

SERVICE DATE – JUNE 5, 2023

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1066 (Sub-No. 3X)

CITY OF PEORIA, ILL.—DISCONTINUANCE OF SERVICE EXEMPTION—IN PEORIA
COUNTY, ILL.

Digest:¹ The Board grants the City of Peoria, Ill. authority to discontinue rail service over an approximately 1.1-mile portion of a rail line on behalf of the Central Illinois Railroad Company.

Decided: June 5, 2023

On February 15, 2023, the City of Peoria, Ill. (the City), a noncarrier, filed a petition under 49 U.S.C. § 10502 seeking an exemption from the prior approval requirements of 49 U.S.C. § 10903 “permitting the City, on behalf of the no longer extant Central Illinois Railroad Company (‘CIRY’), to discontinue service” over an approximately 1.1-mile portion of a railroad line known as the Kellar Branch, extending between mileposts 1.71 and 2.78 (the Line), located in the City. The City also seeks an exemption from the offer of financial assistance (OFA) provisions of 49 U.S.C. § 10904. Notice of the petition was served and published in the Federal Register on March 7, 2023 (88 Fed. Reg. 14,231). No comments opposing the City’s petition have been filed. For the reasons discussed below, the Board will grant the City’s petition.

BACKGROUND

The City states that it purchased the Kellar Branch from the trustee of the Chicago, Rock Island & Pacific Railroad Company in 1984 after the trustee secured authority to abandon it in 1980.² (City Pet. 5.) The City explains that CIRY was authorized to operate over the Kellar Branch in Central Illinois Railroad—Operation Exemption—Rail Line of the City of Peoria & the Village of Peoria Heights in Peoria & Peoria Heights, Peoria County, Ill., FD 34518 et al. (STB served July 28, 2004). (City Pet. 6.) According to the City, CIRY ceased operations in

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 The Board has found that the Kellar Branch was fully abandoned when the City acquired it. Pioneer Indus. Ry.—Discontinuance of Serv. Exemption—Line in Peoria Cnty., Ill., AB 1066 (Sub-No. 1X) et al., slip op at 5 (STB served Apr. 16, 2010); City of Peoria—Adverse Discontinuance—Pioneer Indus. Ry., AB 878, slip op. at 1 (STB served Nov. 19, 2007).

2010 and was involuntarily dissolved in 2011. (Id. at 3, 9.) In addition, the City asserts that CIRY's prior owners cannot be located and CIRY has failed to abide by its operating, maintenance, and other responsibilities under its prior operating lease with the City, which has been terminated. (Id. at 4.)

The City states that the only customer on the Line, O'Brien Steel Service Co. (O'Brien Steel), has been without rail service since 2010 following the cessation of CIRY's operations.³ (Id. at 3.) The City explains that, after discontinuance, it intends to transfer approximately 550 feet of right-of-way and track located at the south end of the Line to O'Brien Steel, which plans to use the track as a private industrial spur to connect to the Tazewell & Peoria Railroad.⁴ (Id.)

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 10903, a railroad providing transportation under the Board's jurisdiction may not discontinue its operations without the prior approval of the Board.⁵ 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 necessary to protect shippers from the abuse of market power. The City has asked the Board to grant such an exemption here.

Before determining whether the requirements for granting an exemption under § 10502 are satisfied in this case, the Board must determine whether the City may seek an exemption on behalf of CIRY. The Board is unaware of any prior cases in which a state entity that owns a previously abandoned line has filed a petition for exemption to discontinue service on behalf of a defunct operator of the line. However, in cases where a carrier was operating pursuant to a

³ The City states that Pioneer Industrial Railway (PIRY) obtained nonexclusive local trackage rights over the Line in 2010, see Pioneer Indus. Ry. Co.—Trackage Rights Exemption—Cent. Ill. R.R., FD 35341 (STB served. Jan. 14, 2010), but has not used them since CIRY's dissolution in 2011. (Id. at 9.) PIRY filed a verified notice of exemption for discontinuance of those trackage rights on February 15, 2023, which became effective on April 6, 2023. Pioneer Indus. Ry.—Discontinuance of Trackage Rts. Exemption—in Peoria Cnty., Ill., AB 1056 (Sub-No. 1X) (STB served Apr. 7, 2023).

