

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1074X

LASSEN VALLEY RAILWAY, LLC—ABANDONMENT EXEMPTION—IN WASHOE COUNTY, NEV. AND LASSEN COUNTY, CAL.

Decided: September 7, 2011

By decision served on August 8, 2011 (August decision), the Board, under 49 U.S.C. § 10502, exempted from the prior approval requirements of 49 U.S.C. § 10903 the abandonment by Lassen Valley Railway, LLC (LVR) of a 21.77-mile line of railroad extending from milepost 338.33 near Flanigan, Washoe County, Nev., to milepost 360.10 near Wendel, Lassen County, Cal. (the Line).¹ The August decision stated that an offer of financial assistance (OFA) under 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27 must be received by the Board by August 18, 2011. This decision denies the request of Robert Alan Kemp, d/b/a Nevada Central Railroad (NCR) to extend that deadline.

On August 18, 2011, NCR filed a motion for extension of time to file an OFA and notice of intent to file an OFA. NCR requests a 60-day extension of time to allow it to complete private and Federal Railroad Administration (FRA) loan applications. On August 19, 2011, LVR replied, urging that the Board deny NCR's motion. LVR states that NCR's motion did not comply with a number of the Board's rules and that an OFA should have been filed by August 18, 2011. LVR further asserts that delaying the effective date of LVR's abandonment authority for 60 days to permit NCR to complete loan applications would be unfair and unreasonable.

The statute imposes strict time limits for the filing of an OFA. 49 U.S.C. § 10904. Moreover, LVR has opposed the request for an extension. Allowing the late filing of an OFA over the owning rail carrier's objection would be inconsistent with Congress's direction to the Board to process OFAs within the strict time limits established by the statute. See Aban. & Discontinuance of Rail Lines & Rail Transp. Under 49 U.S.C. § 10903, 1 S.T.B. 894, 909-10 (1996) (in enacting the ICC Termination Act of 1995, Congress shortened the time for the Board to process OFAs); R.R. Ventures, Inc. v. STB, 299 F.3d 523, 531 (6th Cir. 2002) (same). Thus, the Board typically does not allow extensions of time for filing OFAs when the line owner objects. See, e.g., Mid-Michigan R.R.—Aban. Exemption—in Kent, Ionia, and Montcalm Cntys., Mich., AB 364 (Sub-No. 14X), slip op. at 5 (STB served Sept. 26, 2008); BNSF

¹ The August decision made the exemption subject to interim trail use and employee protective conditions, as well as an environmental and historic preservation condition, all of which remain in effect.

Ry.—Aban. Exemption—In Kootenai Cnty., Idaho, AB 6 (Sub-No. 468X) (STB served Dec. 30, 2009).

Here, NCR does not propose to submit an OFA within 60 days. Rather, it proposes only to submit an application for a grant to the FRA and to seek private funding during that time. The date when NCR might know whether or not it will receive any funding is therefore farther away than 60 days, quite possibly much farther away. NCR does not provide any information regarding the substance of its loan application(s), or why NCR expects that its application(s) would be approved. Notwithstanding the August decision where the Board found that the Line has not been used since 2004 and that there are no apparent prospects of future traffic, NCR's motion does not provide any evidence that there is any need for continued rail service.

In short, NCR has failed to offer an adequate justification for the relief it seeks. Based on the record, NCR's ability to finance the purchase of the Line and provide continued rail service appears speculative. For the foregoing reasons, NCR's motion for an extension of time is denied. This decision, however, does not preclude NCR from negotiating with LVR to acquire all or part of the Line outside the OFA process.

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

It is ordered:

1. NCR's motion for extension of time to file an OFA is denied.
2. This decision is effective on its date of service.

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