

SERVICE DATE – AUGUST 8, 2024

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1243X

PATRIOT WOODS RAILROAD, LLC—ABANDONMENT EXEMPTION—IN COWLITZ
COUNTY, WASH.

Decided: August 8, 2024

Patriot Woods Railroad, LLC (PW), filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon approximately 21.50 miles of rail line between milepost 8.5 at Ostrander Junction and the end of the line at milepost 30 in Cowlitz County, Wash. (the Line). Notice of the exemption was served and published in the Federal Register on August 31, 2017 (82 Fed. Reg. 41,462). The exemption became effective on September 30, 2017. On March 10, 2023, PW filed a notice of consummation under 49 C.F.R. § 1152.29(e)(2) seeking to exercise its authority and fully abandon the Line. As discussed below, PW’s notice of consummation was late-filed and will be rejected.

To comply with the Board’s obligations under the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321-4370m-11, and related laws including the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108, the Board’s Office of Environmental Analysis (OEA) completed an environmental and historic review. By decision served on September 29, 2017 (September 2017 Decision), the Board imposed a historic preservation condition under Section 106 of the NHPA. That condition, among other things, prohibited PW from filing its consummation notice or initiating any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process was completed and the Board removed the condition.¹

OEA then served a Supplemental Final Environmental Assessment on February 8, 2022, attaching a Memorandum of Agreement (MOA) executed by OEA, PW, and the Washington State Department of Archaeology and Historic Preservation. OEA stated that the filing of the MOA with the Advisory Council on Historic Preservation completed the Board’s compliance responsibilities under Section 106. For this reason, OEA recommended removing the Section 106 historic preservation condition imposed in the September 2017 Decision.

¹ The September 2017 Decision also included a notice of interim trail use or abandonment (NITU) under the National Trails System Act, 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29, and a 180-day public use condition under 49 U.S.C. § 10905. The public use condition expired on March 29, 2018, and the NITU expired on March 22, 2019. The decision also imposed several environmental conditions relating to salvage, which remain in effect but are not barriers to consummation.

Based on OEA's recommendation, this proceeding was reopened, and the previously imposed Section 106 condition was removed by decision served on March 16, 2022. That condition represented the last barrier to consummation of the abandonment. See Consummation of Rail Line Abans. Subject to Historic Pres. & Other Env't Conditions, EP 678, slip op. at 3-4 (STB served Apr. 23, 2008). As such, PW's notice of consummation was due 60 days later, by May 15, 2022. 49 C.F.R. § 1152.29(e)(2). PW, however, did not file its notice of consummation until March 10, 2023, nearly 10 months late.

Although a railroad, for good cause shown, may request an extension of time for filing a notice of consummation prior to the deadline in the Board's regulations, see 49 C.F.R. § 1152.29(e), PW did not do so here and has provided no explanation for its significant delay in filing. Accordingly, PW's notice of consummation will be rejected.

Pursuant to 49 C.F.R. § 1152.29(e)(2), PW's authority to abandon the Line has automatically expired. If PW wishes to abandon the Line, it must seek new authority to do so. See id.

It is ordered:

1. PW's notice of consummation is rejected.
2. If PW wishes to pursue abandonment of the Line, it must seek new authority.
3. This decision is effective on its date of service.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.