

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. AB 1335X

MERIDIAN & BIGBEE RAILROAD, L.L.C.
- DISCONTINUANCE OF INCIDENTAL OVERHEAD TRACKAGE RIGHTS -
IN LOWNDES AND MONTGOMERY COUNTIES, AL

SUPPLEMENT

(color images included)

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Dated: November 21, 2023

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On November 3, 2023, the Board issued Decision No. 1 in Docket No. FD 36727 embracing the Meridian & Bigbee Railroad, L.L.C. (“MNBR”) Discontinuance of Incidental Overhead Trackage Rights. In Decision No. 1, the Board stated that MNBR could not invoke the Board’s class exemption procedures at 49 C.F.R. part 1152 subpart F to discontinue its incidental overhead trackage rights over a 14-mile rail line extending between milepost XXB189 near Burkville and terminating at Montgomery Yard in Montgomery, AL (the “Subject Line”) because MNBR could not certify that no local traffic has moved over the Subject Line for two years. The Board did, however, state that it would consider an individual exemption for MNBR’s discontinuance on its own motion and stated that “MNBR may supplement the record ... with any additional information and argument” that MNBR “would like the Board to consider in determining whether the proposed discontinuance meets the exemption standard of 49 U.S.C. §10502(a).”¹ MNBR is providing this supplement to demonstrate that the MNBR discontinuance meets the Board’s criteria for granting an individual discontinuance exemption.

This supplement incorporates the facts from MNBR’s October 6, 2023, notice of exemption (the “October 6 Notice”).

¹ Decision No. 1, slip op. at 7.

ARGUMENT SUPPORTING THE GRANTING OF AN INDIVIDUAL EXEMPTION FOR THE DISCONTINUANCE OF MNBR'S INCIDENTAL OVERHEAD TRACKAGE RIGHTS

The Board has jurisdiction over the proposed discontinuance of overhead trackage rights pursuant to 49 U.S.C. §10903. Under 49 U.S.C. §10502, the Board must exempt a transaction from regulation when it finds that: (1) regulation is not necessary to carry out the rail transportation policy ("RTP") of 49 U.S.C. §10101; and (2) either (a) the transaction is of limited scope, or (b) regulation is not necessary to protect customers from the abuse of market power.

The legislative history of Section 10502 shows that Congress intended for the Board to use its exemption authority to free certain transactions from the administrative and financial costs associated with continued regulation. When enacting the Staggers Rail Act of 1980, Pub. L. No. 96-488, 94 Stat. 1895, Congress encouraged the Board's predecessor agency to use its exemption authority liberally:

The policy underlying this provision is that while Congress has been able to identify broad areas of commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining the specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with the policies of this Act, the Commission will pursue partial and complete exemption from remaining regulation.

H.R. Rep. No. 1430, 96th Cong. 2d Sess. 105 (1980). See also *Exemption From Regulation – Boxcar Traffic*, 367 I.C.C. 424, 428 (1983), vacated and remanded on other grounds, *Brae Corp. v. United States*, 740 F.2d 1023 (D.C. Cir. 1984). Congress reaffirmed this policy in the conference report accompanying the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, which re-enacted the rail exemption as Section 10502. H.R. Rep. No. 422, 104th Cong. 1st Sess. 168-69 (1995).

Unless the requested exemption is granted, MNBR's discontinuance of incidental overhead

trackage rights would be subject to 49 U.S.C. §10903 and the Board's regulations implementing that section at 49 C.F.R. Part 1152. This transaction should be exempted from regulatory requirements because it satisfies the standards of Section 10502: (1) regulation is not necessary to carry out the RTP; (2) the transaction is of limited scope, and (3) the transaction will not result in an abuse of market power.

As noted in the October 6 Notice, MNBR proposes to discontinue its overhead trackage rights conditioned on CSXT's acquisition of MNBR's line of railroad between Burkville and Myrtlewood. The trackage rights which were used to connect MNBR's line to an interchange with CSXT in Montgomery would no longer be necessary once CSXT acquires MNBR's line. And indeed, MNBR would not be able to exercise the trackage rights because it would not physically be able to reach Burkville.

Detailed scrutiny of MNBR's proposed discontinuance under 49 U.S.C. §10903 is not necessary to carry out the RTP. MNBR merely holds incidental overhead trackage rights over the Subject Line and holds no rights to serve, and has never served, local traffic. CSXT has continuously held and will continue to hold the right and obligation to serve local traffic along the Subject Line. 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) and (7), (15). Additionally, granting an exemption for MNBR's proposed discontinuance will foster sound economic conditions and encourage efficient management of railroads. 49 U.S.C. §§10101 (5), and (9). Other aspects of the rail transportation policy will not be adversely affected.

This transaction is of limited scope because the Subject Line is only 14-miles long and MNBR does not have the right to provide (and has not provided) any local service. 49 U.S.C.

§10502(a)(2)(A). CSXT provides local service on the Subject Line and, as a result, no shipper will lose rail service or experience an interruption of rail service because of this discontinuance. Further, MNBR does not intend to exercise its discontinuance authority over the Subject Line unless and until CSXT consummates its acquisition transaction in Docket No. FD 36727.

MNBR's proposed discontinuance is of limited scope and, therefore, it is not necessary for MNBR to demonstrate that regulation is not needed to protect shippers from the abuse of market power. Nevertheless, regulation of the MNBR discontinuance is not needed to protect shippers from the abuse of market power because MNBR never had the right to provide local service. Local service will continue to be provided by CSXT, and thus, no interruption of rail service will occur as a result of this discontinuance of these incidental overhead trackage rights.

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For the reasons set forth above, MNBR respectfully requests that the Board determine that the proposed discontinuance of incidental overhead trackage rights on the Subject Line proposed in the October 6 Notice meets the standards of 49 U.S.C. 10502(a) for an individual exemption.

Respectfully submitted,



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Dated: November 21, 2023

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing Supplement was served on the following parties of record via email or first-class mail.

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Dated: November 21, 2023