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SERVICE DATE — MAY 17, 2022

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1305X

NORTH COAST RAILROAD AUTHORITY
—ABANDONMENT EXEMPTION—
IN MENDOCINO, TRINITY, AND HUMBOLDT COUNTIES, CAL.

Digest:¹ The Board lifts the abeyance and stay orders previously imposed in this proceeding and allows a notice of exemption for abandonment filed by North Coast Railroad Authority to proceed. The Board also denies a motion for exemption from the offer of financial assistance provisions.

Decided: May 15, 2022

For the reasons discussed below, the Board will lift the abeyance and stay orders previously imposed in this abandonment proceeding, allowing the verified notice of exemption to become effective and permitting it to be published in the Federal Register. The Board also will deny the pending motion for exemption from the offer of financial assistance (OFA) statute and related regulations.

BACKGROUND

On May 14, 2021, North Coast Railroad Authority (NCRA)² filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments and Discontinuances of Service to abandon 175.84 miles of rail line from milepost 139.5 at Commercial Street in Willits, Cal., to milepost 284.1 near Eureka, Cal., including appurtenant branch lines extending to milepost 267.72 near Carlotta, Cal., milepost 295.57 near Korplex, Cal., milepost 300.5 near Samoa, Cal., and milepost 301.8 near Korbel, Cal., in Mendocino, Trinity, and Humboldt

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. Pol’y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

² NCRA notes that the State of California has changed NCRA’s name to Great Redwood Trail Agency, effective March 1, 2022. (NCRA Letter 6, Jan. 10, 2022.) On April 6, 2022, U.S. Representative Jared Huffman filed a letter noting the name change and expressing support for NCRA’s verified notice.

Counties, Cal. (the Line).³ According to NCRA, it originally acquired the Line in 1992 from the Eureka Southern Railroad (Eureka Southern). See N. Coast R.R. Auth.—Acquis. & Operation Exemption—Eureka S. R.R., FD 32052 (ICC served Apr. 23, 1992).⁴ NCRA states that it now seeks to abandon the Line because no local or overhead traffic has moved over it within the past two years and, since 1998, the Line has been subject to a safety-related emergency order imposed by the Federal Railroad Administration (FRA) prohibiting railroad operations on it. (Verified Notice 1-2.)

On June 8, 2021, the Board’s Office of Environmental Analysis (OEA) issued for public review and comment a Draft Environmental Assessment (EA) that described the potential environmental impacts of NCRA’s proposed abandonment of the Line. On June 9, 2021, however, the proceeding was held in abeyance to permit the Board to consider whether it retained jurisdiction over the Arcata & Mad River subsidiary, which is located between milepost 295.57, near Korblex, and milepost 301.8, near Korbel. N. Coast R.R. Auth.—Aban. Exemption—in Mendocino, Trinity, & Humboldt Cntys., Cal., AB 1305X (STB served June 9, 2021). Consistent with that decision, OEA served a decision on June 11, 2021, noting that the Draft EA comment period would be stayed until further Board order. N. Coast R.R. Auth.—Aban. Exemption—in Mendocino, Trinity, & Humboldt Cntys., Cal., AB 1305X (STB served June 11, 2021).

Subsequently, by decision served on August 26, 2021 (August 2021 Decision), the Board directed NCRA to comment further on the jurisdictional issue related to the Arcata & Mad River subsidiary. The decision also noted that there appeared to be a discrepancy regarding the endpoint of the Line on the Samoa branch and requested comment on whether NCRA owns that portion of line, whether it is part of the interstate rail network, and any other relevant information. NCRA filed a responsive pleading on September 15, 2021, clarifying the issues raised by the Board.

Concurrently with the filing of its verified notice, NCRA filed a request for issuance of a notice of interim trail use or abandonment (NITU) to establish interim trail use/rail banking on the Line⁵ under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d) and 49 C.F.R.

