

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 603 (Sub-No. 3X)

V AND S RAILWAY, LLC—ABANDONMENT EXEMPTION—
IN KIOWA COUNTY, COLO.

Decided: June 16, 2014

On May 14, 2014, V and S Railway, LLC (V&S) filed a verified notice of exemption under 49 C.F.R. § 1152.50 to abandon a line of railroad between milepost 749.5 near Towner and milepost 787.5 near Eads (the “Eastern Segment”), a distance of approximately 38 miles, in Kiowa County, Colo. In its notice, V&S certified that: (1) no local traffic has moved over the Eastern Segment for at least two years; (2) any overhead traffic on the Eastern Segment can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the Eastern Segment (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Eastern Segment is pending either with the Surface Transportation Board (Board) or with any U.S. District Court, nor has any such complaint been decided in favor of complainant within the two-year period.¹ Because this transaction requires further scrutiny, the notice will be rejected.

BACKGROUND

The Eastern Segment is part of the “Towner Line,” which extends approximately 121.9 miles between milepost 747.5 near Towner and milepost 869.4 near NA Junction, in Colorado. In 2005, V&S obtained Board authorization to lease and operate the Towner Line. V&S Ry.—Acquis. & Operation Exemption—Rail Line of Colo., Kan. & Pac. Ry., FD 34779 (STB served Dec. 30, 2005). In 2012, V&S sought and obtained discontinuance authority from the Board on the western portion of the Towner Line between NA Junction and Haswell (the “Western Segment”). V&S Ry.—Discontinuance of Serv. Exemption—in Pueblo, Crowley, & Kiowa Cntys., Colo., AB 603 (Sub-No. 2X) (STB served June 28, 2012).

¹ V&S also certified that the requirements at 49 C.F.R. § 1105.7(c) (environmental report), 49 C.F.R. § 1105.11 (transmittal letter), 49 C.F.R. § 1105.12 (newspaper publication), and 49 C.F.R. § 1152.50(d)(1) (notice to governmental agencies) had been met.

During this time, however, V&S became aware that in addition to leasing and operating the Towner Line in 2005, it had also actually purchased the line. Thus, in 2012 V&S belatedly sought and obtained acquisition authority to purchase the Towner Line. See V&S Ry.—Acquis. & Operation Exemption—Colo. Dep’t of Transp. (V&S Acquisition), FD 35664 (STB served Nov. 13, 2012). V&S requested that its acquisition authority be retroactive to the consummation date of its lease in 2005. V&S stated that it “expect[ed] in the near future to file with the Board its Verified Notice of Abandonment Exemption to abandon the [W]estern [S]egment of the Towner Line, between NA Junction and Haswell” (for which it had already obtained discontinuance authority), which it could only do if the authority was applied retroactively.² The Board declined to make V&S’s authority retroactive but stated that it would allow V&S to use the Board’s class exemption procedures at 49 C.F.R. pt. 1152 subpart F to abandon the Western Segment by waiving the usual requirement for an abandoning carrier to have had Board-authorized ownership of the line for at least two years. V&S Acquisition, slip op. at 5. Thus, the Board ordered that “[w]ith respect to V&S’s future request to seek authority to abandon the [W]estern [S]egment of the Towner Line, application of the Board’s regulation at 49 C.F.R. § 1152.50(b) is waived to the extent it requires V&S to have had Board-authorized ownership of the line for at least two years in order to make the certification required under that provision.” Id., slip op. at 5 (emphasis added).

To date, V&S has not filed for authority to abandon the Western Segment, but on May 14, 2014, filed its verified notice of exemption in this docket to abandon the Eastern Segment.

DISCUSSION AND CONCLUSIONS

The informal, streamlined class exemption process is typically reserved for routine transactions that are uncomplicated and noncontroversial. See, e.g., Burlington N. & Santa Fe Ry.—Acquis. & Operation Exemption—S. Dakota, FD 34645, slip op. at 2 (STB served Jan. 14, 2005). A notice that raises unresolved issues or questions that require considerable scrutiny may be rejected. Saratoga & N. Creek Ry.—Operation Exemption—Tahawus Line, FD 35559, slip op. at 5 (STB served May 14, 2012).

