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SERVICE DATE – AUGUST 15, 2024

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 857 (Sub-No. 2)

COLORADO LANDOWNERS—ADVERSE ABANDONMENT—
GREAT WESTERN RAILWAY OF COLORADO, LLC IN WELD COUNTY, COLO.

Decided: August 15, 2024

On October 5, 2022, a group of landowners (Landowners) filed an application¹ under 49 U.S.C. § 10903 asking the Board to authorize the third-party, or “adverse,” abandonment of approximately 6.2 miles of rail line (the Line) owned by Great Western Railway of Colorado, LLC (Great Western), in Weld County, Colo.² (Landowners Appl. 2.) Notice of the application was served and published in the Federal Register on October 25, 2022 (87 Fed. Reg. 64,532).

On June 4, 2024, the Landowners filed electronically a request for leave to file out of time an attached letter from the Town of Johnstown, Colorado (the Town). (Landowners Req. 1.) The Landowners assert that the letter contains an update on the status of the Line and confirms the Town’s support for the proposed abandonment. (Id.) On June 20, 2024, Great Western moved to reject the Landowners’ filing. It contends, first, that the Landowners’ filing did not meet the service requirements of 49 C.F.R. § 1104.12. Specifically, Great Western argues that, although its counsel received a service copy of the Landowners’ submission by mail (a week after it was filed), it should have been, but was not, served electronically as provided under the Board’s regulations³ and as indicated in the Landowners’ certificate of service. (Great Western Mot. 1.) Additionally, Great Western argues, the Landowners have not shown good cause for the Board to accept their late-filed submission in any event. (Id. at 2.)

Here, although under the Board’s regulations the June 4 submission should have been served on Great Western by email, Great Western ultimately did receive a service copy by mail, albeit later than it would have if the filing had been served electronically; moreover, the

¹ Although the application was filed on August 18, 2022, it is considered filed on October 5, 2022, to satisfy procedural requirements related to the Landowners’ revised environmental and historic report filed on September 13, 2022, and further amended on September 15, 2022. See Colo. Landowners—Adverse Aban.—Great W. Ry. of Colo. in Weld Cnty., Colo., AB 857 (Sub-No. 2), slip op. at 1 (STB served Sept. 7, 2022).

² The Line extends from milepost 0.0 at or near Johnstown, Colo., to milepost 6.2 at or near Welty, Colo. (Landowners Appl. 2.)

³ Great Western cites the provision of 49 C.F.R. § 1104.12(a) that service on the parties “should be by the same method and class of service used in serving the Board.”

Landowners' apparent failure to serve its filing electronically does not appear to have deprived Great Western of its ability to participate in this proceeding, nor does Great Western allege any resulting harm. Under the circumstances, rather than rejecting the filing for failure to serve, the service requirement will be waived as to the manner of service in this instance. However, to mitigate any prejudice to Great Western and ensure that it has a full opportunity to respond to the content of the letter, (which Great Western alleges contains "a number of false and misleading allegations," (Great Western Mot. 2.)), Great Western will be permitted to submit an additional reply to the Landowners' June 4 submission by August 29, 2024. The Landowners are reminded that they are expected to comply with the Board's service requirements and serve their submissions on all parties of record listed on the Board's service list for this proceeding in the manner provided by the Board's regulations.⁴

Additionally, because the attached letter includes information about the status of the Line and the views of the Town, there is good cause to accept the Landowners' late-filed June 4 submission given the amount of time that has passed since the Board last received an update on the status of the Line, and the agency's interest in a complete record that embodies the full spectrum of the interests involved. See 49 C.F.R. § 1152.25(d)(5).

It is ordered:

1. The Board's service requirements are waived as to the manner of service with respect to the Landowners' June 4, 2024 submission.
2. The Landowners' June 4, 2024 filing is accepted into the record.
3. Great Western may file a response to the Landowners' June 4, 2024 filing by August 29, 2024.
4. This decision is effective on its service date.

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

⁴ This decision concerns only the Landowners' June 4, 2024 filing. The Board is aware that Great Western previously filed challenges to the Landowners' compliance with certain service and publication requirements with respect to other filings. To the extent that these objections need to be addressed, the Board will do so in a future decision in this docket.