

SERVICE DATE – FEBRUARY 16, 2021

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1300X

CATTARAUGUS LOCAL DEVELOPMENT CORP.—
ABANDONMENT EXEMPTION—IN CATTARAUGUS COUNTY, N.Y.

Digest:¹ This decision allows Cattaraugus Local Development Corp. to abandon approximately 12.14 miles of rail line in Cattaraugus County, N.Y., subject to standard employee protective conditions.

Decided: February 11, 2021

Currently before the Board is a petition filed by Cattaraugus Local Development Corp. (CLDC) regarding the proposed abandonment² of approximately 12.14 miles of rail line extending from milepost 426.5, in the Town of New Albion, to the city line of the City of Salamanca in the Town of Salamanca, which is near milepost 414.1,³ in Cattaraugus County, N.Y. (the Line). Notice of the petition was served and published in the Federal Register on

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

² CLDC originally submitted a petition for declaratory order on March 4, 2020, requesting that the Board declare that the Line has been abandoned pursuant to 49 U.S.C. § 10502, or, in the alternative, that CLDC may satisfy the requirements for an abandonment exemption pursuant to 49 U.S.C. § 10502. By decision served on August 5, 2020, the Board docketed CLDC’s petition under Docket No. AB 1300X for consideration under the Board’s abandonment exemption procedures. However, because CLDC had not obtained Board authority when it acquired the Line in 2000, the abandonment proceeding was held in abeyance to permit CLDC to seek after-the-fact authority for its acquisition. CLDC obtained that authority in September 2020. See Cattaraugus Local Dev. Corp.—Acquis. Exemption—Rail Line in Cattaraugus Cnty., N.Y., FD 36435 (STB served Sept. 24, 2020).

³ In the acquisition docket, CLDC noted that milepost 414.1 is the closest mile marker to the southern boundary of the Line but that “the actual [m]ilepost, if it existed,” would be milepost 414.36. CLDC Suppl. 2, Sept. 8, 2020, Cattaraugus Local Dev. Corp.—Acquis. Exemption—Rail Line in Cattaraugus Cnty., N.Y., FD 36435.

December 17, 2020 (85 Fed. Reg. 82,027).⁴ The exemption will be granted subject to standard employee protective conditions.

BACKGROUND

According to CLDC, the Cattaraugus County Industrial Development Agency (IDA) acquired the Line from the Trustees of the Erie Lackawanna Railway Company in 1980, and by the early 1990s, the Line was no longer in operation. (Pet. 1-2.) CLDC states that IDA transferred the Line to CLDC in August 2000, and that, since 2005, the Line has been used as a recreational trail known as the Senator Pat McGee Trail (McGee Trail). (*Id.* at 3.) CLDC further states that it intends to transfer ownership of the Line to the State of New York for continued operation of the McGee Trail. (*Id.*)⁵

DISCUSSION AND CONCLUSIONS

Exemption from 49 U.S.C. § 10903. Under 49 U.S.C. § 10903, a rail line may not be abandoned without prior approval from the Board. Under 49 U.S.C. § 10502, however, the Board must exempt a transaction or service from regulation when the Board 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 necessary to protect shippers from the abuse of market power.

Detailed scrutiny of CLDC's abandonment proposal under 49 U.S.C. § 10903 is not necessary in this case to carry out the RTP. There has been no freight rail service on the Line since the early 1990s.⁶ 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.

⁴ By publication of the notice, this proceeding was removed from abeyance, and the petition for exemption was deemed to have been filed on November 27, 2020, the date on which CLDC satisfied its service requirements.

⁵ On December 1, 2020, the National Association of Reversionary Property Owners filed a comment asserting that interim trail use under the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act), should not be available for the Line. As no request for a notice of interim trail use or abandonment under the Board's Trails Act regulations has been filed, the Board need not address this argument. The Board further notes that no party has previously sought authority from the Board under the Trails Act concerning the development of the McGee Trail on the Line.

⁶ But for the fact that CLDC has not had Board-authorized ownership of the Line for at least two years, the proposed abandonment likely would qualify for the Board's two-year-out-of-service class exemption under 49 C.F.R. part 1152 subpart F. See V & S Ry.—Aban. Exemption—in Kiowa Cnty., Colo., AB 603 (Sub-No. 3X), slip op. at 3-4 (STB served Oct. 23, 2014).

Regulation of the proposed transaction is not necessary to protect shippers from an abuse of market power because there are no active shippers on the Line and no freight traffic has moved over the Line since the early 1990s.⁷ Further, no shipper or other party has filed in opposition to the proposed abandonment.

Employee Protection. Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, the Board will impose the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

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 28, 2020 deadline. See 49 C.F.R. § 1152.27(c)(1)(i).

Environmental and Historic Review. CLDC has submitted a combined environmental and historic report and has notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the 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) has examined the environmental and historic report and analyzed the probable effects of the proposed action on the quality of the human environment.

In a Draft Environmental Assessment (Draft EA) issued on December 18, 2020, OEA concluded that, as proposed, the abandonment of the Line would not significantly affect the quality of the human environment. Comments on the Draft EA were due by January 15, 2021, and one comment was received. The New York State Department of Transportation commented in support of the McGee Trail. In the Final EA, issued on January 22, 2021, OEA did not recommend any environmental or historic preservation conditions. Based on OEA's recommendation, the Board concludes that the proposed abandonment would not significantly affect either the quality of the human environment or the conservation of energy resources.

⁷ 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 abandonment is limited in scope. See 49 U.S.C. § 10502(a)(2).

It is ordered:

1. Under 49 U.S.C. § 10502, the Board exempts from the prior approval requirements of 49 U.S.C. § 10903 the abandonment by CLDC of the Line, subject to the employee protective conditions set forth in Oregon Short Line.
2. This exemption will be effective March 18, 2021.
3. Petitions to reopen and petitions to stay must be filed by March 3, 2021.
4. Pursuant to 49 C.F.R. § 1152.29(e)(2), CLDC 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 CLDC's filing of a notice of consummation by February 16, 2022, 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 satisfaction, expiration, or removal of the legal or regulatory barrier.

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