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SERVICE DATE - JUNE 15, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-400 (Sub-No. 4)

SEMINOLE GULF RAILWAY, L.P. – ADVERSE ABANDONMENT – IN LEE COUNTY, FL

Decided: June 14, 2004

This decision grants a request by Lee County, FL (Lee County or petitioner) for waiver of the requirement at 49 CFR 1152.20(b)(1) that a notice of intent be served at least 15 days, but not more than 30 days, prior to the filing of an abandonment application.

BACKGROUND

On May 3, 2004, Lee County filed: (1) a notice of intent to file an adverse application in which it would seek a finding that the present or future public convenience and necessity require or permit the abandonment of 4,260 feet of the Baker Spur in Lee County, operated by Seminole Gulf Railway, L.P.; and (2) a petition asking for exemption from various statutory provisions governing rail line abandonments, and for waiver of several of the Board's related regulations, that would, if granted, facilitate filing of the application. Lee County is in the process of widening Alico Road, a heavily traveled thoroughfare between Interstate Hwy. 75 and U.S. Hwy. 41, and it plans to seek the adverse abandonment of this portion of the Baker Spur to avoid the \$1 million cost of installing a new grade crossing.

The Board granted in part the exemption and waiver requests in a decision served June 9, 2004. Lee County filed the instant waiver request on that same date.

Lee County seeks waiver of 49 CFR 1152.20(b)(1), the requirement that the notice of intent be served at least 15 days, but not more than 30 days, prior to the filing of the abandonment application, because of a delay in the publication of the notice in the county newspaper, as required under 49 CFR 1152.20(a)(4). Petitioner claims that, although it instructed the newspaper to publish its notice beginning May 19, 2004, actual publication did not take place until May 31, 2004. Lee County states that interested parties have now been served for a third time in a 6-week period, and it asks for this waiver so that it may file its application on or after June 15, 2004. Petitioner asserts that, given the continuing notice that potentially interested parties have had of its intention to file this application, no party will be prejudiced by the requested waiver and further delay in filing the application will serve no useful purpose.

DISCUSSION AND CONCLUSIONS

The Board (and its predecessor, the Interstate Commerce Commission) ordinarily would reject a notice of intent or an abandonment application that does not substantially conform to the requirements of 49 CFR 1152, Subpart C. However, in appropriate instances, the Board will waive inapplicable and unneeded provisions.¹

In this situation, it does not appear that strict adherence to 49 CFR 1152.20(b)(1) is necessary. Lee County reports that it has now served the notice of intent three times in a 6-week period. It appears that all interested parties have received sufficient notice of this proceeding and would not be prejudiced by this waiver. Petitioner's waiver request is therefore reasonable and 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. Lee County's petition for waiver is granted.
2. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary

¹ See Napa Valley Wine Train, Inc.—Adverse Abandonment—In Napa Valley, CA, STB Docket No. AB-582 (STB served Mar. 30, 2001), and cases cited therein.