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SERVICE DATE - OCTOBER 7, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-384 (Sub-No. 1X)

DELTA SOUTHERN RAILROAD, INC.–ABANDONMENT EXEMPTION– BETWEEN
LAKE VILLAGE, AR, AND SHELburn, LA

Decided: October 5, 2004

Delta Southern Railroad, Inc. (DSR), filed a notice of exemption under 49 CFR 1152 Subpart F-Exempt Abandonments to abandon a 30.0-mile portion of its Lake Providence Line, between milepost 433.0, near Lake Village, AR, and milepost 463.0, near Shelburn, LA. Notice of the exemption was served and published in the Federal Register on June 10, 2004 (69 FR 32657-58). The exemption was scheduled to become effective on July 10, 2004. In a decision served on June 17, 2004, the Board granted the request of DSR to hold this proceeding in abeyance for 90 days (until September 15, 2004), to permit the parties to negotiate a settlement. The June 17, 2004 decision also directed the parties to notify the Board as to the status of the negotiations no later than August 16, 2004. In a letter filed on August 16, 2004, DSR stated that, although the parties had been engaged in negotiations, no agreement had been reached and that it was not willing to hold the proceeding in abeyance beyond September 15, 2004. On September 17, 2004, DSR filed a letter requesting that the Board reinstate this proceeding because the parties are unable to reach an agreement. The request to proceed with the abandonment proposal is reasonable and will be granted. Accordingly, a new effective date and procedural schedule for the filing of documents will be established.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on June 14, 2004. In the EA, SEA indicated that the National Geodetic Survey (NGS) has identified 17 geodetic station markers that may be affected by the proposed abandonment. Therefore, SEA recommends that a condition be imposed requiring DSR to notify NGS 90 days prior to salvage activities to plan for the relocation of the station markers.

In the EA, SEA also indicated that The Department of Arkansas Heritage, Arkansas Historic Preservation Program, has requested information, including a 1:24,000 scale U.S. Geological Survey topographic map that clearly delineates the project boundary. Accordingly, SEA recommends that DSR be required to retain its interest in and take no steps to alter the historic integrity of all sites and structures located on the Arkansas portion of the right-of-way

that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA).¹

The recommended conditions will be imposed. As conditioned, this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. DSR's request to reactivate this proceeding is granted.
3. Upon reconsideration, the exemption of the abandonment of the rail line described above is subject to the conditions that DSR: (1) notify NGS 90 days prior to salvage activities to plan for the relocation of the station markers; and (2) retain its interest in and take no steps to alter the historic integrity of all sites and structures located on the Arkansas portion of the right-of-way that are 50 years old or older until completion of the section 106 process of the NHPA.
4. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 6, 2004, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues, formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),² and trail use/rail banking requests under 49 CFR 1152.29 must be filed by October 18, 2004. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 27, 2004, with the Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001.

A copy of any petition filed with the Board should be sent to DSR's representative: Thomas F. McFarland, P.C., 208 South LaSalle Street – Suite 1890, Chicago, IL 60604-1112.

¹ SEA had recommended imposing a third condition, which would have required DSR to consult with the U.S. Army Corps of Engineers. SEA subsequently learned that a permit under section 404 of the Clean Water Act is not required. Therefore, SEA no longer recommends imposing the consultation condition.

² Each OFA must be accompanied by the filing fee, which currently is set at \$1,100, and will increase to \$1,200, effective October 31, 2004. See Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—2004 Update, STB Ex Parte No. 542 (Sub-No. 11) (STB served Oct. 1, 2004).

Pursuant to the provisions of 49 CFR 1152.29(e)(2), DSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by DSR's filing of a notice of consummation by October 7, 2005, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

5. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary