

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 384 (Sub-No. 2X)

DELTA SOUTHERN RAILROAD, INC.—ABANDONMENT EXEMPTION—IN EAST
CARROLL PARISH, LA.

Decided: December 28, 2010

Delta Southern Railroad, Inc. (DSR), filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon 8 miles of rail line extending from milepost 463.0, near Shelburn, to milepost 471.0, which is approximately a mile south of Lake Providence, in East Carroll Parish, La. Notice of the exemption was served and published in the Federal Register on November 29, 2010 (75 Fed. Reg. 73,161-62). The notice stated that the exemption would become effective on December 29, 2010, 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 by December 9, 2010.

On December 8, 2010, Lake Providence Port Commission (Lake Providence) filed a formal expression of intent to file an OFA to purchase the line. This filing automatically stayed the effective date of the exemption for 10 days, until January 8, 2011.¹ In the filing, Lake Providence states that, by letter dated December 7, 2010, it requested DSR to provide Lake Providence with certain information and documentation set forth in 49 C.F.R. § 1152.27(a).

By petition filed on December 22, 2010, Lake Providence requests that the time period for it to submit an OFA be tolled until 10 business days after it has received the requested information from DSR. According to Lake Providence, on December 20, 2010, DSR indicated that the information was still being gathered and that it would not be available until the following week. Lake Providence further states that it believes DSR is agreeable to the procedural schedule proposed. By letter filed on December 23, 2010, DSR clarifies that it is agreeable to the tolling of the OFA filing date based on 10 calendar days, not 10 business days, after receipt of the valuation information, which DSR contends is contemplated in the Board's regulations under § 1152.27.

The Board will consider requests to toll the period for filing an OFA when an applicant has failed to provide a potential offeror with the information necessary to the development of an OFA and that information is not contained in the notice of exemption. See 49 C.F.R. § 1152.27(c)(2)(ii)(C). In this case, because the information necessary to formulate an OFA has

¹ See 49 C.F.R. § 1152.27(c)(2)(i). Lake Providence simultaneously served the notice of intent on DSR.

not been provided to Lake Providence, the due date to file an OFA will be extended. Accordingly, Lake Providence's OFA will be due 10 calendar days after DSR notifies the Board in writing that it has provided Lake Providence with the requested information and documentation, and the effective date of the exemption will be extended 10 calendar days after the due date for filing an OFA.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) in this proceeding on December 3, 2010. In the EA, OEA notes that the Louisiana Department of Environmental Quality, Business and Community Outreach Division (LDEQ), stated that it had no objections to the project as proposed. According to OEA, LDEQ included a list of general comments, many of which are not specific to actions associated with railroad abandonment activities. However, for those activities that may occur if the proposed abandonment is exempted, OEA recommends that a condition be imposed requiring DSR to consult with LDEQ's Water Permits Division (225-219-3181) and LDEQ's Solid and Hazardous Waste Division (225-219-3640) regarding salvaging and abandonment procedures prior to commencement of any salvage activities.

OEA also notes that the National Geodetic Survey (NGS) has indicated that there are 6 survey markers in the area of the proposed abandonment. Accordingly, OEA recommends a condition requiring DSR to consult with NGS and to notify NGS at least 90 days prior to beginning salvage activities that may disturb or destroy the 6 geodetic station markers.

Furthermore, in the EA, OEA indicates that the right-of-way may be suitable for other public purposes such as rail banking and interim trail use following abandonment and salvage of the line. On December 9, 2010, Lake Providence filed a request for issuance of a notice of interim trail use (NITU) for the line under the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act), and 49 C.F.R. § 1152.29. In a letter filed on December 20, 2010, DSR states that it is not willing to negotiate with Lake Providence for trail use. Under the Trails Act, the Board's trail use authority is limited because the trail use program is voluntary and consensual between the railroad and the trail user. See Rail Abans.—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 598 (1986). As such, it applies only if the abandoning railroad agrees to negotiate. Accordingly, Lake Providence's trail use request is denied.

Comments to the EA were due on December 17, 2010. No comments to the EA were filed. Accordingly, the conditions recommended by OEA in the EA will be imposed.

As conditioned, this decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. The time period for Lake Providence to file an OFA is tolled until 10 calendar days after DSR notifies the Board in writing that it has provided Lake Providence with the requested information and documentation.
3. The effective date of the exemption is postponed until 10 calendar days after the due date for the filing of an OFA.
4. Upon reconsideration, the notice served and published in the Federal Register on November 29, 2010, exempting the abandonment of the line described above, is subject to the conditions that DSR: (1) consult with LDEQ's Water Permits Division and LDEQ's Solid and Hazardous Waste Division regarding salvaging and abandonment procedures prior to commencement of any salvage activities; and (2) consult with NGS and notify NGS at least 90 days prior to beginning salvage activities that may disturb or destroy the 6 geodetic station markers identified in the area of the proposed abandonment.
5. Lake Providence's request for issuance of a NITU is denied.
6. This decision is effective on its date of service.

By the Board, Julia M. Farr, Acting Director, Office of Proceedings.