

SERVICE DATE – MARCH 9, 2020

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1291X

ALCOA ENERGY SERVICES, INC.—ABANDONMENT EXEMPTION—IN MILAM
COUNTY, TEX.

Digest:¹ This decision permits the abandonment of approximately six miles of rail line in Milam County, Tex., subject to an environmental condition.

Decided: March 6, 2020.

On November 21, 2019, Alcoa Energy Services, Inc. (AESI), filed a petition under 49 U.S.C. § 10502 for exemption from the prior approval requirements of 49 U.S.C. § 10903 to abandon approximately six miles of railroad line extending between milepost 0.0 at a point of connection with Union Pacific Railroad Company at Marjorie, Tex., and milepost 6.0 at Sandow, Tex. (the Line). Notice of the petition was served and published in the Federal Register on December 11, 2019 (84 Fed. Reg. 67,765). No comments were filed in response to AESI's petition. As discussed below, the Board will grant the exemption, subject to an environmental condition.

BACKGROUND

According to AESI, common carrier rail operations on the Line ended in February 2018, following the closure of a smelter facility (the Sandow Facility) on the Line. (Pet. 1.) AESI states that it acquired the Line, which constitutes its entire system, at the end of 2018. (*Id.* at 2, 12.) See also Alcoa Energy Servs., Inc.—Acquis. Exemption—Rockdale, Sandow & S. R.R., FD 36257 (STB served Dec. 14, 2018). AESI states that, after almost a year of ownership, there is no current demand for rail service and there are no apparent traffic prospects. (Pet. 3.)² AESI states that, if the petition for exemption is granted, it intends, for the time being, to preserve the Line as private, unregulated trackage, but it cannot rule out the possibility of future salvage. (*Id.* at 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. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² According to the petition, Alcoa USA Corp., an affiliate of AESI, owns the Sandow Facility, which will not be restored to operation. (Pet. 1-2.)

DISCUSSION AND CONCLUSIONS

Pursuant to 49 U.S.C. § 10903, a rail line may not be abandoned without the Board's prior approval. Under 49 U.S.C. § 10502, however, the Board must exempt a transaction or service from regulation when it finds that: (1) continued regulation is not necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. § 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

Detailed scrutiny of the proposed abandonment under 49 U.S.C. § 10903 is not necessary to carry out the RTP in this case. There are no active shippers on the Line. The last shipper to use the Line—a corporate predecessor of Alcoa USA Corp.—ceased operation before AESI acquired the Line, and the record reflects no apparent prospect of future traffic. (Pet. 1, 3.) Further, no objections to the proposed abandonment have been raised. Under these circumstances, granting an exemption would expedite regulatory decisions, foster sound economic conditions in transportation, reduce regulatory barriers to exit, and provide for the expeditious handling of this proceeding. See 49 U.S.C. § 10101(2), (5), (7), (15). Other aspects of the RTP would not be adversely affected.

Similarly, regulation of the proposed abandonment is not needed to protect shippers from the abuse of market power because, as discussed above, there are no shippers on the Line. Furthermore, the Line is stub-ended and therefore not capable of handling overhead traffic. (Pet. 6.)³

Offers of Financial Assistance. The Board will not consider offers of financial assistance (OFA) in this case because no formal expressions of intent to file an OFA were filed by the December 23, 2019 deadline. See 49 C.F.R. § 1152.27(c)(1)(i).

Employee Protection. Where, as here, the carrier is abandoning its entire system, the Board generally does not impose labor protection under 49 U.S.C. § 10502(g), unless the evidence indicates the existence of: (1) a corporate affiliate that will continue substantially similar rail operations; or (2) a corporate parent that will realize substantial financial benefits over and above relief from the burden of deficit operations by its subsidiary railroad. See Miss. & Skuna Valley R.R.—Aban. Exemption—in Yalobusha & Calhoun Ctys., Miss., AB 1089X, slip op. at 3 (STB served Jan. 20, 2012); Wellsville, Addison & Galetton R.R.—Aban. of Entire Line in Potter & Tioga Ctys., Pa., 354 I.C.C. 744, 746 (1978); Northampton & Bath R.R.—Aban. near Northampton & Bath Junction, in Northampton Cty., Pa., 354 I.C.C. 784, 786 (1978). Although the petition indicates that AESI has a corporate affiliate (Alcoa USA Corp.), there is no indication that its affiliate will continue substantially similar rail operations on the Line. Further, the record does not indicate that AESI's corporate parent (Alcoa Corporation) would realize substantial financial benefits over and above relief from the burden of any deficit operations by its subsidiary railroad. As such, the Board will not impose employee protective conditions here.

³ Because regulation of the proposed abandonment is not needed to protect shippers from the abuse of market power, the Board need not determine whether the proposed transaction is limited in scope. See 49 U.S.C. § 10502(a)(2).

Environmental Review. AESI submitted a combined environmental and historic report and notified the appropriate federal, state, and local agencies of the opportunity to submit information concerning the potential environmental impacts of the proposed abandonment. See 49 C.F.R. §§ 1105.7-1105.8, 1105.11. The Board's Office of Environmental Analysis (OEA) issued a Draft Environmental Assessment (Draft EA) for public review and comment on January 17, 2020, analyzing the potential environmental effects of the proposed abandonment. The Draft EA noted that the National Geodetic Survey (NGS) has indicated that there may be geodetic survey markers in the right-of-way that could be disturbed by the proposed abandonment. Accordingly, OEA recommended in the Draft EA a condition requiring AESI to notify NGS at least 90 days prior to beginning salvage activities. Comments on the EA were due by February 14, 2020.

OEA issued its Final EA on February 24, 2020, noting that it received no new comments. OEA recommends that the previously recommended condition be imposed upon any decision granting abandonment authority. If the condition is imposed, OEA believes that the proposed action will not significantly affect the quality of the human environment.

The Board's Analysis of Environmental Issues. The Board adopts the analysis and conclusions made by OEA. As such, the Board adopts the Draft EA (as modified by the Final EA) and Final EA, including the final recommended mitigation measure. The Board is satisfied that OEA has taken the requisite hard look at the potential environmental impacts associated with AESI's proposed abandonment and properly determined that, with the recommended environmental mitigation in the Final EA, the proposed project will not have potentially significant environmental impacts, and that preparation of an EIS is unnecessary.

This action, as conditioned, will not significantly impact the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. § 10502, the Board exempts from the prior approval requirements of 49 U.S.C. § 10903 AESI's abandonment of the Line, subject to the condition set forth in the Final EA.
2. The exemption will be effective April 8, 2020.
3. Petitions for stay are due by March 24, 2020, and petitions to reopen must be filed by March 24, 2020.
4. Pursuant to 49 C.F.R. § 1152.29(e)(2), AESI 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 AESI's filing of a notice of consummation by March 9, 2021, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory barrier to consummation exists at the end of

the one-year period, the notice of consummation must be filed no later than 60 days after the satisfaction, expiration, or removal of the legal or regulatory barrier.

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