³ In a separate docket, NCRA filed a petition seeking exemptions from certain statutory provisions and waivers of certain regulatory requirements regarding a proposed third-party, or “adverse,” application for discontinuance of the operating rights of Northwestern Pacific Railway Company (NWPY) over a portion of the Line, and the Board granted, in part, the petition for exemptions and waivers. See N. Coast R.R. Auth.—Adverse Discontinuance of Lease & Operating Auth.—Nw. Pac. Ry., AB 1313 (STB served Mar. 4, 2022).

⁴ It does not appear that the portion of the Line known as the Arcata & Mad River subsidiary was included in the acquisition and operation authority granted in 1992.

⁵ Several commenters filed letters in support of NCRA’s request for interim trail use/railbanking on the Line. (See Friends of the Eel River Letter 2-3, Sept. 15, 2021; Humboldt Trails Council Letter 1; Humboldt Baykeeper Letter 1; Rails-to-Trails Conservancy Letter 1; Humboldt County Association of Governments Letter 1-2; City of Arcata Letter 1-2.)

§ 1152.29.⁶ Thereafter, on July 26, 2021, NCRA filed a motion requesting exemption from the OFA provisions of 49 U.S.C. § 10904 and related regulations, to which Mendocino Railway and North Coast Railroad Company, L.L.C. (NCRCo), replied in opposition on August 16, 2021.⁷ On December 15, 2021, the California Coastal Commission (Commission) sought leave to late-file a reply supporting NCRA's motion. Subsequently, several comments were filed expressing various positions on the Commission's late-filed reply and NCRA's motion. In the interest of a full record, the Board will accept all late-filed comments and surreplies.

DISCUSSION AND CONCLUSIONS

Arcata & Mad River Subsidiary

In its verified notice of exemption, NCRA states that the Board's predecessor, the Interstate Commerce Commission (ICC), authorized abandonment of the Arcata & Mad River

Conversely, Humboldt Redwood Company, Humboldt Sawmill Company, Mendocino Redwood Company, and Mendocino Forest Products (collectively, Humboldt and Mendocino Companies) filed a joint letter opposing a trail adjacent to, or on, the Line and claiming reversionary property interests in sections of the Line, as well as timber rights on adjacent land. (Humboldt and Mendocino Companies Letter 1-2.) In a separate letter, Humboldt Redwood Company, LLC (HRC) states that it is the successor in interest to certain real property located adjacent to the Line and that, upon Board approval for abandonment of the Line, it intends to exercise its option to purchase in fee all portions of the right of way that are adjacent to its lands. (HRC Letter 1-2.) Notwithstanding the Humboldt and Mendocino Companies' and HRC's assertions, the Board notes that state law governs disposition of reversionary property interests subject to the Board's jurisdiction to regulate abandonments. Preseault v. ICC, 494 U.S. 1, 8 (1990); see also Nat'l Ass'n of Reversionary Prop. Owners—Pet. for Rulemaking, EP 749 et al., slip op. at 2-4 (STB served Oct. 2, 2018) (explaining that reversionary property interests are governed by state law and only become relevant upon consummation of abandonment); Kan. City Pub. Serv. Freight Operation—Exemption—Aban. in Jackson Cnty., Mo., 7 I.C.C.2d 216, 225-26 (1990) (explaining that issues of real property rights involving lines authorized to be abandoned are within exclusive jurisdiction of the State).

In a July 6, 2021 filing, Mendocino Railway states that it anticipates filing an offer of financial assistance (OFA) and argues that OFAs take precedence over trail use.

⁶ In its request, NCRA states that it consents to negotiate an interim trail use agreement and asks that the Board issue a NITU, rather than a notice of exemption, to expedite the trail use negotiation process to obviate the need for further filings to secure the NITU. The Board will deny NCRA's request to forego the publication of the notice of exemption in this proceeding. Among other reasons, unless a transaction is exempted from the OFA provisions, the Board must consider any OFAs before it addresses NITU requests, as discussed below.

