its verified notice of exemption for after-the-fact authority in FD 36763 requested that the authority be granted to it nunc pro tunc, i.e., retroactively. Although the Board on occasion has granted authority retroactively, it generally disfavors doing so, see Elk River R.R.—Merger Exemption—The Buffalo Creek R.R., FD 36434, slip op. at 3 (STB served Nov. 6, 2020), and did not do so in Docket No. FD 36763.

Acquis. & Operation Exemption—Colo. Dep’t of Transp., FD 35664, slip op. at 4 (STB served Nov. 13, 2012) (noting that a carrier’s failure to obtain acquisition authority when it purchased the line appeared to be inadvertent). Accordingly, this case does not raise the concerns the two-year authorized ownership requirement is meant to avoid. See BNSF Ry.—Aban. Exemption—in Okla. Cnty., Okla., AB 6 (Sub-No. 430X) et al. (STB served Jan. 26, 2007) (rejecting a notice of exemption to discontinue service by a carrier that had leased the line only nine months earlier, finding that the carrier’s decision to lease “indicate[d] a perception of a demand for service”) (citing Tulare Valley, 9 I.C.C.2d at 1206). Moreover, the Lowville-Croghan Line otherwise qualifies for the class exemption because it has been out of service for more than two years.¹⁰ See V & S Ry., FD 35664, slip op. at 4 (“[T]here appears to be no effort by [the rail carrier] here to cut short the operational aspects of the exemption process that are in place to protect the public interest.”). And given the long period of inactivity on the Lowville-Croghan Line, including since LBRR’s unauthorized acquisition in 2016, it seems little, if any, additional information would be gleaned from requiring LBRR to instead seek abandonment authority by filing a petition for exemption.

Additionally, in Tulare Valley, the ICC stated that a carrier is required to have had agency-authorized ownership for two years because the agency was concerned that a carrier might otherwise use the class exemption to evade labor protection. Tulare Valley, 9 I.C.C.2d at 1206-07. Here, there are no affected employees on the Lowville-Croghan Line and LBRR states that, if there were, they would be subject to the applicable labor protective conditions. (LBRR Notice 5, AB 180X.)

For these reasons, the Board will grant LBRR’s motion to waive the requirement that it have Board-authorized ownership of the Lowville-Croghan Line for at least two years in order to seek a class exemption under 49 C.F.R. part 1152, subpart F. In light of this waiver, LBRR’s verified notice of exemption to abandon the Lowville-Croghan Line will be accepted and published in the Federal Register.

Petitions to Reject the Verified Notices. As noted, several parties filed comments opposing the verified notices of exemption to abandon. Some commenters claim that there are businesses located in Lowville that could potentially ship by rail, including Kraft Food and Qubica AMF Bowling.¹¹ One commenter states that he owns a wood yard and that having a rail line to transport wood products would help his business financially. (Richard Meyer Letter 1, AB 768X et al., Sept. 20, 2023.) In addition, several commenters argue that efforts to reduce carbon emissions will result in the conversion of diesel trucks to electric trucks, and that the electric trucks will be less economically efficient and incapable of operating during the severe winter months; this in turn, petitioners argue, will result in a need for rail service. (See, e.g., Richard Meyer Letter 1, AB 768X et al., Sept. 20, 2023.)

¹⁰ As discussed below, the Board finds that arguments claiming a potential need for future rail service are not substantiated.

¹¹ (Joanne & Rodney Dicob Letter 1, AB 768X et al., Sept. 18, 2023; Eric Schwartzenruber Letter 1, AB 180X, Sept. 18, 2023; Bruce Krug Letter 1, AB 768X et al., Sept. 20, 2023; Dennis Bishop Letter 1, AB 768X, Sept. 26, 2023; John Williams Letter 1, AB 768X et al., Jan. 9, 2024.)

Lewis County filed a letter disputing that there are any local businesses that would need rail service and asserting that plans for carbon reduction “will not bring back these rail lines for commerce in Lewis County.” (Lewis County Reply 1-2, AB 768X et al., Oct. 10, 2023; see also Town of West Turin Letter 1-2, AB 768X et al., Nov. 16, 2023 (“Lewis County does not have the industries and manufacturing centers to justify maintaining these rail corridors for perhaps some use decades from now.”).)

