

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 384 (Sub-No. 1X)

DELTA SOUTHERN RAILROAD, INC.—ABANDONMENT EXEMPTION—BETWEEN
LAKE VILLAGE, ARK., AND SHELburn, LA.

Decided: May 17, 2010

Delta Southern Railroad, Inc. (DSR), filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 30.0-mile portion of its Lake Providence Line between milepost 433.0, near Lake Village, Ark., and milepost 463.0, near Shelburn, La. Notice of the exemption was served and published in the Federal Register on June 10, 2004 (69 Fed. Reg. 32,657-58).¹ In a decision served on October 7, 2004 (October 2004 decision), the Board stated that, if consummation had not been effected by DSR's filing of a notice of consummation by October 7, 2005, and there were no legal or regulatory barriers to consummation, the authority to abandon would automatically expire.² At the request of DSR, the deadline for filing a notice of consummation for an 8.2-mile portion of the right-of-way between milepost 454.8, at the Arkansas-Louisiana state line, and milepost 463.0, at or near Shelburn, was extended several times, most recently by decision served on October 2, 2009. The latest extension expired on April 5, 2010.

Under 49 C.F.R. § 1152.29(e)(2), a railroad may, for good cause shown, file a request for an extension of time to file a notice of consummation in abandonment proceedings. On April 19, 2010, DSR filed a request to extend further the deadline for filing its notice of consummation for an additional 180 days from April 5, 2010. While DSR did not file its notice of consummation by the April 5, 2010 due date, DSR is asking the Board to accept its request for an extension to file its notice of consummation. As justification for an extension, DSR explains that: (1) the request is being sought a short time after expiration of the deadline for consummation; (2) there has been no request for rail banking and interim trail use of the rail line and, therefore, no entity

¹ The exemption was subject to employee protective conditions.

² The October 2004 decision imposed an environmental condition on the entire line, as well as a historic preservation condition on the portion of the right-of-way located in Arkansas (between mileposts 433.0 and 454.8). The environmental condition pertains to salvage activities and is not a barrier to consummation of the abandonment authority. The historic preservation condition imposed on the Arkansas portion of the right-of-way was a barrier to consummation, but this segment has been sold for continued rail service.

would be disadvantaged by the extension; (3) the request is being sought in order to permit DSR to negotiate to convey the rail line for continued rail use, which would be consistent with the national rail policy; and (4) in the foregoing circumstances, it would be unduly burdensome to require DSR to re-file for authority to abandon the rail line.³

DSR has shown good cause to extend the time to consummate the abandonment and to file a notice of consummation in this proceeding. Under the circumstances, the request for an extension of time for DSR to file a notice of consummation will be granted. While DSR's request for an extension of time will therefore be accepted under the circumstances described in this decision, neither DSR nor any other rail carrier should count on the Board's granting similar extension requests in the future or on the Board's accepting late-filed notices of consummation.

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

It is ordered:

1. DSR's request for an extension of time to consummation the abandonment is granted.
2. The authority to abandon the 8.2-mile portion of the line between mileposts 454.8 and 463.0 must be exercised, and the notice of consummation must be filed on or before October 2, 2010 (180 days after April 5, 2010).
3. This decision is effective on its service date.

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

³ DSR and any past or future purchasers of its lines are reminded that sales for continued rail service prior to consummation of abandonment require Board authorization.