

SERVICE DATE – MARCH 22, 2021

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1266 (Sub-No. 1X)

CANONIE ATLANTIC CO.—ABANDONMENT EXEMPTION—IN NORFOLK, VA.

Digest:¹ This decision permits the abandonment of approximately 1.4 miles of rail line in Norfolk, Va., subject to standard employee protective conditions.

Decided: March 19, 2021

On December 8, 2020, Canonie Atlantic Co. (CAC), a Class III rail carrier, filed a petition under 49 U.S.C. § 10502 for exemption from the prior approval requirements of 49 U.S.C. § 10903 to abandon an approximately 1.4-mile rail line in Norfolk, Va., between milepost 100.7 at North Junction and milepost 102.1 at St. Julian (the Line).² In its petition, CAC also seeks exemption from the offer of financial assistance (OFA) process at 49 U.S.C. § 10904. Notice of the petition was served and published in the Federal Register on December 28, 2020 (85 Fed. Reg. 84,452). As discussed below, the Board will grant the exemption, subject to environmental and standard employee protective conditions, and deny as moot CAC's petition for exemption from § 10904.

BACKGROUND

According to CAC, it seeks to abandon the Line because it intends to sell the Line to the Virginia Department of Rail and Public Transportation (DRPT) for public use—specifically, commuter rail transportation. (Pet. 1.) CAC states that no freight traffic has moved over the Line in over two years³ and that the only recent use of the Line has been to support intercity passenger service by the National Railroad Passenger Corporation (Amtrak). (Id. at 1, 4.) CAC

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 In a related docket, a verified notice of exemption was filed by Cassatt Management, LLC d/b/a Bay Coast Railroad to discontinue its operations over the Line, as well as over an adjacent line owned by Norfolk Southern Railway Company between milepost 100.7 and milepost 100.3. See Cassatt Mgmt., LLC—Discontinuance of Serv. Exemption—in Norfolk, Va., AB 1267 (Sub-No. 1X) (STB served Dec. 28, 2020).

³ According to CAC, it filed a petition (rather than a verified notice under the two-year out-of-service class exemption) because it is also seeking an exemption from the OFA process at § 10904. (Pet. 3.)

states that DRPT intends to continue to use the Line for the same purposes as it is currently being used. (Id. at 1.)

In addition to seeking an exemption from 49 U.S.C. § 10903 to abandon the Line, CAC also seeks an exemption from the OFA procedures at 49 U.S.C. § 10904. (Id. at 1, 6.) In support, CAC argues that there is no overriding public need for freight rail service on the Line and that the right-of-way is needed for a valid public purpose, i.e., DRPT's plans to utilize the Line to facilitate Amtrak passenger rail service. (Id. at 6.) DRPT filed a letter in support of CAC's petition on December 9, 2020.

DISCUSSION AND CONCLUSIONS

Exemption from 49 U.S.C. § 10903. 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. The record indicates that no freight traffic has moved over the Line in over two years, there has been no overhead traffic on the Line during the period of non-service that would need to be diverted, there are no customers on the Line, and the only recent use of the Line has been to support intercity passenger service for Amtrak. (Pet. 1, 4.) 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 by use of the exemption process.

Regulation of the proposed abandonment is also not needed to protect shippers from the abuse of market power. As discussed above, there are no customers on the Line, no shippers have requested service over the Line in over two years, and the only use of the Line in that period has been to provide support for Amtrak's intercity passenger rail service. (Pet. 4.)⁴

Employee Protection. Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, the Board will impose upon CAC 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).

⁴ Because the Board finds that regulation of the proposed abandonment is not necessary 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).

Environmental and Historic Review. CAC submitted a combined environmental and historic report with its petition 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 report, verified the data it contains, and analyzed the potential effects of the proposed action on the quality of the human environment.

In a Draft Environmental Assessment (Draft EA) served on February 5, 2021, OEA recommended that the Board impose a condition requiring CAC to retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) eligible for listing or listed in the National Register of Historic Places (National Register) until completion of the Section 106 process of the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108. (Draft EA 5.)

Comments on the Draft EA were due by March 8, 2021. OEA received one comment from the Virginia Department of Historic Resources (State Historic Preservation Office or SHPO), indicating that, based upon the information provided to them, no historic properties listed in or eligible for inclusion in the National Register would be affected within the Area of Potential Effect of the proposed abandonment.

On March 11, 2021, OEA issued its Final Environmental Assessment (Final EA) stating that, pursuant to Section 106 of the NHPA and following consultation with the SHPO and the public, OEA has determined that the proposed abandonment would not affect historic properties listed in or eligible for inclusion in the National Register. Accordingly, OEA recommends that the Section 106 condition that was previously recommended in the Draft EA not be imposed. Therefore, OEA no longer recommends that any conditions be imposed in this proceeding. The Board agrees with OEA's analysis and recommendation and, therefore, will not impose the historic preservation condition.

Offers of Financial Assistance. CAC also petitions the Board to exempt the transaction from the OFA requirements at 49 U.S.C. § 10904. Because no formal expressions of intent to file an OFA were filed by the January 7, 2021 deadline, the Board will not consider OFAs in this case, and CAC's petition for exemption from § 10904 will be denied as moot.

This action 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 CAC's abandonment of the Line, subject to the employee protective conditions set forth in Oregon Short Line.
2. CAC's request for exemption from the OFA procedures is denied as moot.
3. The exemption will be effective April 21, 2021.

4. Petitions to reopen and petitions to stay must be filed by April 6, 2021.

5. Pursuant to 49 C.F.R. § 1152.29(e)(2), CAC 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 CAC's filing of a notice of consummation by March 22, 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.