

SERVICE DATE – APRIL 2, 2024

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1233 (Sub-No. 2X)

ALLEGHENY VALLEY RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN
ALLEGHENY COUNTY, PA.

Digest:¹ The Board denies a request to waive an environmental regulation and deems the filing date for a verified notice of exemption to abandon a line in Pennsylvania to be March 14, 2024.

Decided: March 27, 2024

On February 23, 2024, Allegheny Valley Railroad Company (AVR) filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon an approximately 3.6-mile portion of a rail line known generally as the Brilliant Branch, located in Pittsburgh and Aspinwall, Allegheny County, Pa. (the Line). AVR's verified notice includes a request pursuant to 49 C.F.R. § 1105.7(g) that the Board waive the provision at 49 C.F.R. § 1105.11 calling for the carrier to use a form transmittal letter when sending its environmental and/or historic report to appropriate agencies. (AVR Notice 6 n.1.)² For the reasons discussed below, the Board will deny AVR's request for waiver and will deem the filing date for AVR's verified notice to be March 14, 2024.

According to AVR, it served its environmental and historic report (the Report) on the required agencies by January 31, 2024. (AVR Notice 6 n.1.) However, AVR explains that, because of an oversight, the Report sent to the agencies did not include the § 1105.11 transmittal letter. (Id.) AVR further explains that it re-served the Report on the agencies, this time with the transmittal letter, on February 23, 2024, the same day AVR filed its verified notice with the Board. (Id.) AVR argues that because it has agreed to convey its interest in the Line to the Redevelopment Authority of Allegheny County for interim trail use/railbanking pursuant to the National Trails System Act, 16 U.S.C. § 1247(d), and because the Board's issuance of a notice of interim trail use or abandonment permitting negotiations for interim trail use is ministerial, any environmental or historic conditions placed on AVR's abandonment authority would not apply unless and until AVR sought to consummate that authority. (Id.) AVR therefore requests that

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol'y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

² AVR's verified notice of exemption does not have page numbers. The page numbers cited in this decision refer to the pdf page numbers of AVR's filing.

the Board waive the requirement to include the form transmittal letter with the Report to allow the requested exemption to become effective by April 13, 2024. (Id.)

DISCUSSION AND CONCLUSIONS

The Board's regulations require environmental and historic reports to be served on appropriate agencies at least 20 days in advance of filing of a notice of exemption. 49 C.F.R. §§ 1105.7(b) and 1105.8(c). Additionally, § 1105.11 sets forth, in an appendix, the form of the cover letter to be used in transmitting the reports. That cover letter is important because it provides agencies with a description of the proposed abandonment and ensures that agencies know about the tight statutory and regulatory deadlines imposed on the Board for processing verified notices of abandonment, and when and how to provide feedback on the reports to the Board. See 49 C.F.R. § 1105.11 app.

Although AVR served its Report on the appropriate agencies 20 days prior to AVR's filing the verified notice, see 49 C.F.R. §§ 1105.7(b) & 1105.8(c), the Report did not include the § 1105.11 transmittal letter at that time. Although AVR ultimately served the Report again, this time with the transmittal letter, on February 23, 2024, the same day AVR filed the verified notice, agencies may not have had a sufficient opportunity, for the full period contemplated under the regulations, to assess the Report and file written comments with OEA, thus in turn hindering OEA's ability to timely issue a Draft Environmental Assessment (Draft EA). See 49 C.F.R. § 1105.12 (stating that the EA will "normally be available 25 days after the filing of the notice of exemption").³

Therefore, to ensure that all appropriate agencies will have had a sufficient opportunity to review the information in the Report and submit written comments on it, and to give OEA sufficient time to consider comments that are received and prepare the Draft EA, AVR's request to waive 49 C.F.R. § 1105.11 will be denied. However, rather than requiring AVR to refile its verified notice, the February 23 verified notice will be deemed to have been filed on March 14 (20 days after the Report with the cover letter was sent to the agencies), and notice of the exemption will be served and published in the Federal Register on that basis.

It is ordered:

1. AVR's request for waiver of 49 C.F.R. § 1105.11 is denied.
2. The Board deems March 14, 2024, as the date on which AVR's verified notice was filed.
3. This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.

³ AVR's expectation that interim trail use will be implemented on the Line does not negate the need to complete the required environmental and historic review.