

SERVICE DATE—JUNE 23, 2023

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 590 (Sub-No. 2X)

MARYLAND TRANSIT ADMINISTRATION—DISCONTINUANCE AND
ABANDONMENT EXEMPTION—IN WICOMICO COUNTY, MD.

Decided: June 23, 2023

On May 9, 2023, the Maryland Transit Administration (MTA) filed a verified notice of exemption pursuant to 49 C.F.R. Part 1152 subpart F—Exempt Abandonments & Discontinuances of Service, to abandon and discontinue service over an approximately 4.19-mile line of railroad in Wicomico County, Md., extending between Rowastico Creek just north of Hebron, Md., (Station Number 2645+53) and the line's intersection with Brick Kiln Road close to Owens Branch Road near Salisbury, Md. (Station Number 2869+18) (the Hebron-Salisbury Line or Line). For the reasons discussed herein, the verified notice will be dismissed for lack of jurisdiction.

BACKGROUND

MTA is a unit of the Maryland Department of Transportation (MDOT) and the State of Maryland (State). MTA states in its verified notice that the Hebron-Salisbury Line was part of several rail lines purchased by the State for MDOT from the Penn Central Corporation (successor to the Penn Central Transportation Company) and the Baltimore and Eastern Railroad Company in 1982, following those railroads' bankruptcy and passage of the Final System Plan (FSP). (Notice 2.)¹

According to MTA, there has been no service on the Hebron-Salisbury Line since it was acquired by the State in 1982. (Id.) MTA states that it has recently undertaken discussions with Wicomico County (County) regarding the County's potential acquisition of a portion of the Line for "non-rail related" purposes. (Id. at 2-3.) According to the verified notice, MTA has been unable to locate any abandonment proceedings or any other Interstate Commerce Commission (ICC) or Board proceedings involving the Line subsequent to its designation in the FSP. (Id. at 3.) MTA states that it has filed for abandonment authority in compliance with the Board's

¹ According to MTA, the FSP provided for the transfer of certain lines to the Consolidated Rail Corp. (Conrail), but the Hebron-Salisbury Line was part of a longer rail line called the Mardela Track that was not approved for transfer to Conrail. (Id.) MTA states that the FSP instead provided that the Mardela Track should be offered for sale to the Southern Railway, but if the offer was not accepted, the Mardela Track would not be designated for transfer to Conrail. (Id.)

procedures to ensure that the Line “is completely removed from the Board’s jurisdiction” prior to any transfer to the County. (Notice 3.)

DISCUSSION AND CONCLUSIONS

MTA states in its notice that, as owner of the Hebron-Salisbury Line, it “is exempt from the Board’s jurisdiction pursuant to 49 C.F.R. § 1150.22,” (Notice 3) the regulation covering acquisitions made pursuant to Common Carrier Status of States, State Agencies & Instrumentalities, & Pol. Subdivisions (Common Carrier Status of States), 363 I.C.C. 132 (1980), aff’d sub nom. Simmons v. ICC, 697 F.2d 326 (D.C. Cir. 1982).² Assuming MTA’s assertion that the Line was acquired under Common Carrier Status of States is accurate, the notice is unnecessary as the Line would already be considered authorized for abandonment and the Board does not have the authority to publish it. Therefore, given MTA’s assertion, the verified notice will be dismissed.

Under Common Carrier Status of States, states are exempt from the Board’s regulatory requirements for acquisition of rail lines that have already been approved for abandonment or that have been abandoned. Common Carrier Status of States, 363 I.C.C. at 135. Therefore, based on MTA’s assertion, the Line would have previously been authorized for abandonment and there is no indication that anything ever occurred to extinguish that authorization. The authority MTA now seeks is therefore unnecessary based on MTA’s own assertion. See City of Fishers—Pet. for Partial Revocation of Exemption, FD 36137 (STB served May 31, 2018). In addition, MTA, as a noncarrier state entity under Common Carrier Status of States, is exempt from Board regulation. City of Fishers, FD 36137, slip op. at 5, citing Common Carrier Status of States. Furthermore, no party has presented any evidence suggesting MTA’s assertion is inaccurate.

Thus, because MTA asserts that it acquired the Hebron-Salisbury Line under Common Carrier Status of States, and no evidence has currently been presented to the contrary, MTA’s notice of exemption will be dismissed for lack of jurisdiction.

² MTA’s conclusion that the acquisition occurred subject to Common Carrier Status of States is supported by a Board statement in a prior proceeding that “[t]he rail lines acquired by MDOT from Penn Central Corporation in 1982 had already either been abandoned or authorized for abandonment, and, as a result, their acquisition did not give the state agency common carrier status.” Maryland Transit Admin.—Pet. for Declaratory Ord., FD 34975, slip op. 8 n.16 (STB served Sept. 19, 2008) (emphasis added) (citing 49 C.F.R. § 1150.22 and Common Carrier Status of States). The Hebron-Salisbury Line appears to be among that group of rail lines. MTA included a copy of the 1982 deed in which the group of lines were conveyed from the Penn Central Corporation to the State in Maryland Transit Admin.—Aban. Exemption—in Somerset Cnty., Md. (MTA/Somerset), AB 590 (Sub-No. 1X) (STB served May 14, 2015). See MTA Notice, AB 590 (Sub-No. 1X), Nov. 26, 2014, Ex. D. This deed included the Hebron-Salisbury Line.

It is ordered:

1. MTA's verified notice of exemption is dismissed.
2. This decision is effective on its date of service.

By the Board, Mai T. Dinh, Director, Office of Proceedings.