As it has in past cases, the Board will treat the comments opposing the abandonment as petitions to reject the verified notices, including—because the commenters have raised concerns about the need for rail service on the line—on the ground that the two-year out-of-service class exemption should not be available as it pertains to these transactions. See BNSF Ry.—Aban. Exemption—in Okla. Cnty., Okla., AB-6 (Sub-No. 430X), slip op. at 2 (treating comments opposing verified notices of exemption to abandon as petitions to reject); see also CSX Transp. Inc.—Aban. Exemption—Floyd Cnty., Ky., AB 55 (Sub-No. 745X), slip op. at 2 (treating a letter opposing a verified notice of exemption to abandon as a petition to reopen the proceeding). A party seeking rejection of a notice of exemption has the burden of demonstrating that the notice contains false or misleading information, or that regulation is necessary to carry out the Rail Transportation Policy (RTP) of 49 U.S.C. § 10101. Gen. Ry.—Exemption for Acquis. of R.R. Line—in Osceola & Dickinson Cntys., Iowa, FD 34867, slip op. at 4 (STB served June 15, 2007);¹² see also 49 U.S.C. § 10502(d). An exemption under 49 C.F.R. part 1152 subpart F is void ab initio if the verified notice contains false or misleading information that is material to the authorization process. 49 C.F.R. § 1152.50(d)(3). Information is material if the transaction would not otherwise have qualified for an exemption. Berkshire Scenic Ry. Museum, Inc. v. ICC, 52 F.3d 378, 381 (1st Cir. 1995). Failure to disclose material information can render a notice misleading by omission. Eastside Cmty. Rail, LLC—Acquis. & Operation Exemption—GNP Rly, FD 35692 et al., slip op. at 3-4; Ohio River Partners LLC—Acquis. & Operation Exemption—Hannibal Dev., LLC, FD 35984, slip op. at 3 (STB served Apr. 1, 2016). Although the Board has rejected exemptions in cases that require additional scrutiny and a more detailed record than is produced through a class exemption process, see, e.g., Macquarie, FD 36566, slip op. at 4,¹³ the party seeking rejection must first provide reasonable, specific concerns to demonstrate that rejection is warranted. Gen. Ry., FD 34867, slip op. at 4 (citing I&M Rail Link

¹² The Board has used overlapping criteria to determine whether a notice of exemption should be rejected (i.e., prior to the notice becoming effective) or revoked (i.e., after the notice has become effective). Compare TGS Cedar Port R.R.—Operation Exemption—in Chambers Cnty., Tex., FD 36627, slip op. at 3-4 (STB served Apr. 1, 2024) (describing that the Board can *revoke* a notice of exemption based on false or misleading information or that regulation is necessary to carry out the RTP) with Macquarie Infrastructure Partners V GP, LLC—Acquis. of Control Exemption—Grenada R.R., FD 36566, slip op. at 4 (STB served Apr. 7, 2022) (describing that the Board can *reject* a notice of exemption based on false or misleading information or the need for more detailed scrutiny).

¹³ Cf. Eighteen Thirty Group, LLC—Acquis. Exemption—in Allegany Cnty, Md., FD 35438 et al., slip op. at 19 (STB served Apr. 5, 2012) (noting that the mere fact petitioners may find numerous ways to misread materials does not establish the presence of issues that require “considerable scrutiny”).

LLC—Acquis. & Operation Exemption—Certain Lines of Soo Line R.R., FD 33326 et al., slip op. at 7 (STB served Apr. 2, 1997), aff’d sub nom. City of Ottumwa v. STB, 153 F.3d 879 (8th Cir. 1998)).

