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SERVICE DATE – MAY 6, 2016

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 603 (Sub-No. 4X)

V AND S RAILWAY, LLC—DISCONTINUANCE EXEMPTION—IN PUEBLO,  
CROWLEY, KIOWA, AND OTERO COUNTIES, COLO.<sup>1</sup>

Decided: May 5, 2016

On August 3, 2015, V and S Railway, LLC (V&S) filed a verified notice of exemption in Docket No. AB 603 (Sub-No. 4X) to abandon a 121.9-mile line of railroad, known as the Towner Line, extending between milepost 747.5 near Towner and milepost 869.4 near NA Junction in southeast Colorado. V&S now wishes to withdraw its verified notice. As discussed below, this request will be granted.

BACKGROUND

The Towner Line has been the subject of three Board proceedings during the past two years. In Docket No. NOR 42140, KCVN, LLC (KCVN), the Colorado Wheat Administrative Committee, the Colorado Association of Wheat Growers, and the Colorado Wheat Research Foundation (collectively, the Colorado Interests) filed a complaint on October 28, 2014, alleging that V&S violated 49 U.S.C. §§ 11101 and 10903 by removing certain track and related assets from a segment of the Towner Line (the Western Segment) without first seeking abandonment authority.<sup>2</sup> On May 7, 2015, the Board partially granted the Colorado Interests' concurrently filed motion for preliminary injunction, and barred V&S from removing and dismantling track and related assets from the Western Segment pending the Board's ruling on the complaint. Thereafter the parties moved to hold the complaint case in abeyance pending V&S's decision to seek abandonment authority for the Towner Line. The Board granted this request in a decision served on July 17, 2015, and the complaint case remains in abeyance.

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<sup>1</sup> This proceeding was originally titled V & S Railway—Abandonment Exemption—in Pueblo, Crowley, & Kiowa Counties, Colo., but the title was changed based on the shifting nature of the proposal described in this decision.

<sup>2</sup> The Western Segment extends between milepost 808.3 near Haswell, Colo., and milepost 868.5, which is approximately 0.9 miles short of the Towner Line's western terminus at milepost 869.4. In 2012, V&S obtained authority to discontinue service over the Western Segment. V & S Ry.—Discontinuance of Serv. Exemption—in Pueblo, Crowley & Kiowa Ctys., Colo., AB 603 (Sub-No. 2X) (STB served June 28, 2012).

On August 3, 2015, V&S filed a verified notice of exemption in Docket No. AB 603 (Sub-No. 4X) to abandon the Towner Line, as it had agreed to do in Docket No. NOR 42140. The Board served and published notice of the exemption in the Federal Register, and KCVN and Colorado Pacific Railroad, LLC (Colorado Pacific) sought information from V&S to allow them to file an offer of financial assistance (OFA) under 49 U.S.C. § 10904 to purchase the line. V&S provided the information. That information, however, suggested that the Towner Line passes through a county and zip code not included in V&S's verified notice. The Board therefore directed V&S to supplement its verified notice if the Towner Line passes through the previously undisclosed county and zip code. In a filing submitted on November 30, 2015, V&S stated that the Towner Line does pass through the previously undisclosed county and zip code. Rather than filing a supplement to its August 2015 abandonment notice, V&S sought to amend the notice to instead seek authority to discontinue operations over the Towner Line. On December 8, 2015, KCVN asked that the Board reject the amended notice or, if the Board deemed V&S's amendment as a request to withdraw its abandonment notice, that the Board deny such a request as contrary to the public interest. On December 17, 2015, V&S replied to KCVN's objections.

In a decision served on January 15, 2016, the Board rejected V&S's November 30 amended notice. The Board found that, if V&S wished to pursue discontinuance authority for the Towner Line, it must either file a petition for exemption under 49 U.S.C § 10502 or a formal application under 49 U.S.C. § 10903. The Board further stated that V&S could supplement its original notice of exemption if it instead decided to continue seeking abandonment authority. On January 27, 2016, however, V&S gave notice of its intent to withdraw its abandonment notice of exemption.<sup>3</sup>

## DISCUSSION AND CONCLUSIONS

When a carrier is authorized to abandon a line, that authority is permissive. This means that the carrier can choose whether to exercise that authority. Because carriers are not compelled to abandon lines, the Board normally grants a carrier's request to withdraw a notice of exemption for abandonment authority. See Almono LP—Aban. Exemption—in Allegheny Cty., Pa., AB 842X (STB served Jan. 28, 2004).

KCVN argued in December, however, that allowing withdrawal here would not be in the public interest because it would allow V&S to ignore its promise to seek authority to abandon the Towner Line, and would preclude the line's acquisition for continued rail service through the OFA process. Because abandonment authority is permissive, and the effect of dismissal is that the line remains part of the national transportation system and available for continued rail service upon reasonable request, the Board has granted a carrier's request to withdraw a notice of

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<sup>3</sup> Since then, KCVN and Colorado Pacific jointly filed, in Docket No. FD 36005, a feeder line application under 49 U.S.C. § 10907 asking that the Board require V&S to sell the Towner Line and 12 miles of related track and facilities to Colorado Pacific. In a decision served and published in the Federal Register on April 15, 2016, the Board accepted the application, requested further information, and established a procedural schedule.

exemption for abandonment authority even after the OFA process has begun. See Almono; see also Me. Cent. R.R.—Aban. Exemption—in Androscoggin Cty., Me., AB 83 (Sub-No. 16X) (STB served Sept. 15, 2000). For the same reasons, the public interest would not be served here by proceeding further with V&S's notice of exemption, particularly where the carrier itself no longer wishes to pursue its own request. V&S's notice of exemption to abandon the Towner Line is therefore dismissed. As a result of this dismissal, V&S's common carrier obligation to provide service over the Towner Line (except for the Western Segment, over which V&S's service obligation is discontinued) remains in place, and V&S remains fully obligated to provide common carrier service upon reasonable request. See 49 U.S.C. § 11101.

It is ordered:

1. V&S's verified notice of exemption to abandon the Towner Line is dismissed.
2. This decision is effective on its service date.

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