⁷ Replies to the motion were due by August 16, 2021. See 49 C.F.R. § 1104.13. In a September 14, 2021 filing, the League of Women Voters of Humboldt County, League of Women Voters of Mendocino County, and League of Women Voters of Sonoma County urge the Board to reject any application to allow the transportation of coal over the Line or to allow NCRCo to acquire the Line.

subsidiary in 1985. (Verified Notice, Ex. B, Arcata & Mad River Jurisdictional Issue 1); see also Arcata & Mad River R.R.—Aban. Exemption—in Humboldt Cnty., Cal., AB 241X (ICC served Apr. 23, 1985). NCRA argues, however, that Eureka Southern expressed interest in, and subsequently purchased, the subsidiary from the Simpson Timber Company. (Verified Notice, Ex. B, Arcata & Mad River Jurisdictional Issue 1.) NCRA states that, thereafter, it purchased Eureka Southern out of bankruptcy in 1992 and that both entities operated the subsidiary for freight rail purposes until 1994. (Id. Ex. B, Arcata & Mad River Jurisdictional Issue 1-2.) Thus, NCRA asserts that evidence concerning the Arcata & Mad River subsidiary is consistent with a determination that the Simpson Timber Company never consummated its abandonment authority but rather transferred its interests in the Line to Eureka Southern for continued rail operations, which continued under NCRA. (Id. Ex. B, Arcata & Mad River Jurisdictional Issue 4.)

In the August 2021 Decision, the Board identified a June 6, 1985 letter filed by Arcata & Mad River Railroad (A&MR), which noted that the “applicant railroad ha[d] been abandoned.” A&MR Letter 1, June 6, 1985, Arcata & Mad River R.R., AB 241X. The letter, signed by A&MR’s counsel, further noted, among other things, that “[i]nstructions ha[d] been issued to the tariff publishing agents to cancel the [A&MR’s] participation and to the Association of American Railroads to withdraw the carrier from the interchange and other agreements to which it had been a party.” Id. The Board stated that the letter from A&MR’s counsel demonstrated A&MR’s clear intention to consummate the abandonment of the Arcata & Mad River subsidiary upon expiration of a public use condition in October 1985. Aug. 2021 Decision, AB 1305X, slip op. at 5. Further, the Board noted, there appeared to be no evidence in the current record that sale of the Arcata & Mad River subsidiary to Eureka Southern as a line of railroad was ever finalized. Id. Additionally, the Board stated that it had not located any records indicating that Eureka Southern, or NCRA, filed for acquisition authority with the ICC for the Arcata & Mad River subsidiary. Id. The Board sought comment on why the letter would not constitute conclusive evidence of A&MR’s clear intention to consummate the abandonment of the Arcata & Mad River subsidiary upon the expiration of the public use condition, thereby removing that branch from the interstate rail network and the Board’s jurisdiction. Id.

NCRA acknowledges that the letter suggests an intention by A&MR to consummate its abandonment authority. (NCRA Comment 16-17, Sept. 15, 2021.) NCRA further asserts that the representations made by A&MR’s counsel are consistent with Eureka Southern subsequently treating the subsidiary as non-jurisdictional track—hence explaining why neither Eureka Southern nor NCRA sought authority to acquire it. (Id.)

As the Board explained the August 2021 Decision, when a railroad exercises, or “consummates,” its abandonment authority, the line is removed from the interstate rail network, and the Board’s jurisdiction over the line terminates. See Aug. 2021 Decision, AB 1305X, slip op. at 4 (citing Hayfield N. R.R. v. Chi. & N.W. Transp. Co., 467 U.S. 622, 633-34 (1984) (consummation of abandonment terminates the agency’s jurisdiction); Baros v. Tex. Mexican Ry., 400 F.3d 228, 234 (5th Cir. 2005) (“Once a rail carrier abandons a line, the line is no longer part of the national transportation system, and the [Board’s] jurisdiction terminates.”)). Prior to 1996, in order to determine if a railroad had consummated an abandonment, the agency employed a case-by-case evaluation of all the facts and circumstances to determine whether the railroad showed a clear intention to remove the line from the interstate rail network, or if instead