The Board will deny the petitions to reject the verified notices. As an initial matter, petitioners do not challenge MAN’s or LBRR’s certification that the Lines and the Lyons Falls Track have had no rail traffic for at least two years and thus meet the regulatory requirements for the class exemption. In addition, none of the petitioners have shown that the verified notices contain false or misleading information, that regulation is necessary to carry out the RTP, or that the circumstances presented here require additional scrutiny beyond what is provided for in the class exemption process.

Petitioners’ central argument in opposing the abandonments, implicitly invoking the notion that regulation is necessary to carry out the RTP, is that the Lines *may* be needed for future rail service. However, petitioners have not carried their burden to show that this is the case. See Mid-Mich. R.R.—Aban. Exemption—in Kent, Ionia, & Montcalm Cntys., Mich., AB 364 (Sub-No. 14X), slip op. at 4 (STB served Sept. 26, 2008) (“Because the need for future rail service is uncertain at best and revocation would exacerbate [the railroad]’s financial burden, we find that regulation is not required to foster the RTP.”). There has been no rail traffic on the Lowville-Carthage Line or Lowville-Croghan Line for over 15 years, which indicates that the potential for future traffic is unlikely. Although some petitioners allude to the potential for rail service by local businesses, none has provided specific information to substantiate that claim.¹⁴ One petitioner notes that, according to a recent news report, MAN will begin using its rail line from Carthage to Newton Falls, N.Y., to serve a mining operation after that line had been out of service for 20 years. (Brian & Lori Reape Letter 1, AB 768X et al., May 28, 2024.) However, there is nothing to demonstrate that the resumption of service on that separate line increases the likelihood that there will be a need for rail service on MAN’s Lowville-Carthage Line or LBRR’s Lowville-Croghan Line. Finally, assertions that rail service will be needed because of the use of electric trucks are not only speculative, but the causal relationship is too attenuated to be accorded much weight. See BNSF Ry.—Aban. Exemption—in Okla. Cnty., Okla., AB 6 (Sub-No. 430X) et al., slip op. at 6 (explaining that “general concerns about preserving existing lines . . . do not warrant requiring a carrier to maintain a line that is not used and not likely to be used in the future”).¹⁵

¹⁴ See CSX Transp., Inc.—Aban. Exemption—in Floyd Cnty., Ky., AB 55 (Sub-No. 745X), slip op. at 2-3 (STB served Dec. 18, 2015) (“General assertions about the need to retain a rail line to attract future economic development are too speculative a basis for preventing a rail carrier from abandoning an unproductive line.”); R.J. Corman R.R.—Aban. Exemption—in Clearfield, Jefferson, & Ind. Cntys., Pa., AB 491 (Sub-No. 2X), slip op. at 3 (STB served Dec. 11, 2008) (“The Board does not require a railroad to continue operating a losing line based on mere hope of economic growth.”).

¹⁵ In a September 15, 2023 letter, the Railway Historical Society of Northern New York (RHSNNY) states that it uses part of MAN’s track to access its engine house and turntable and that, if the MAN abandonment occurs, the equipment in the engine house will be marooned. (RHSNNY Letter 2, AB 768X et al., Sept. 15, 2023.) However, Lewis County asserts that the

Accordingly, to the extent the comments are being treated as petitions to reject the verified notices of exemption, they will be denied.¹⁶

Comments Opposing Trail Use. As noted, according to MAN and LBRR, Lewis County has entered into a contract with the two carriers, subject to abandonment approval, to purchase the Lines and the Lyons Falls Track and convert portions of those lines into recreational trails for use by the public. (MAN Notice 4, AB 768X; LBRR Notice 3, AB 180X; see also Lewis County Reply 1, 3, AB 768X et al., Oct. 10, 2023.) Several commenters oppose Lewis County’s plans. In its reply, Lewis County argues that its residents are in favor of the proposed trails. (Lewis County Reply 1, AB 768X et al., Oct. 10, 2023.)

