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SURFACE TRANSPORTATION BOARD

Docket No. AB 1076X

CADDO VALLEY RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN
CLARK, PIKE AND MONTGOMERY COUNTIES, ARK.

Docket No. AB 1076 (Sub-No. 1X)

CADDO VALLEY RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN PIKE
AND CLARK COUNTIES, ARK.

Decided: October 25, 2013

This decision extends the time to exercise the abandonment authority and file a notice of consummation in Docket Nos. AB 1076X and AB 1076 (Sub-No. 1X).

The notice proceeding. In Docket No. 1076X (notice proceeding), Caddo Valley Railroad Company (CVRR) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon the portion of the Norman Branch Line between milepost 447, near Antoine, and milepost 479.2, at the end of the line near Birds Mill, a distance of 32.2 miles, in Clark, Pike, and Montgomery Counties, Ark. (the notice segment). Notice of the exemption was served and published in the Federal Register on November 16, 2011 (76 Fed. Reg. 71,125) (November 2011 notice). The November 2011 notice stated that, if consummation had not been effected by CVRR's filing of a notice of consummation by November 16, 2012, and there were no legal or regulatory barriers to consummation of the abandonment, the authority to abandon would automatically expire. Later, the proceeding was reopened and the exemption was made subject to two environmental conditions, including one (the Section 7 condition) that was a barrier to consummation.¹

The petition proceeding. Concurrently with filing its verified notice of exemption in the notice proceeding, CVRR also filed in Docket No. AB 1076 (Sub-No. 1X) (petition proceeding), a petition for exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10903 to abandon the adjoining segment of the Norman Branch Line between milepost 429.45, near Gurdon, and milepost 447, near Antoine, a distance of 17.55 miles, in Pike and Clark Counties, Ark. (the petition segment). In a decision served on February 14, 2012 (February 2012 decision), the Board granted the exemption as to the petition segment. The

¹ See Caddo Valley R.R.—Aban. Exemption—in Clark, Pike, & Montgomery Cntys., Ark., AB 1076X (STB served Feb. 23, 2012). The Board removed the Section 7 condition on February 27, 2013. See Caddo Valley R.R.—Aban. Exemption—in Clark, Pike, & Montgomery Cntys., Ark., AB 1076X et al. (STB served Feb. 27, 2013).

February 2012 decision provided that, if consummation had not been effected by CVRR's filing of a notice of consummation by February 14, 2013, and there were no legal or regulatory barriers to consummation, the authority to abandon would automatically expire. At CVRR's request, the Board subsequently extended the deadline for CVRR to file its notice of consummation in the petition proceeding to February 28, 2013.²

The NITU request in both proceedings. By decision served on February 27, 2013—prior to the consummation deadline in both proceedings—the Board accepted the late filed request by the West Central Arkansas Planning and Development District (WCAPDD) for the issuance of a Notice of Interim Trail Use (NITU) for both the notice and petition segments. The Board reopened the notice and petition proceedings and authorized a 180-day period (until August 26, 2013) for WCAPDD to negotiate with CVRR for acquisition of the right of way (ROW) for use as a trail under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29.³ Issuance of the NITU served as a new barrier to consummation of the abandonment in both proceedings.⁴

On August 26, 2013, CVRR notified the Board that WCAPDD has elected not to pursue negotiations for interim trail use. With the expiration of the NITU on that day, the last barrier to consummation of the abandonment in both proceedings was removed. Thus, under the Board's regulations, notices of consummation of the abandonments in both proceedings were due no later than October 25, 2013.⁵

By letter filed on October 17, 2013, CVRR has requested an extension of the filing deadline for its notices of consummation in both proceedings until February 1, 2014. CVRR states that another group has expressed interest in pursuing negotiations for interim trail use and requests additional time in which a new NITU may be requested.

By letter filed on October 18, 2013, Betty Pennington, a landowner along the ROW, states that CVRR has abandoned the line and that the time for filing a consummation notice has expired. Pennington also asserts that the time for filing a request for a NITU, as well as the

² See Caddo Valley R.R.—Aban. Exemption—in Clark, Pike, & Montgomery Cntys., Ark., AB 1076X et al. (STB served Feb. 13, 2013).

