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SERVICE DATE - JANUARY 18, 2012

SURFACE TRANSPORTATION BOARD

DECISION

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.

Digest:<sup>1</sup> The Board is denying Caddo Valley Railroad Company's request to reconsider the Board's decision served on December 13, 2011. That decision extended the deadline for filing offers to purchase the line segment sought to be abandoned in Docket No. AB 1076X, in order to coincide with the later deadline for offers to purchase the adjoining segment of the same line sought to be abandoned in Docket No. AB 1076 (Sub-No. 1X).

Decided: January 17, 2012

In a decision served on December 13, 2011, the Board extended the deadline for filing an offer of financial assistance (OFA) in Docket No. AB 1076X, so that the deadline would coincide with the later deadline for an OFA in Docket No. AB 1076 (Sub-No. 1X) for an adjoining line segment. That same day, Caddo Valley Railroad Company (CVRR) requested reconsideration of the Board's decision. For the reasons discussed below, CVRR's request will be denied.

BACKGROUND

On October 27, 2011, CVRR filed a verified notice of exemption in Docket No. AB 1076X under the class exemption of 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). The notice stated that the exemption would become effective on December 16, 2011, unless stayed by the Board or unless a formal

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<sup>1</sup> 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. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

expression of intent to file an OFA under 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27(c)(2) was filed.

Concurrently with filing its verified notice of exemption in Docket No. AB 1076X, CVRR also filed in Docket No. AB 1076 (Sub-No. 1X), 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). A final decision on the petition for exemption is scheduled to be issued by February 14, 2012.

On November 28, 2011, Southwest Arkansas Regional Intermodal Authority (Intermodal Authority) filed a formal expression of intent to file an OFA to purchase both the notice segment and the petition segment of the Norman Branch Line.<sup>2</sup> Intermodal Authority requested that CVRR provide certain information relevant to the OFA, as contemplated under 49 C.F.R. § 1152.27(a), and that the OFA deadline be postponed for 30 days.

On December 2, 2011, CVRR provided certain information in response to Intermodal Authority's request. CVRR also objected to Intermodal Authority's request to postpone the OFA deadline, asserting that it had provided the information requested, as well as an accurate net liquidation value of the entire Norman Branch Line based on a recent inspection and current value of scrap steel.<sup>3</sup>

In a letter filed on December 8, 2011, Arkansas Governor Mike Beebe, on behalf of Intermodal Authority, requested that the effective date of the abandonment exemption in both proceedings be extended to June 16, 2012, to allow Intermodal Authority additional time to pursue financing options to purchase the 2 line segments at issue and to ensure that a viable OFA could be prepared.

In a decision served on December 13, 2011, the Board extended the OFA deadline for the notice segment to February 24, 2012, so that it would coincide with the OFA deadline for the petition segment. The Board provided several reasons for its decision: the notice and petition segments are adjoining segments on the same line; Intermodal Authority seeks to purchase both segments; and CVRR provided a combined net liquidation value calculated for both segments. The Board noted that the extended deadline for the notice segment would remain within the statutory time frame for the OFA process. Because OFAs must be submitted before an abandonment exemption takes effect (lest the carrier consummate abandonment before an OFA

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<sup>2</sup> This filing automatically stayed the effective date of the exemption in Docket No. AB 1076X for 10 days, until December 26, 2011. See 49 C.F.R. § 1152.27(c)(2)(i).

<sup>3</sup> CVRR attached to its reply its estimate of the net salvage value of the track and track materials, including removal costs, and calculates the net liquidation value of the entire line as \$3,304,255.57.

is filed), the Board also incidentally postponed the effective date of the exemption for the notice segment until 10 days after the due date for the filing of an OFA, consistent with the standard 10-day postponement that occurs under the Board's regulations when an OFA is filed in a class exemption proceeding. See 49 C.F.R. § 1152.27(c)(2).

## DISCUSSION AND CONCLUSIONS

Under our statute, 49 U.S.C. § 721(a), and regulations, 49 C.F.R. § 1115.3(b), a petition for reconsideration must show that the prior Board action will be affected materially because of new evidence or changed circumstances, or that the prior action involves material error. CVRR presents no new evidence, nor does it argue that circumstances have changed in the short time since the Board's December 13, 2011 decision. Therefore, the only basis for reconsideration can be that the Board materially erred.

