

SERVICE DATE – AUGUST 13, 2024

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 307 (Sub-No. 6X)

WYOMING AND COLORADO RAILROAD COMPANY, INC.—
ABANDONMENT EXEMPTION—IN CARBON COUNTY, WYO.

Decided: August 13, 2024

On May 31, 2006, the Board granted a petition for exemption filed by Wyoming and Colorado Railroad Company, Inc. (WYCO), authorizing WYCO to abandon a 23.71-mile rail line between milepost 0.57, near Walcott, and milepost 24.28, at Saratoga, in Carbon County, Wyo. (the Line). Pursuant to 49 C.F.R. § 1152.29(e)(2), the Board’s May 2006 decision provided that if WYCO did not file a notice of consummation by May 31, 2007, and no legal or regulatory barriers to consummation existed, the abandonment authority would automatically expire. See Wyo. & Colo. R.R.—Aban. Exemption—in Carbon Cnty., Wyo., AB 307 (Sub-No. 6X), slip op. at 6 (STB served May 31, 2006). WYCO did not file a notice of consummation by the May 2007 consummation deadline and, therefore, its authority to abandon the Line automatically expired at that time.¹

On April 1, 2024, Saratoga Railroad, LLC (Saratoga) and its parent company, Western Group Holding Company, Inc. (Western Group) (collectively, Petitioners), filed a petition requesting that the Board waive the requirement for WYCO to file a consummation notice or an extension request by the May 2007 deadline. They further request that the Board allow Saratoga, the Line’s current owner, to consummate the abandonment authority over the Line without needing to refile for abandonment authority. Petitioners include a consummation notice from Saratoga with their filing.

According to Petitioners, Saratoga, a noncarrier corporation, sought and received Board authority to acquire the Line from its affiliate, WYCO, in a 2017 corporate family transaction. (Pet. 1 n.1 (citing Durbano—Corp. Fam. Transaction, FD 36091 (STB served Feb. 2, 2017)).)² In its filing, Saratoga explained that WYCO “never fully consummated the abandonment of the

¹ Under 49 C.F.R. § 1152.29(e)(2), a railroad may not consummate an authorized abandonment if there is any legal or regulatory barrier to consummation. WYCO’s petition for exemption was granted subject to several conditions, however, none of those conditions were a barrier to consummation. Therefore, no legal or regulatory barrier to consummation existed at the time of the May 2007 deadline. 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).

² Saratoga is a subsidiary of Western Group, which is owned by David L. Durbano. (Id. at 1, 1 n.1.)

[] Line and never filed a notice of consummation,” and acknowledged at that time that “WYCO’s abandonment authority expired and the [Line] remained a line of railroad subject to the STB’s jurisdiction.” See Notice 4, Durbano—Corp. Fam. Transaction, FD 36091 (citing Aban. & Discontinuance of Rail Lines & Rail Transp. Under 49 U.S.C. 10903). Later, in 2020, WYCO (which no longer owned the Line) was sold to an unaffiliated company. (Id. at 1 n.1 (citing OPSEU Pension Plan Tr. Fund—Acquis. of Control Exemption—Cimarron Valley R.R., FD 36440 (STB served Oct. 16, 2020)).)

In support of its request for waiver, Petitioners assert that WYCO’s failure to timely file a notice consummation by the May 2007 deadline was due to an honest mistake, a change in corporate structure, and a change in regulatory counsel. (Id. at 3.) Petitioners state that the Line has no shippers, the track was salvaged in 2006, and the right-of-way is ready to be sold. (Id.) Petitioners argue that there would be no utility in requiring Saratoga to go through the abandonment process again and would waste the time and resources of the Petitioners and the Board. (Id.) Further, Petitioners assert no parties would be prejudiced by the Board granting a waiver of the consummation deadline. (Id.)

The Director of the Office of Proceedings has “authority initially” to “waive the regulations at 49 C.F.R. part 1152, subpart C, on appropriate petition.” 49 C.F.R. § 1011.7(a)(2)(xiv). However, good cause has not been shown for granting a partial waiver of 49 C.F.R. § 1152.29(e)(2). In the long intervening time since WYCO’s abandonment authority lapsed, the Line was the subject of a Board-approved transaction pursuant to which Saratoga acquired it. See Durbano, FD 36091. Thus, even had WYCO’s abandonment authority not expired in 2007, that unconsummated authority was superseded by Saratoga’s subsequent Board-authorized acquisition of the Line. Permitting abandonment under WYCO’s earlier, lapsed authority after the Board-authorized transfer to Saratoga would not merely amount to waiving the notice of consummation requirement; it would permit Saratoga to abandon the Line without ever having sought the authority to do so.³

³ The two decisions cited by Petitioners are distinguishable from this proceeding. In ABE Fairmont, LLC—Abandonment Exemption—in Fillmore County, Neb., the carrier that received the abandonment authority appeared to no longer exist and had sold the underlying real estate to multiple adjoining landowners, “all [of whom] considered the common carrier obligation on the [line] to be extinguished.” See ABE Fairmont, LLC, AB 1106X et al., slip op. at 2-3, 5 (STB served Jan. 29, 2018). Under those “unique circumstances,” the Board retroactively waived the notice of consummation requirement to avoid stranding the line after authorizing abandonment of a connecting segment. Id. at 5. And in Union Railroad—Abandonment Exemption—in the City of McKeesport, Allegheny County, Pa., the abandoning railroad missed the deadline by only a few months and had sold the line to an adjacent shipper in the mistaken belief that it had already been abandoned. Union Railroad, AB 183 (Sub-No. 5X), slip op. at 1 (STB served Nov. 15, 2022). Neither case presents circumstances like those here, where, after the Line had been authorized for abandonment, a different carrier acquired it in a Board-approved transaction that was predicated on the abandonment authority having expired years before. See Durbano, FD 36091, slip op. at 2 n.3.

For the foregoing reasons, the petition for waiver will be denied. If Saratoga wishes to abandon the Line, it must file for abandonment authority in a new docket.

It is ordered:

1. Petitioners' request to waive the regulatory deadline for filing a notice of consummation or requesting an extension is denied.
2. This decision is effective on its service date.

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