the record indicated an intent to preserve the right-of-way for rail service.⁸ See Aug. 2021 Decision, AB 1305X, slip op. at 4 n.7 (citing Ill. Cent. Gulf R.R.—Aban.—in Dewitt & Piatt Cntys., Ill., 5 I.C.C.2d 1054, 1061 (1988)). Where an abandonment has been consummated, the Board no longer has jurisdiction over the line and cannot consider requests for interim trail use/rail banking under the Trails Act. Aug. 2021 Decision, AB 1305X, slip op. at 4 (citing Iowa Traction Ry.—Discontinuance of Serv. Exemption—in Cerro Gordo Cnty., Iowa, AB 1269 (Sub-No. 1X), slip op. at 3 (STB served Apr. 6, 2020) (finding no jurisdiction to authorize interim trail use/rail banking over an abandoned line)).

Here, the record indicates that A&MR had a clear intention to remove the Arcata & Mad River subsidiary from the interstate rail network upon expiration of a public use condition, as evidenced by A&MR's letter dated June 6, 1985. Further, NCRA admits that the representations made by A&MR's counsel are consistent with Eureka Southern subsequently treating the subsidiary as non-jurisdictional track. (NCRA Comment 16-17, Sept. 15, 2021.) The Board, therefore, determines that the abandonment of the Arcata & Mad River subsidiary was consummated decades ago. Thus, this rail segment has already been removed from the interstate rail network and the Board's jurisdiction over it has terminated. See Hayfield, 467 U.S. at 633-34; Baros, 400 F.3d at 234. As a result, the Arcata & Mad River subsidiary is no longer part of this exemption proceeding and the Board cannot consider requests for its interim trail use/rail banking. See Iowa Traction Ry., AB 1269 (Sub-No. 1X), slip op. at 3.

Samoa Branch

The August 2021 Decision also stated that there appears to be a discrepancy regarding the endpoint of the Line on the Samoa branch. Aug. 2021 Decision, AB 1305X, slip op. at 5. In its verified notice of exemption, NCRA indicates that it received acquisition and operation authority on the Samoa branch extending to milepost 300.5. (See NCRA Verified Notice 1, 3); see also N. Coast R.R. Auth., FD 32052, slip op. at 1. However, in North Coast Railroad Authority—Adverse Discontinuance of Lease & Operating Authority—Northwestern Pacific Railway, Docket No. AB 1313, NCRA's petition states that the endpoint of the Samoa branch is milepost 302.86. NCRA Pet. 2, N. Coast R.R., AB 1313. Due to this discrepancy, the Board requested comment on the status of the 2.36-mile rail segment extending between milepost 300.5 and milepost 302.86. In its responsive comment, NCRA asserts that the segment is ancillary track that is excepted from the Board's licensing authority.

A rail line licensed under 49 U.S.C. § 10901 is within the Board's exclusive jurisdiction and can only be abandoned upon the carrier receiving abandonment authority from the Board. 49 U.S.C. § 10903. Excepted track—also referred to as ancillary, spur, industrial, team, switching, or side track—is also within the Board's exclusive jurisdiction, 49 U.S.C. § 10501(b), but, under 49 U.S.C. § 10906, Board authorization is not required for the construction, operation,

⁸ Current Board regulations require that a rail carrier file a notice of consummation with the Board. 49 C.F.R. § 1152.29(e)(2). This consummation notice is the only definitive, legally recognizable way for a rail carrier to consummate an abandonment. Honey Creek R.R.—Pet. for Declaratory Ord., FD 34869 et al., slip op. at 4-5 (STB served June 4, 2008).

abandonment, or discontinuance of such track. Jersey Marine Rail, LLC—Pet. for Declaratory Ord., FD 36063, slip op. at 2 n.3 (STB served Jan. 31, 2017).