CVRR asserts primarily that the Board failed to apply the legal standard that pertains to requests for stays of Board decisions. However, the Board did not err in not applying the standard for stay requests here. First, neither Intermodal Authority's November 28 filing nor Governor Beebe's December 8 letter sought a stay, nor did the Board's December 13 decision impose one. Rather, Intermodal Authority, as well as Governor Beebe, made procedural requests to extend the time for filing an OFA beyond the deadline set forth in the Board's regulations.<sup>4</sup>

Second, neither Intermodal Authority nor Governor Beebe has challenged any Board action or sought judicial review. A party seeking to stay a decision generally does so to preserve the status quo while challenging the action sought to be stayed.<sup>5</sup> Thus, one prong of the traditional stay test requires assessing the likelihood that the party seeking the stay will prevail on the merits of its underlying challenge. Wash. Metro. Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 843-44 (D.C. Cir. 1977). The absence of any underlying challenge or claim by Intermodal Authority or Governor Beebe shows that the Board had no reason to apply the Holiday Tours stay criteria in considering the OFA extension requests, much less construe the extension requests as petitions for stay.

Third, CVRR has not shown that extending the OFA deadline for the notice segment exceeds the Board's statutory authority. CVRR alleges "unfairness" in lengthening the abandonment process by postponing the OFA deadline for the notice segment. However, as the

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<sup>4</sup> Although Governor Beebe's request is framed as one to "extend the effective abandonment consummation date," the essence of the request is, like Intermodal Authority's, for an extension of the OFA filing deadline—i.e., an extension "to ensure that all optimal financing options [for an OFA], both public and private, are evaluated" and "to ensure that a viable offer of financial assistance can be prepared."

<sup>5</sup> See, e.g., New York City Econ. Dev. Corp.—Adverse Aban.—New York Cross Harbor R.R. in Brooklyn, N.Y., AB 596, slip op. at 7 (STB served Aug. 28, 2003).

Board said in its decision, the extended OFA deadline for the notice segment remains within the 120-day statutory time frame for the OFA process under 49 U.S.C. § 10904.<sup>6</sup> Further, the Board's decision to adjudicate the 2 OFA proceedings concurrently here is reasonable. Intermodal Authority seeks to purchase both the notice and petition segments in one transaction. Moreover, in responding to Intermodal Authority's request for information, CVRR calculated and submitted a combined net liquidation value for both segments of the Norman Branch Line. In short, CVRR has not shown that the Board materially erred, and its request for reconsideration will be denied.

We are also denying CVRR's request that the Board require Intermodal Authority to post a bond that would hold CVRR harmless should the market value of its assets drop below its calculated net liquidation value. When necessary, the Board imposes reasonable conditions on the authority that it issues that may have the effect of delaying a party's ability to consummate its transaction.<sup>7</sup> Parties are not entitled to compensation for the financial effects attributable to such delay when Board authorization is required to proceed with the underlying action. CVRR fails to show why we should make an exception here.

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

It is ordered:

1. CVRR's request for reconsideration is denied.
2. CVRR's request that the Board require Intermodal Authority to post a bond is denied.
3. This decision is effective on its date of service.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Begeman.

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<sup>6</sup> In a class exemption proceeding (here, Docket No. AB 1076X), an OFA is due no later than 30 days after the date of the Federal Register publication giving notice of the exemption. 49 C.F.R. § 1152.27(b)(2)(ii). In a petition for an individual exemption (here, Docket No. AB 1076 (Sub-No. 1X)), OFAs are due 120 days after the filing of the petition or 10 days after service of a Board decision granting the exemption, whichever occurs sooner. 49 C.F.R. § 1152.27(b)(2)(i). That deadline is driven by the 120-day statutory time frame set forth in 49 U.S.C. § 10904, which was intended by Congress to protect carriers from protracted abandonment proceedings.

<sup>7</sup> These can include, for example, conditions relating to environmental safeguards, proper salvage techniques, and historic preservation.