Based on the record, it appears that Lewis County intends to convert portions of the Lines and the Lyons Falls Track into trails without resorting to the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d). Specifically, once abandonment authority is granted, MAN and LBRR will consummate the abandonment authority and convey their property interests in the Lines and the Lyons Falls Track to Lewis County, which will then develop the trails. (MAN Notice 4, AB 768X; LBRR Notice 3, AB 180X; see also Lewis County Reply 1, 3, AB 768X et al., Oct. 10, 2023.) Concerns regarding Lewis County’s plans to convert those lines into a trail post-abandonment are outside of the Board’s jurisdiction. When a rail carrier that has received authority to abandon a rail line exercises, or “consummates,” that authority, the line is removed from the interstate rail network, and the Board’s jurisdiction over the line terminates. See Hayfield N. R.R. v. Chi. & N.W. Transp. Co., 467 U.S. 622, 633-34 (1984) (consummation of abandonment terminates the agency’s jurisdiction).¹⁷ Accordingly, the Board will take no action in response to these comments.

RHSNNY will not be adversely impacted by the abandonment, as the county has already indicated that it will work with RHSNNY to have this tourist line continue. (Lewis County Reply 2, AB 768X et al., Oct. 10, 2023.)

¹⁶ One commenter argues that the Lowville-Carthage Line is severed from the interstate rail network and thus not under the Board’s jurisdiction. (See Bruce Krug Letter 1, AB 768X et al., Sept. 26, 2023; Bruce Krug Letter 1, AB 768X et al., Oct. 3, 2023; Bruce Krug Letter 1, AB 768X et al., Apr. 22, 2024.) Although the Lowville-Carthage Line terminates in Lowville, it connects on the Carthage end with a CSX Transportation, Inc., rail line. (See MAN & LBRR Letter 1-2, AB 768X et al., Sept. 28, 2023.) Accordingly, those jurisdictional arguments are without merit. Another commenter also briefly questions whether LBRR’s Lowville-Croghan Line is part of the interstate rail network and therefore eligible for railbanking but does not further elaborate. (Dennis Bishop Letter 1-2, AB 768X et al., Sept. 26, 2023.) In any event, the Lowville-Croghan Line is connected to MAN’s existing Lowville-Carthage Line and, therefore, the jurisdictional argument regarding LBRR’s Lowville-Croghan Line also fails.

¹⁷ Even if MAN, LBRR, and Lewis County intend to railbank the Lines under the Trails Act before the railroads consummate abandonment, the Board is limited in its ability to deny a request for interim trail use, so long as the carrier and potential trail user consent. See Kan. E. R.R.—Aban. Exemption—in Butler & Greenwood Cntys., Kan., AB 563 (Sub-No. 1X), slip op. at 3 (STB served June 2, 2006) (stating that the Trails Act “does not grant the Board discretionary authority to disapprove a voluntary trail use agreement that meets the stated

Conclusion. For the reasons discussed above, the Board will remove these dockets, including the environmental review, from abeyance, and grant LBRR's request for waiver of the two-year Board-authorized ownership requirement for use of the class exemption under 49 C.F.R. part 1152 subpart F, and deny petitions to reject the verified notices of exemption. Accordingly, the Board will serve and publish the verified notices in the Federal Register.

It is ordered:

1. Dockets Nos. AB 180X and AB 768X, including the environmental review, are removed from abeyance.
2. LBRR's motion in Docket No. AB 180X to waive the Board's regulation at 49 C.F.R. § 1152.50(b) to the extent it requires an applicant to have had Board-authorized ownership of a line for at least two years in order to qualify for a class exemption under 49 C.F.R. part 1152 subpart F is granted.
3. The Petitions to reject the verified notices of exemption in Docket Nos. AB 180X and AB 768X are denied.
4. The verified notices of exemption in Docket Nos. AB 180X and AB 768X will be served and published in the Federal Register.
5. This decision is effective on its service date.

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

requirements of 16 U.S.C. 1247(d) and the Board's rules at 49 CFR 1152.29"); see also Goos v. ICC, 911 F.2d 1283, 1295 (8th Cir. 1990) (stating that the agency has "little, if any, discretion to forestall a voluntary agreement to effect a conversion to trail use"); Citizens Against Rails-to-Trails v. STB, 267 F.3d 1144 (D.C. Cir. 2001).