⁴ The City attached to its petition a letter from O'Brien Steel supporting the City's petition.

⁵ Typically, where a state entity acquires an abandoned line and contracts with an operator to provide service, the operator obtains a modified certificate of public convenience and necessity pursuant to 49 C.F.R. § 1150.23. Under a modified certificate, to discontinue service the operator need not obtain Board authority but merely must provide 60 days' notice. See 49 C.F.R. §§ 1150.22, 1150.24. Here, however, for reasons that are not clear, CIRY sought and obtained standard operating authority over the Line rather than a modified certificate. Therefore, the modified certificate rule allowing discontinuance without obtaining Board authority does not apply.

modified certificate, the Board has accepted termination notices filed by line owners on behalf of operators where (1) the operator has ceased operating on the line, (2) the agreement granting operating rights to the operator has expired, and (3) the operator is no longer recognized as a corporate entity in the state where the line is located. See, e.g., Nobles Rock R.R.—Modified Rail Certificate, FD 33792, slip op. at 2 (STB served May 18, 2021).

The same conditions are present in this case: CIRY has ceased operating on the Line, its operating agreement has been terminated, and it is no longer recognized as a corporate entity in Illinois. Because the Board, under certain circumstances, allows state entities to effectuate discontinuance on behalf of defunct operators that held modified certificates, the Board finds that it is appropriate to consider the City's unopposed petition for discontinuance on behalf of an entity that could have operated pursuant to a modified certificate where those same circumstances are present. To reject the petition would impose an additional regulatory burden on the City and O'Brien Steel—neither of which are responsible for CIRY's failure to seek discontinuance authority—in their efforts to enable O'Brien Steel to resume shipping via rail. Impeding those efforts would be contrary to the RTP. See 49 U.S.C. §§ 10101(2), (5), (7), (15).

Detailed examination of the City's proposed discontinuance under 49 U.S.C. § 10903 is not necessary to carry out the RTP in this case. An exemption from the application process would promote a fair and expeditious regulatory decision-making process, reduce regulatory barriers to exit, and result in the efficient handling of this proceeding. 49 U.S.C. §§ 10101(2), (7), (15). Other aspects of the RTP would not be adversely affected by the exemption.

The Board also finds that regulation under 49 U.S.C. § 10903 is not necessary to protect shippers from the abuse of market power. The only shipper on the line supports the petition and plans to use a portion of the Line as an industrial spur to connect to the Tazewell & Peoria Railroad.

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. However, in this case, there is no carrier and there are no employees. Therefore, the Board will not impose any employee protective conditions.

Because no formal expressions of intent to file an offer of financial assistance (OFA) to subsidize continued rail service or to acquire the Line were filed by the March 17, 2023 deadline, the Board will not consider OFAs in this case. See 49 C.F.R. § 1152.27(c)(1)(i). And, because the Line was previously abandoned, the Board need not consider trail use requests under 16 U.S.C. § 1247(d) or requests to negotiate for public use of the Line under 49 U.S.C. § 10905.⁶

⁶ See Providence & Worcester R.R.—Discontinuance of Serv. Exemption—in Middlesex Cnty., Conn., AB 254 (Sub-No. 11X) (STB served July 3, 2019); Wis. Cent. v. STB, 112 F.3d 881, 883-84, 889-90, 892 (7th Cir. 1997) (finding that the subsequent lease of an abandoned line to an operator who wishes to provide common carrier service over that line subjects the operator and the service it provides to the agency's regulatory power, but not the

Furthermore, no environmental review is required here where the underlying right-of-way was previously abandoned and where there is no indication that the discontinuance will result in potentially significant environmental impacts. See 49 C.F.R. § 1105.6(c)(1).

It is ordered:

1. Under 49 U.S.C. § 10502, the Board exempts the discontinuance of CIRY's service on the Line from the prior approval requirements of 49 U.S.C. § 10903 and from the OFA provisions of 49 U.S.C. § 10904.

2. This decision is effective on its service date.

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

owner and its property unless the owner takes an affirmative act indicating its willingness and ability to provide service in the lessee's stead).