In assessing whether a particular track is a railroad line subject to the Board’s licensing authority under § 10901 or excepted track under § 10906, the Board has adopted a case-by-case approach that analyzes the track’s intended use, physical characteristics, relationship to the rail system, and history. See Oakland Global Rail Enter.—Pet. for Declaratory Ord., FD 36168, slip op. at 8 & n.8 (STB served Mar. 15, 2019). The Board considers and weighs the various indicia as appropriate in light of the particular evidence and circumstances of each case. Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp., FD 32760, slip op. at 12 (STB served Jan. 31, 2018); cf. Norfolk S. Ry.—Pet. for Exemption—in Balt. City & Balt. Cnty., Md., AB 290 (Sub-No. 311X), slip op. at 10 (STB served Jan. 27, 2012) (discussing the Board’s discretion in weighing evidence submitted by the parties). Given the typical connection between the track’s relationship to the rail system, its physical characteristics, and its intended use, the various indicia generally relate to one another. See Oakland Glob., FD 36168, slip op. at 8. Moreover, evidence regarding some indicia may be sufficient for the Board to make a determination on the overall legal status of the track without evidence to analyze all potential indicia. Id.

NCRA argues that the portion of the Samoa branch between milepost 300.5 and milepost 302.86 was, and is, ancillary track. According to NCRA, its predecessors, Northwestern Pacific Railroad Company and Eureka Southern, consistently used milepost 300.5 as the endpoint on the Samoa branch, and regarded any track extending beyond milepost 300.5 to be ancillary track. (NCRA Comment 1-2, Sept. 15, 2021.) Among other things, NCRA points to a February 25, 1980 track chart of its predecessor showing the endpoint of the Samoa branch as milepost 300.5—with spurs and sidetracks appearing to extend beyond that point. (NCRA Comment, Ex. B at 8, Sept. 15, 2021.) Similarly, NCRA argues that prior agency proceedings did not consider the 2.36-mile rail segment to be subject to the agency’s jurisdiction. According to NCRA, in North Coast Railroad Authority, Docket No. FD 32052, in which NCRA received authorization for acquisition of the Line, the Samoa branch is defined to include trackage between “milepost 294.84, near Arcata, and milepost 300.5, near Samoa.” (NCRA Comment 5, Sept. 15, 2021.) Further, NCRA states that NWPY’s reference to the terminus of the Samoa branch as milepost 302.86 in Northwest Pacific Railway—Lease & Operation Exemption—North Coast Railroad Authority, Docket No. FD 33998, appears to have been inadvertent. (NCRA Comment 10, Sept. 15, 2021.) NCRA argues that NWPY never operated over the Samoa branch and therefore never brought the portion of track between milepost 300.5 and milepost 302.86 under the Board’s jurisdiction.⁹ (Id. at 9-10.) Thus, NCRA argues that, at no time before, during, or after its acquisition has there been any new construction, operation, or “burst of rail shipments or shippers” that would support a change to the endpoint on the Samoa branch. (Id. at 2.)

The Board finds that the track extending between milepost 300.5 and milepost 302.86 is ancillary track that has never been subject to the agency’s regulatory authority. The track’s physical characteristics and relationship to the rail system indicate that the track is ancillary track

⁹ As noted above, since 1998, the Line has been subject to a safety-related emergency order imposed by the FRA prohibiting railroad operations on the Line. (Verified Notice 1-2.)

and was not constructed to penetrate new markets or territories. The 2.36-mile rail segment is moderate in length and located near the end of the mainline. The location of the track indicates that the track is stub-ended and unable to accommodate through or overhead service. Given the physical characteristics of the track, it appears that the main use of the track would have been for loading, unloading, and switching for freight rail customers, which are ancillary functions. See, e.g., Oakland Glob., FD 36168, slip op. at 8. Additionally, the record indicates that prior agency proceedings did not consider the rail segment to be subject to the agency’s licensing authority.¹⁰ Thus, based on the indicia noted above, the Board finds that the 2.36-mile track is ancillary and therefore Board authority is not required for abandonment of that track.