³ See Caddo Valley R.R.—Aban. Exemption—in Clark, Pike, & Montgomery Cntys., Ark., AB 1076X et al. (STB served Feb. 27, 2013). This is the same decision in which the Board removed the Section 7 condition in the notice proceeding.

⁴ 49 C.F.R. § 1152.29(e)(2).

⁵ See 49 C.F.R. § 1152.29(e)(2) (notice of consummation must be filed no later than 60 days after satisfaction, expiration, or removal of any legal or regulatory barrier to consummation).

NITU negotiation period, have expired.⁶ Pennington further states that CVRR does not have the right to sell the ROW because it does not own the underlying land and expresses uncertainty as to who represents CVRR.⁷

DISCUSSION AND CONCLUSIONS

Under 49 C.F.R. § 1152.29(e)(2), a railroad may, for good cause, file a request for an extension of time to file a notice of consummation in abandonment proceedings.

Here, CVRR filed a timely request to extend the consummation deadline in order to allow additional time for another interested trail user to file a request for a NITU for the line. The Board previously has granted an extension of a consummation deadline on similar grounds, see South Carolina Central Railroad—Abandonment Exemption—in Chesterfield & Darlington Counties, S.C., AB 312 (Sub-No. 3X) (STB served Apr. 3, 2013), and it is appropriate to do so here.

Contrary to the objections that have been raised, all of the property at issue here remains within the Board’s jurisdiction and part of the national transportation system. CVRR has not filed a notice of consummation of abandonment in either proceeding, and, as discussed above, the time for doing so has not yet expired, pursuant to the 60-day provision of 49 C.F.R. § 1152.29(e)(2), which is applicable here. Further, the Board may accept late-filed NITU requests—as the Board did previously in this case with WCAPDD’s request—as long as the agency retains jurisdiction over the line.⁸ Pennington notes that CVRR has removed tracks and rails from the line, but the Board’s regulations allow a railroad to salvage track and materials consistent with interim trail use and rail banking. 49 C.F.R. § 1152.29(d)(1). Pennington also challenges CVRR’s right to sell the ROW because CVRR does not own the underlying land. However, interim trail use under the Trails Act is not limited to cases in which the carrier owns the underlying real estate in fee simple.⁹ The Trails Act expressly provides for arrangements to “preserve established railroad rights-of-way for future reactivation of rail service” by prohibiting

⁶ On August 29, 2013, Pennington submitted comments expressing similar concerns, as well as asserting that no one has assumed financial responsibility for the ROW and that the 60-day period, under 49 C.F.R. § 1152.29(e)(2), for filing a consummation notice after the removal of a regulatory barrier to consummation does not apply in these proceedings.

⁷ In its August 26, 2013 filing, CVRR identified James E. Smith, Jr., as counsel for CVRR.

⁸ See Rail Abans.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 158 (1987).

⁹ See Preseault v. ICC, 494 U.S. 1, 8 (1990); Birt v. STB, 90 F.3d 580, 583 (D.C. Cir. 1996).

abandonment whenever a trail sponsor offers to assume managerial, tax, and legal responsibility for a right-of-way for use in the interim as a trail. 16 U.S.C. § 1247(d).

CVRR, however, has not justified extending the consummation deadline until February 1, 2014. The only reason CVRR gives for the requested extension is to provide another potential trail sponsor an opportunity to file a request for a NITU for the line. Given that the original deadlines for NITU requests expired over a year ago,¹⁰ any interested trail sponsor should file promptly a request for a NITU to permit further negotiation. A 60-day extension of the consummation deadline should be sufficient for that purpose. See S.C. Cent. R.R.—Aban. Exemption—in Chesterfield & Darlington Cntys., S.C., AB 312 (Sub-No. 3X) (STB served Apr. 3, 2013) (granting a 60-day extension). Therefore, CVRR's consummation deadline will be extended to 60 days from the date of service of this decision (until December 24, 2013). This extension will provide a sufficient amount of time for any other interested trail sponsor to file a request for a NITU for the line.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The deadline for CVRR to exercise its abandonment authority and file its notices of consummation in Docket Nos. AB 1076X and AB 1076 (Sub-No. 1X) is extended to December 24, 2013.
2. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

¹⁰ The deadlines for filing NITU requests were November 28, 2011, in the notice proceeding and December 6, 2011, in the petition proceeding. See 49 C.F.R. § 1152.29(b)(2).