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SERVICE DATE – MAY 11, 2015

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 43 (Sub-No. 189X)

ILLINOIS CENTRAL RAILROAD COMPANY—
ABANDONMENT EXEMPTION—IN CHAMPAIGN COUNTY, ILL.

Decided: May 8, 2015

Illinois Central Railroad Company (IC), a wholly owned subsidiary of Canadian National Railway Company, filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F-Exempt Abandonments to abandon approximately 3.2 miles of railroad line (the Line). The Line extends between milepost 7.8 in Bondville and milepost 11 in Seymour, in Champaign County, Ill. Notice of the exemption was served and published in the Federal Register on April 10, 2015 (80 Fed. Reg. 19,400). The Board's notice indicated that the exemption would become effective on May 12, 2015, 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 was received. Such expressions of intent were due by April 20, 2015.

Finding of No Significant Impact Under 49 C.F.R. § 1105.10(g). IC filed environmental and historic reports with its verified notice of exemption. The Board's Office of Environmental Analysis (OEA) examined the reports, verified their data, and analyzed the probable effect of the proposed action on the quality of the human environment. OEA served a draft Environmental Assessment (EA) on April 17, 2015, and solicited public comments. OEA did not receive any comments in response to the EA. A Final EA was issued on May 7, 2015.

No environmental or historic preservation issues have been raised by any party or identified by OEA. Accordingly, a finding of no significant impact under 49 C.F.R. § 1105.10(g) will be made pursuant to 49 C.F.R. § 1011.7(a)(2)(ix).

Notice of Intent to File an OFA. Under 49 C.F.R. § 1152.27(c)(2), to engage the OFA process, formal expressions of intent to file an OFA must be filed within 10 days of the publication of a notice of exemption to abandon a rail line. Accordingly, as noted above, the Board's April 10, 2015 notice specified that formal expressions of intent to file an OFA were due by April 20, 2015.

On April 30, 2015, 10 days after the April 20 deadline, Topflight Grain Cooperative (Topflight) submitted its notice of intent to file an OFA.¹ Topflight also requests that the Board toll the period for submitting OFAs for an additional 30 days to allow for time to review material it has requested from IC. Topflight states that its request is in accordance with the national transportation policy² and would not unreasonably prejudice any party.³

In a reply filed on May 6, 2015, IC argues that Topflight's late-filed notice of intent should not be accepted. IC asserts that waiving the deadline for tendering a formal notice of intent to file an OFA is unwarranted and that such delay would be prejudicial to IC because it would delay its disposition of uneconomical assets. Topflight filed a reply to IC on May 8, 2015, asserting that IC's opposition represents a change of position, that IC's own actions undermine its claimed need for expedition, and that Topflight tendered traffic to IC in the Fall of 2013 but the terms offered by IC made transportation by rail uneconomic.

Topflight's request to late-file the notice of intent will be denied. Neither in its initial request nor in its May 8 reply does Topflight provide any reason why its notice of intent was late and could not have been filed by the April 20 deadline. Moreover, IC objects to the late filing. See, e.g., Gen. Ry.—Aban. Exemption—in Osceola & Dickinson Cntys., Iowa, AB 1067 (Sub-No. 2X) (STB served Oct. 24, 2008) (denying a request to accept a late-filed notice of intent to file an OFA where the justification for the late filing was insufficient and the carrier objected). See also Aban. & Discontinuance of Rail Lines & Rail Transp. Under 49 U.S.C. 10903, 1 S.T.B. 894, 909-10 (1996) (in enacting the ICC Termination Act of 1995, Congress shortened the time for the Board to process OFAs under 49 U.S.C. 10904).

Topflight's notice of intent will therefore be rejected,⁴ and its request to toll the deadline for submitting an OFA will be dismissed as moot.

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

¹ Topflight captions its pleading as a petition to reopen but does not address the reopening standards under 49 C.F.R. § 1152.25(e)(4) or offer any evidence or argument in support of reopening.

² See 49 U.S.C. § 10101.

³ On May 4, 2015, Topflight filed a "corrected" petition to reopen/notice of intent, which amends the date in the certificate of service.

⁴ See 49 C.F.R. § 1152.25(d)(5).

It is ordered:

1. Abandonment of the Line will have no significant effect on the quality of the human environment and conservation of energy resources or on historic resources.
2. Topflight's request to accept its late-filed notice of intent to file an OFA is denied, and the notice of intent is rejected.
3. Topflight's request to toll the deadline for submitting an OFA is denied as moot.
4. This decision is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.