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SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 34658 (Sub No. 1)

ALASKA RAILROAD CORPORATION—PETITION FOR DECLARATORY ORDER

Decided: February 17, 2011

In a decision served on January 6, 2010, the Board granted the petition for exemption filed by Alaska Railroad Corporation (ARRC), a rail carrier owned by the State of Alaska, for authority to construct and operate an 80-mile rail line in the State of Alaska (referred to as the Northern Rail Extension), extending southeasterly from ARRC's existing Eielson Branch near the community of North Pole (located just south of Fairbanks) to the community of Delta Junction. The grant was made subject to 121 environmental conditions. Alaska R.R.—Construction and Operation Exemption—Rail Line Between North Pole and Delta Junction, Alaska, FD 34658 (STB served Jan. 6, 2010).

On January 28, 2010, ARRC filed a petition requesting that the Board issue an order declaring that the U.S. Environmental Protection Agency (EPA) may not impede the U.S. Army Corps of Engineers (Corps) from issuing permits under Section 404 of the Clean Water Act. According to ARRC, EPA is using the Corp's Section 404 permitting process to circumvent the Board's January 6, 2010 decision.

On February 16, 2011, EPA filed a petition for waiver of the 10-day filing requirement for seeking an extension, 49 C.F.R. § 1104.7(b), and for a 10-day extension, to March 2, 2011, to file a reply. EPA states that the requested extension is needed because the declaratory order petition raises statutory preemption issues of potentially national significance, and that the preparation of a reply requires coordination with its Region 10 office and with the Corps. EPA states that ARRC does not object to the waiver and extension request. The waiver and extension request will be granted.

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

It is ordered:

1. The request for waiver of the 10-day filing requirement in 49 C.F.R. § 1104.7(b) is granted. The due date for EPA to file a reply is extended to March 2, 2011.

2. This decision is effective on its service date.

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