

SERVICE DATE – JANUARY 5, 2018

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36137

CITY OF FISHERS, CITY OF NOBLESVILLE, & HAMILTON COUNTY, IND.—PETITION
FOR PARTIAL REVOCATION OF EXEMPTION

Decided: January 4, 2018

On August 1, 2017, the Cities of Fishers and Noblesville, Ind., and Hamilton County, Ind. (collectively, Petitioners), filed a petition for partial revocation of an abandonment exemption granted in 1991 over a 37.56-mile rail line between Indianapolis, Ind., and Tipton, Ind. (the Line). The Petitioners' ultimate intention is to rail bank the Line pursuant to the National Trails System Act, 16 U.S.C. § 1247(d), and the Surface Transportation Board's (Board's) interim trails use regulations, 49 C.F.R. § 1152.29.

On September 22, 2017, the Board initiated a proceeding by granting in part two motions for extension of time to file comments. In that decision, the Board extended the time period for comments on the petition to October 12, 2017, and permitted Petitioners to respond by October 23, 2017. City of Fishers, City of Noblesville, & Hamilton Cty., Ind.—Pet. for Partial Revocation of Exemption (September Decision), FD 36137, slip op. at 2 (STB served Sept. 22, 2017).

After issuance of the September Decision, the Board received comments on the petition from interested parties,¹ including numerous comments filed after the comment deadlines.

On October 27, 2017, the Petitioners replied in opposition to an October 24, 2017 filing from the Mayor of the City of Logansport, Ind., Dave Kitchell. On November 8, 2017, the Petitioners replied in opposition to three filings: a November 2, 2017 motion to suspend and investigate from Save the Nickel Plate, discussed further below; a November 6, 2017 filing by Mayor Kitchell; and the November 6, 2017 request for an extension of time filed by Linda Kraatz (discussed further below). In their November 8 reply, Petitioners also request the Board redesignate an October 13, 2017 letter from the Quikrete Companies to the Board's Acting Chairman as correspondence, rather than as a comment filed in this proceeding.

On November 14, 2017, the Petitioners replied, opposing acceptance of the late-filed comments in general and specifically in opposition to the November 13, 2017 joint petition for leave to file supplemental comments from U.S. Rail Corporation (U.S. Rail) and the Indiana

¹ On October 12, 2017, Linda Kraatz timely filed a motion to deny petition, which will be addressed in a later decision.

Transportation Museum (ITM), arguing that the Board should reject the filing. Petitioners also argue that, if the Board were to accept the late-filed comments from U.S. Rail and ITM, or any other late-filed comments, Petitioners should be permitted to respond substantively to those filings “by a future date certain.” (Pet’rs Reply 2, Nov. 14, 2017.)

Because of the significant public interest in this proceeding and in the interest of a complete record that embodies the full spectrum of interests involved, the service requirements of 49 C.F.R. § 1104.12(a) will be waived for all pleadings and letters received by the Board as of the date of issuance of this decision, and all of those pleadings and letters will therefore be accepted into the record.² The October 13, 2017 letter from the Quikrete Companies to the Board’s Acting Chairman will remain in the record.

The Petitioners’ request that they be allowed to file a substantive reply to any accepted late-filed comments will be granted, and thus they will not be prejudiced by the acceptance of the above late-filed comments into the record. Petitioners will have until January 25, 2018 to reply to the accepted late-filed comments. With the exception of any reply filed by the Petitioners, no additional filings will be accepted and the record in this proceeding will be closed.

Motion to Suspend and Investigate. On November 2, 2017, Save the Nickel Plate filed a motion to suspend and investigate, requesting the Board suspend its consideration of the petition and “investigate all of the filings and claims submitted” by the Petitioners. (Save the Nickel Plate Mot. 1, Nov. 2, 2017.) Save the Nickel Plate argues this is necessary because it believes the Line remains an active line “under the Board’s authority and jurisdiction,” (*id.* at 4), and there is potential freight use for the Line (*id.* at 5-6). As mentioned above, the Petitioners replied in opposition to Save the Nickel Plate’s motion on November 8, 2017.

Save the Nickel Plate’s motion will be denied. The arguments presented in the motion do not provide any reason for the Board to suspend this proceeding and conduct an investigation. The Board has provided ample time for comments on the petition and the building of an adequate record, especially when balanced with the Board’s obligation to issue a decision within a statutory deadline. See 49 U.S.C. § 10502(d).

Request for an Extension of Time. On November 6, 2017, Linda Kraatz filed a request for a 90-day extension of time to file comments on the petition (accompanied by a motion for leave to late file which is being granted as discussed above). Ms. Kraatz argues that the Board has “already granted an extension of time” by accepting several late filings into the record, and that the Board should therefore extend the comment period an additional 90 days. (Kraatz Req. for Extension of Time 1-2, Nov. 6, 2017.)

² Correspondence received prior to the date of this decision that did not conform to the Board’s service requirements will, in accordance with the service waiver, be added to the docket in this proceeding following this decision.

Correspondence from members of Congress is generally placed in the docket of the proceeding to which they refer as a matter of Board practice. Such correspondence is and will remain in the docket.

Ms. Kraatz's request for an extension of time will be denied. The specific filings Ms. Kraatz refers to in her request are letters from members of Congress, which are generally placed in the docket to which they refer as a matter of Board practice. Those letters will remain in this docket. The Board has already provided additional time for the public to comment on this petition, and no additional extension of the comment period is necessary.

It is ordered:

1. The service requirement in this proceeding is waived for all pleadings and letters received by the Board as of the date of issuance of this decision.
2. All pleadings and letters received by the Board as of the date of issuance of this decision are accepted into the record.
3. Save the Nickel Plate's motion to suspend and investigate is denied.
4. Ms. Kraatz's request for an extension of time is denied.
5. Petitioners may file a response to the accepted comments and letters by January 25, 2018.
6. This decision is effective on its date of service.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.