Motion for Exemption from the OFA Process

As noted above, NCRA filed a motion requesting that the Board exempt, pursuant to 49 U.S.C. § 10502, this abandonment proceeding from the OFA provisions of 49 U.S.C. § 10904. NCRA states that exemption is warranted because there is a compelling need to use the right-of-way for a valid public purpose and there is no overriding public need for continued rail service on the Line. (NCRA Motion for OFA Exemption 10-13.) Specifically, NCRA argues that there have been no active shippers on the Line for 23 years, and, given the Line’s history of high maintenance costs and unreliability due to washouts, landslides, mudslides, and tunnel fires, there is no foreseeable combination of shippers or traffic in the Line’s service area sufficient to justify rehabilitation and operation of the Line. (Id. at 5, 10, 13.) Instead, NCRA argues that the right-of-way would be best utilized as a multi-use trail. (Id. at 12.) According to NCRA, this approach would preserve the corridor for possible future rail use and foster the preservation of the environmentally sensitive Eel River Canyon, while promoting outdoor recreational values. (Id.)

The Commission supports NCRA’s request for exemption from the Board’s OFA procedures. According to the Commission, the Board’s past decisions make clear that rail-banking a right of way for use as a trail serves a valid public purpose. (Commission Reply 2, (citing Union Pac. R.R.—Aban. Exemption—in Kane Cnty., Ill., AB 33 (Sub-No. 105X) (STB served Apr. 29, 1997); Ga. Sw. R.R.—Aban. Exemption—in Barbour Cnty., Ala., AB 1000X (STB served Apr. 25, 2007)).) The Commission also argues that trail use serves another valid public purpose—advancing the State of California’s coastal resource preservation policies under the California Coastal Act (Coastal Act). (Id. at 2, 7.) Among other things, the Commission asserts that the resumption of commercial rail operations, particularly in environmentally sensitive and hazardous areas such as the Humboldt Bay region, would impede many of the Coastal Act’s policies. (Id. at 2.) The Commission argues that there is no overriding public need for continued rail service on the Line given the lack of rail service in more than two decades. (Id. at 2, 4, 6.) And, the Commission argues that, while there appears to be “bare interest” in resuming freight operations on the Line, there is no current demand for rail service. (Id. at 2.) The Commission asserts that, if the Board were to allow OFAs in this proceeding, no offeror

¹⁰ Regarding the history of a line, the Board may look to see whether the track was subject to a grant of operating authority or other agency licensing. See, e.g., Naval Nuclear Propulsion Program—Pet. for Declaratory Ord., FD 36298, slip op. at 4-6 (STB served Oct. 15, 2019); Oakland Glob., FD 36168, slip op. at 8.

would be able to tender an offer that would comport with the Board’s regulations. (*Id.* at 2, 18-20.)

Mendocino Railway and NCRCo oppose NCRA’s exemption request. Mendocino Railway has expressed an interest in filing an OFA for a portion of the Line, (Mendocino Railway Reply 4, Aug. 16, 2021), and NCRCo has expressed an interest in filing an OFA for the entire line, (NCRCo Reply 2-3). Both potential offerors argue that NCRA has not shown that there is a valid public purpose that would warrant an exemption from the OFA provisions. (Mendocino Ry. Reply 8-10, Aug. 16, 2021; NCRCo Reply 7-8.) They also argue that the Board should not prejudge the continuing need for rail service and the merits of any offer but should consider those issues within the context of the OFA procedures. (Mendocino Ry. Reply 11-16, Aug. 16, 2021; NCRCo Reply 8-11.)

