

SERVICE DATE – OCTOBER 3, 2022

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1322X

WOLF CREEK RAILROAD LLC—ABANDONMENT EXEMPTION—IN GIBSON
COUNTY, TENN.

Digest:¹ This decision allows Wolf Creek Railroad LLC to abandon an approximately 10-mile railroad line located within the Milan Army Ammunition Plant in Gibson County, Tenn.

Decided: September 30, 2022

On June 16, 2022, Wolf Creek Railroad LLC (WCR) 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 10-mile railroad line (the Line) located within the Milan Army Ammunition Plant (the Plant) in Gibson County, Tenn. The Line constitutes WCR's entire railroad system. Notice of the petition was served and published in the Federal Register on July 6, 2022 (87 Fed. Reg. 40,332). No comments opposing the proposed abandonment were filed. The Board will grant the petition for exemption.

BACKGROUND

According to WCR, it leased the Line from the U.S. Army Joint Munitions Command (JMC) through JMC's representative, American Ordnance LLC. (WCR Pet. 1.) A portion of the Plant had been repurposed as a business park, and WCR provided common carrier rail service to customers there.² (WCR Pet. 2.) On March 31, 2021, the JMC notified WCR that it was terminating the lease as of December 31, 2021, and that WCR must cease its rail operations and vacate the Plant. (Id.) WCR represents that the last customer on the Line was a plastics-transload customer that stopped shipping on the Line in October 2021. (Id.) Thus, WCR seeks to abandon the Line.

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 See Wolf Creek R.R.—Lease & Operation Exemption—Am. Ordnance LLC, FD 36236 (STB served Nov. 18, 2018).

DISCUSSION AND CONCLUSIONS

Exemption from 49 U.S.C. § 10903. Under 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 ceased shipments in October 2021. (WCR Pet. 2.) Further, no objections to the proposed abandonment have been raised. Under these circumstances, granting an exemption would expedite regulatory decisions, reduce regulatory barriers to exit, and provide for the expeditious handling of this proceeding. See 49 U.S.C. § 10101(2), (7), (15). Other aspects of the RTP would not be adversely affected by the use of the exemption process.

Regulation of the proposed abandonment is also not needed to protect shippers from the abuse of market power.³ As discussed above, no shippers remain on the Line.

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 Cntys., Miss., AB 1089X, slip op. at 3 (STB served Jan. 20, 2012); Wellsville, Addison & Galeton R.R.—Aban. of Entire Line in Potter & Tioga Cntys., Pa., 354 I.C.C. 744, 746 (1978); Northampton & Bath R.R.—Aban. near Northampton & Bath Junction, in Northampton Cnty., Pa., 354 I.C.C. 784, 786 (1978). There is no indication that a corporate affiliate will continue substantially similar rail operations on the Line or that a corporate parent would realize substantial financial benefits over and above relief from the burden of any deficit operations by its subsidiary railroad. Therefore, the Board will not impose employee protective conditions here.

Environmental and Historic Review. WCR 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.

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

In a Draft Environmental Assessment (Draft EA) served on August 16, 2022, 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 August 31, 2022. No comments on the Draft EA were received. In the Final Environmental Assessment, issued on September 20, 2022, OEA recommended no 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. Therefore, no environmental or historic preservation conditions are required.

Offers of Financial Assistance. Because no formal expressions of intent to file an offer of financial assistance (OFA) were filed by the July 18, 2022 deadline, the Board will not consider OFAs in this case. See 49 C.F.R. § 1152.27(c)(1)(i).

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 of the Line by WCR, as described above.
2. This exemption will be effective November 3, 2022.
3. Petitions to reopen and petitions to stay must be filed by October 19, 2022.
4. Pursuant to 49 C.F.R. § 1152.29(e)(2), WCR 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 WCR's filing of a notice of consummation by October 4, 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 the satisfaction, expiration, or removal of the legal or regulatory barrier.

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