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SERVICE DATE – LATE RELEASE DECEMBER 13, 2011

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1076X

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

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

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

Digest:<sup>1</sup> The Board is extending the deadline for filing offers to purchase the line segment sought to be abandoned in Docket No. AB 1076X, so that it will 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: December 13, 2011

On October 27, 2011, Caddo Valley Railroad Company (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). Notice of the exemption was served and published in the Federal Register on November 16, 2011 (76 Fed. Reg. 71,125-26). The notice stated that the exemption would become effective on December 16, 2011, unless stayed by the Board or unless a formal expression of intent to file an offer of financial assistance (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). Notice of the petition was served and published in the Federal Register on November 16, 2011 (76 Fed. Reg. 71,124-25). A final decision on the petition for exemption is scheduled to be issued by February 14, 2012.

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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).

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<sup>2</sup> and requested that CVRR provide certain information relevant to Intermodal Authority's OFA, as contemplated under 49 C.F.R. § 1152.27(a). In its expression of intent, Intermodal Authority argued that it was unlikely that the requested information could be provided prior to the OFA due date in Docket No. AB 1076X and therefore requested that the Board toll the 30-day period for submitting OFAs for an additional 30 days, to provide an adequate opportunity to review and analyze the material to be provided by CVRR.

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 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 lines at issue and ensure that a viable OFA could be prepared.

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.

Here, for a number of reasons, it is appropriate for the OFA processes in both cases to be adjudicated concurrently. The notice segment and the petition segment are adjoining segments of the same line. Also, Intermodal Authority seeks to purchase both segments, and the information CVRR has provided calculates the net liquidation value for the entire Norman Branch Line owned by CVRR. Finally, even if the deadline in the class exemption proceeding is

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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 the calculations of the net salvage value of the track and track materials, including removal costs, which sets the net liquidation value of the entire line at \$3,304,255.57.

extended to match the petition proceeding, it will still remain within the statutory time frame for the OFA process. Accordingly, in Docket No. AB 1076X, OFAs will be due on February 24, 2012, or 10 days after service of a Board decision that grants the exemption for the petition segment, whichever occurs sooner. Additionally, the effective date of the exemption for the notice segment will be postponed until 10 days after the due date for the filing of an OFA.

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

It is ordered:

1. The requests of Intermodal Authority and Governor Beebe are granted to the extent set forth below.

2. The OFA processes in Docket Nos. AB 1076X and 1076 (Sub-No. 1X) will be adjudicated concurrently. OFAs in both dockets are due on February 24, 2012, or 10 days after service of a Board decision granting the petition for exemption in Docket No. AB 1076 (Sub-No. 1X), whichever occurs sooner.

3. The effective date of the notice of exemption in Docket No. AB 1076X is postponed until 10 days after the due date for the filing of an OFA.

4. This decision is effective on its date of service.

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