NCRA’s request to exempt this abandonment from the Board’s OFA procedures will be denied. The Board has long held that it will not forgo the OFA process to facilitate a party’s interest in pursuing railbanking under the Trails Act. San Pedro R.R. Operating Co.—Aban. Exemption—in Cochise Cnty., Ariz., AB 1081X, slip op. at 7 (STB served Apr. 13, 2006). It is well settled that an OFA should take priority over a trail use proposal because of the strong congressional intent to preserve rail service wherever possible. See 49 C.F.R. § 1152.29(d) (trail use is provided for only if “continued rail service does not occur under 49 U.S.C. [§] 10904”); see also Rail Abans.—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 608 (1986) (“Offers of financial assistance to acquire rail lines or subsidize rail operations under section 10905 [now § 10904] take priority over both interim trail use and public use conditions because retention of existing rail service is mandatory under section 10905.”). Although the Commission cites Union Pacific Railroad, AB 33 (Sub-No. 105X), and Georgia Southwestern Railroad, AB 1000X, in support of the proposition that the Board may grant an OFA exemption to facilitate trail use, in those two instances the Board did not explain its departure from the congressional intent of preserving rail service wherever possible, and there was no opposition to the OFA exemption. See Union Pac. R.R., AB 33 (Sub-No. 105X), slip op. at 3; Ga. Sw. R.R., AB 1000X, slip op. at 4. Further, in numerous other cases, the Board has denied OFA exemptions to facilitate trail use on the basis that continued rail use takes precedence over rail banking.¹¹ With respect to the Commission’s argument that trail use would serve another public purpose—advancing the policies of the California Coastal Act—this proposed “public purpose” would be a byproduct of trail use, and trail use, as noted above, does not take precedence over the preservation of rail service.

Further, to the extent that NCRA and the Commission argue that, regardless of whether a trail is a valid public purpose, an exemption should be granted because the Line has been out of service for many years and would be too expensive to reopen and maintain, these issues are

¹¹ See, e.g., BNSF Ry.—Aban. Exemption—in Kootenai Cnty., Idaho, AB 6 (Sub-No. 468X), slip op. at 4 (STB served Nov. 27, 2009); BNSF Ry.—Aban. Exemption—in King Cnty., Wash., AB 6 (Sub-No. 465X) (STB served Nov. 28, 2008); Mid-Mich. R.R.—Aban. Exemption—in Kent, Ionia, & Montcalm Cntys., Mich., AB 364 (Sub-No. 14X), slip op. at 3 (STB served June 9, 2008); 1411 Corp.—Aban Exemption—in Lancaster Cnty., Pa., AB 581X (STB served Sept. 6, 2001).

insufficient on their own to warrant an exemption from the Board's OFA provisions. Agency decisions granting OFA exemptions require showings of both a valid public purpose *and* no overriding public need for rail service. See, e.g., Union Pac. R.R.—Aban. Exemption—in Adams, Weld, & Boulder Cnty., Colo., AB 33 (Sub-No. 307X), slip op. at 2-3 (STB served Oct. 18, 2012). Moreover, arguments questioning the legitimacy of potential offerors and the continued need for rail service in this proceeding are more appropriately addressed during an OFA process that considers, among other things, the financial responsibility of offerors, a demonstrable commercial need for service, and the operational feasibility of continued rail service. See 49 C.F.R. § 1152.27(c)(1)(iv), (c)(2)(iii).

Because of the foregoing, NCRA's request for exemption from the provisions of § 10904 will be denied.

Because the Draft EA that OEA issued on June 8, 2021, described the line proposed for abandonment as including the Arcata & Mad River subsidiary, which has already been removed from the national rail system and therefore cannot be abandoned, the Draft EA will be rescinded. OEA will prepare a Corrected Draft EA that will assess the potential environmental impacts of the proposed abandonment of the Line and issue it by May 25, 2022, for public review and comment. The comment due date will be set forth in the Corrected Draft EA.

It is ordered:

1. The abeyance and stay orders served on June 9, 2021, and June 11, 2021, respectively, are lifted.
2. NCRA's request for exemption from the OFA procedures is denied.
3. All late-filed comments and surreplies are accepted into the record.
4. The Draft EA issued on June 8, 2021, is rescinded.
5. This decision is effective on its service date.

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