

SERVICE DATE – JANUARY 28, 2022

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1319X

CITY UTILITIES OF SPRINGFIELD, MO.—ABANDONMENT EXEMPTION—
IN GREENE COUNTY, MO.

Digest:¹ This decision permits the abandonment of approximately 1.24 miles of rail line in Greene County, Mo., subject to conditions.

Decided: January 27, 2022

On October 12, 2021, City Utilities of Springfield, Mo. (City Utilities), a noncarrier, filed a petition under 49 U.S.C. § 10502 for exemption from the prior approval requirements of 49 U.S.C. § 10903 to abandon a 1.24-mile rail line extending from approximately milepost 248.86 to approximately milepost 250.1 in Greene County, Mo. (the Line). In its petition, City Utilities 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 November 1, 2021 (86 Fed. Reg. 60,330).² As discussed below, the Board will grant the abandonment exemption, subject to historic and standard employee protective conditions, and deny as moot City Utilities' petition for exemption from § 10904.

BACKGROUND

City Utilities states that it acquired title to the Line and other track from Burlington Northern Railroad Company (BN) through deeds dated January 15, 1986, and July 21, 1987, and that BN and its successor, BNSF Railway Company (BNSF), provided rail operations over the Line to deliver coal to City Utilities' James River Power Station (JRPS) until that facility ceased burning coal in 2015.³ (Pet. 2-3.) City Utilities states that it now seeks to abandon the Line so

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 As explained in the Federal Register notice, pursuant to 49 C.F.R. § 1152.27(c)(1)(i) formal expressions of intent to file an OFA were due by November 12, 2021.

³ City Utilities states that, in 1983, BN abandoned a portion of rail line that extended between milepost 250.1 and milepost 257.6 but did not remove the tracks beyond milepost 250.83. See Burlington N. R.R.—Aban.—in Christian & Greene Cnty., Mo., AB 6 (Sub-No. 148) (ICC served July 15, 1983). Consequently, City Utilities asserts that the track it

that the right-of-way may be converted to a multi-purpose recreational trail that would be incorporated into a regional trail system.⁴ (Pet. 3.) City Utilities asserts that abandonment is warranted as the Line has been out of service since 2015, no other shippers are located on the Line, and neither BNSF nor City Utilities has any intention of operating over the Line. (*Id.*)

In addition to seeking an exemption from 49 U.S.C. § 10903 to abandon the Line, City Utilities also seeks an exemption from the OFA procedures at 49 U.S.C. § 10904. (Pet. 2, 5.) In support, City Utilities 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., City Utilities' intention to incorporate the Line's right-of-way into an existing regional multi-use recreational trail. (*Id.* at 5.)

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 since 2015, there are no customers on the Line and, therefore, no overhead traffic on the Line would need to be diverted. (Pet. 1, 3.) 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.⁵

acquired from BN consisted of both abandoned track and track—i.e., the Line—that was still subject to the jurisdiction of the Board's predecessor, the Interstate Commerce Commission (ICC). (Pet. 2-3.)

⁴ City Utilities states that, while performing due diligence during the process of conversion, it realized that it inadvertently neglected to seek acquisition authority for the Line from the ICC when City Utilities acquired the Line from BN. (*Id.* at 3.) City Utilities obtained after-the-fact acquisition authority in October 2021. See City Utils. of Springfield, Mo.—Acquis. Exemption—Line of BNSF Ry. in Greene Cnty., Mo., FD 36543 (STB served Oct. 15, 2021).

⁵ But for the fact that City Utilities has not had Board-authorized ownership of the Line for at least two years, the proposed abandonment would likely 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).

See 49 U.S.C. § 10101(2), (5), (7), (15). Other aspects of the RTP would not be adversely affected.⁶

Regulation of the proposed abandonment is also not needed to protect shippers from the abuse of market power because there are no active shippers on the Line and no freight traffic has moved over the Line since 2015. (Pet. 6.)⁷ Further, no shipper or other party has filed an objection to the proposed abandonment.

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 City Utilities 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).

Environmental and Historic Review. City Utilities submitted a combined environmental and historic report with its petition and 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 December 10, 2021, 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 10, 2022.

⁶ As noted above, City Utilities acquired title to the Line through two conveyances in 1986 and 1987 but did not seek the requisite regulatory authority for the acquisition until October 15, 2021—three days after filing its petition for abandonment exemption. The Board has found that acquiring a line of railroad for the purpose of abandoning rather than operating over it constitutes a misuse of the Board's acquisition exemption procedures. See Land Conservancy of Seattle & King Cnty.—Acquis. & Operation Exemption—Burlington N. & Santa Fe Ry., FD 33389, slip op. at 3 (STB served Sept. 26, 1997) (notice of exemption revoked where party filed for abandonment within two months of acquiring the line), pet. for judicial review dismissed, 238 F.3d 429 (9th Cir. 2000). The facts presented here and in City Utilities of Springfield, Missouri—Acquisition Exemption—Line of BNSF Railway in Greene County, Missouri, Docket No. FD 36543, however, differ from Land Conservancy in that the Board granted City Utilities' acquisition authority request simply to remedy a prior failure to obtain such authority. Indeed, City Utilities acquired the Line in 1986 and 1987 with the intent to continue rail operations, and did so for nearly 30 years—until 2015 when City Utilities' JRPS ceased burning coal for fuel. Thus, under the facts and circumstances here, the Board finds that City Utilities did not acquire the Line for the purpose of abandoning it, and Land Conservancy therefore does not apply.

⁷ 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).

In its Final EA, issued on January 14, 2022, OEA notes that it received one comment from the Cherokee Nation. The Cherokee Nation commented that it does not foresee the proposed abandonment impacting the Cherokee Nation's cultural resources. Nevertheless, it requests that the Board halt project activities and contact the Cherokee Nation if items of cultural significance are discovered during any salvage activities. OEA therefore recommends that the Board impose a condition providing that, in the event that any unanticipated archaeological sites, human remains, funerary items or associated artifacts are discovered during the railroad's abandonment-related salvage activities, the railroad will immediately cease all work and notify OEA and other specified consulting parties to determine whether appropriate mitigation measures are necessary.

Accordingly, based on OEA's recommendation, the condition proposed in the Final EA will be imposed.

Offers of Financial Assistance. City Utilities 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 November 12, 2021 deadline, the Board will not consider OFAs in this case, and City Utilities' petition for exemption from § 10904 will be denied as moot.

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 City Utilities' abandonment of the Line, subject to the employee protective conditions set forth in Oregon Short Line and the condition that, in the event that any unanticipated archaeological sites, human remains, funerary items or associated artifacts are discovered during the railroad's abandonment-related salvage activities, City Utilities shall immediately cease all work and notify OEA, interested Federally recognized tribes, and the Missouri State Historic Preservation Officer (SHPO), pursuant to 36 C.F.R. § 800.13(b). OEA will then consult with the SHPO (or the Tribal Historic Preservation Officer), the Cherokee Nation, other interested federally recognized tribes, City Utilities, and other consulting parties, if any, to determine whether appropriate mitigation measures are necessary.

2. The exemption will be effective February 27, 2022.

3. City Utilities' request for exemption from the OFA procedures is denied as moot.

4. Petitions to reopen and petitions to stay must be filed by February 14, 2022.

5. Pursuant to 49 C.F.R. § 1152.29(e)(2), City Utilities 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 effectuated by City Utilities' filing of a

notice of consummation by January 28, 2023, 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 Fuchs, Hedlund, Oberman, Primus, and Schultz.