V&S’s verified notice of exemption raises such concerns, and therefore will be rejected. First, and most importantly, although V&S has certified that no local traffic has moved over the line for at least two years, V&S obtained Board authority to acquire the line less than two years ago. This disqualifies V&S from using the two-year out-of-service class exemption under 49 C.F.R. § 1152.50(b) absent a waiver. See, e.g., Tulare Valley R.R.—Aban. Exemption—in

² V&S’s Pet. at 8-9, in V&S Acquisition, FD 35664.

Kings & Tulare Cntys., Cal., 9 I.C.C. 2d 1205 (1993). In its notice of exemption, V&S states that the V&S Acquisition decision “waived the requirement that V&S have Board authorized ownership of the Towner Line for at least two years.”³ However, as noted above and discussed in V&S Acquisition, that decision waives the two-year ownership requirement for the Western Segment only, not for the Eastern Segment that V&S seeks to abandon here or for any other portion of the Towner Line. See V&S Acquisition, slip op. at 5.

Additionally, on May 28, 2014, the Board received a filing from the Professional Land Surveyors of Colorado, Inc. (the “Land Surveyors”), regarding the proposed abandonment in this docket as well as the status of the Towner Line generally. Among other things, the Land Surveyors assert that “just short of half of the [Eastern Segment] sits on 1875 Federal Grant [right-of-way],” despite the notice’s statement that the rail line does not contain federally granted rights-of-way, and they request that certain conditions be imposed on the proposed abandonment.⁴ On June 10, 2014, V&S responded to the Land Surveyors. Among other things, V&S appears to acknowledge that the Eastern Segment does contain federally granted rights-of-way, stating that the information provided by the Land Surveyors “will enable V&S to respond correctly in the notices it will need to file . . . in any future discontinuance or abandonment proceedings involving the Towner line.”⁵ V&S does not, however, seek to adjust its statement to the contrary in its verified notice of exemption in this proceeding.⁶

³ V&S’s Notice of Exemption at 2.

⁴ The requested conditions are now moot in light of this decision. On June 13, 2014, Kiowa County also submitted a filing which appears to request a number of conditions for abandonment, which are also moot in light of this decision.

⁵ V&S’s Reply at 3.

⁶ The notice also does not address the portions of the Towner Line on which V&S will continue to have a common carrier obligation, including the middle portion between Haswell and Eads (the “Middle Segment”)—another concern raised by the Land Surveyors—and a small portion east of the Eastern Segment between milepost 747.5 and milepost 749.5, and how it will continue to fulfill its common carrier obligation on those segments. This may be of some concern in light of the peculiar posture of the Western Segment, on which V&S received discontinuance authority but then subsequently obtained acquisition authority; although V&S stated in V&S Acquisition that it intended to abandon the Western Segment, it has not yet sought authority to do so. However, on June 4, 2014, V&S filed copies of written notifications sent pursuant to 49 C.F.R. § 1152.50(d)(1) stating that it plans to file a notice of exemption in early July to abandon the Middle Segment, and V&S reiterated that intent in its response to the Land Surveyors. An attempt by V&S to obtain abandonment authority for the Middle Segment could raise the same issues addressed in this decision regarding the two-year ownership requirement and V&S’s statement concerning federally granted rights-of-way. But, if V&S files for and obtains abandonment authority for the Middle Segment, any concern about potentially stranding

(continued . . .)

For these reasons, V&S's notice of exemption will be rejected. Should V&S make another attempt to use the class exemption process for the Eastern Segment (or any other portion of the Towner line other than the Western Segment) prior to December 13, 2014 (the two-year anniversary of the effective date of V&S Acquisition), then, because the waiver granted in V&S Acquisition applied only to the Western Segment, V&S must petition for waiver of the two-year ownership requirement. Alternatively, V&S may choose to proceed by petition for abandonment exemption. In addition, if V&S agrees with the information provided by the Land Surveyors regarding federally granted rights-of-way, as it appears to do, it should revise its statement accordingly in any future filings.

It is ordered:

1. The notice of exemption is rejected.
2. This decision is effective on the date of service.

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

(continued . . .)

that segment would appear to be resolved. If it does not, V&S would need to address ongoing service to the Middle Segment in connection with any future request for authority to abandon the Eastern Segment.