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SERVICE DATE – AUGUST 31, 2021

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1310 (Sub-No. 1X)

NORTHWESTERN PACIFIC RAILROAD COMPANY—DISCONTINUANCE OF SERVICE
EXEMPTION—IN MENDOCINO COUNTY, CAL.

Digest:¹ The Board rejects various objections raised by the Train Riders Association of California to Northwestern Pacific Railroad Company's verified notice of exemption to discontinue service over a rail line in Mendocino County, Cal.

Decided: August 31, 2021

On July 13, 2021, Northwestern Pacific Railroad Company (NWPCO) filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments and Discontinuances of Service to discontinue service over an approximately 53.5-mile rail line between approximately milepost NWP 142.5 near Outlet Station and approximately milepost NWP 89 near the Sonoma-Mendocino County border in Mendocino County, Cal. (the Line). Notice of the exemption was served and published in the Federal Register on August 2, 2021 (86 Fed. Reg. 41,533). The exemption is scheduled to become effective on September 1, 2021.

In its notice, NWPCO states that it holds common carrier authority to operate over the Line pursuant to a lease with the North Coast Railroad Authority (NCRA). (Verified Notice 1); see Nw. Pac. R.R.—Change in Operators Exemption—N. Coast R.R. Auth., FD 35073 (STB served Aug. 30, 2007).² NWPCO states, however, that it has never offered service on the Line due to a safety-related order, Emergency Order 21, issued by the Federal Railroad Administration, which has prohibited railroad operations on the Line since 1998. (Verified Notice 2.)

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 According to NWPCO, NCRA owns the Line and retains a common carrier obligation over it. (Verified Notice 1); see also N. Coast R.R.—Purchase Exemption—S. Pac. Transp. Co., FD 32788 (STB served Mar. 20, 1996). NCRA also has filed a verified notice of exemption to abandon 175.84 miles of rail line, including an approximately three-mile segment of the Line between milepost 139.5 and milepost 142.5. See NCRA Notice of Exemption 1, N. Coast R.R.—Aban. Exemption—in Mendocino, Trinity & Humboldt Cntys., Cal., AB 1305X.

On August 12, 2021, the Train Riders Association of California (TRAC) filed comments objecting to NWPCO's verified notice. TRAC argues that NWPCO failed to perfect the service of its verified notice of exemption and that this failure of service should restart the exemption timeline. (TRAC Reply 1.) Specifically, TRAC states that it was on the service list for NWPCO's previous notice of exemption in Northwestern Pacific Railroad—Discontinuance of Service Exemption—in Marin, Napa, & Sonoma Counties, Cal., Docket No. AB 1310X, and that NWPCO's decision to file a second action under "the same docket number" should not give NWPCO the ability to ignore the service list.³ (TRAC Reply 1.) TRAC further argues that two verified statements it submitted in Docket No. AB 1310X, which allude to shipper interest for rail service on the Line, contradict NWPCO's certification in paragraph 9(b) of its verified notice in Docket No. AB 1310 (Sub-No. 1X).⁴ (TRAC Reply 1); see also TRAC Opposition Statement, Exs. 5, 8, 9, Nw. Pac. R.R.—Discontinuance of Service Exemption, AB 1310X.⁵

On August 17, 2021, NWPCO responded to TRAC's arguments. NWPCO argues, among other things, that it had no obligation to serve its verified notice in this docket on TRAC. (NWPCO Reply 3.) NWPCO also argues that neither of the letters TRAC references are evidence of a complaint before a U.S. District Court or the Board or a decision in favor of a complainant with respect to NWPCO's service on, or over, the Line. (Id. at 3-4.)

DISCUSSION AND CONCLUSIONS

The Board rejects TRAC's assertion that service of the verified notice in this docket was not properly effectuated. Under the Board's regulations at 49 C.F.R. § 1104.12, a party must include "a certificate showing simultaneous service upon all parties to the proceeding." The proceeding in Docket No. AB 1310 (Sub-No. 1X)—discontinuance of service over the Line—is distinct from the discontinuance of the 87.65 miles of rail line at issue in Docket No. AB 1310X. TRAC was not a party to the proceeding in Docket No. AB 1310 (Sub-No. 1X) at the time NWPCO filed its verified notice, and NWPCO therefore was not required to serve the verified notice in this docket on TRAC. The Board further notes that TRAC was not harmed by a lack of service in any event. Notice of the exemption was served on the public through publication in the Federal Register on August 2, 2021, and TRAC timely filed a response to NWPCO's verified

³ NWPCO previously discontinued operations over a connecting rail line segment between milepost NWP 89 and milepost SP 63.4. See Nw. Pac. R.R.—Discontinuance of Serv. Exemption—in Marin, Napa, & Sonoma Cntys., Cal., AB 1310X (STB served June 11, 2021).

⁴ NWPCO's certification in paragraph 9(b) of its notice states, "[n]o formal complaint by a user of rail service on the Subject Line, or a state or local government entity acting on behalf of such user, regarding NWPCO's cessation of service over the Subject Line, either is pending with the Board or any U.S. District Court or has been decided in favor of the complainant within the two-year period." (Verified Notice 3-4.)

⁵ TRAC also argues that NWPCO's notice of exemption for discontinuance of the Line "offers no excuse for unnecessarily burdening the [Board] and parties like [TRAC] with a second proceeding." (TRAC Reply 1 (referring to Docket No. AB 1310X).) The Board, however, does not consider the filing of two separate proceedings to be inappropriate here.

notice. Because TRAC's claim of lack of service is without merit, its request to restart the exemption timeline will be denied.

TRAC's challenge to the veracity or accuracy of NWPCO's certification in its verified notice of exemption is also without merit. To qualify for the two-year out-of-service class exemption, a carrier must certify, among other things, that "no *formal complaint* filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the [Board] or with any U.S. District Court or has been decided in favor of a complainant within the two-year period." 49 C.F.R. § 1152.50(b) (emphasis added). The verified letters submitted by TRAC in Docket No. AB 1310X do not constitute formal complaints before the Board or a U.S. District Court, nor do they indicate that a decision has been issued in favor of a complainant with respect to NWPCO's service on the Line within the two-year period. A "formal complaint" in 49 C.F.R. § 1152.50(b) means just that—a formal filing with the Board or a district court that initiates a proceeding in which the complainant alleges or asserts that the carrier has imposed an illegal embargo or other unlawful impediment to service. Letters expressing interest in rail service are not "formal complaints" filed with the Board or a district court. Moreover, here, NWPCO has never provided service over the Line due to Emergency Order 21, and the letters supplied by TRAC were addressed to NCRA, the owner of the Line, not NWPCO.⁶

The Board will therefore permit NWPCO's exemption to become effective on September 1, 2021.

It is ordered:

1. The verified notice of exemption served and published on August 2, 2021, will be effective on September 1, 2021.
2. This decision is effective on its service date.

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

⁶ TRAC's August 12, 2021 filing does not reference the legal standard for rejecting a verified notice of exemption. Nevertheless, TRAC has not demonstrated that NWPCO's verified notice contains false or misleading information, or that regulation is necessary to carry out the rail transportation policy of 49 U.S.C. § 10101. See Gen. Ry.—Exemption for Acquis. of R.R. Line—in Osceola & Dickinson Cntys., Iowa, FD 34867, slip op. at 4 (STB served June 15, 2007).