

SERVICE DATE – MARCH 1, 2024

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1296 (Sub-No. 1X)

R. J. CORMAN RAILROAD PROPERTY, LLC—ABANDONMENT EXEMPTION—
IN CAMPBELL COUNTY, TENN.

Digest:¹ This decision permits R. J. Corman Railroad Property, LLC, to abandon approximately 3.67 miles of rail line in Campbell County, Tenn., subject to standard employee protective conditions.

Decided: March 1, 2024

On April 21, 2023, R. J. Corman Railroad Property, LLC (RJC Railroad Property), a non-operating Class III rail carrier, filed with the Board a petition under 49 U.S.C. § 10502 for exemption from the prior approval requirements of 49 U.S.C. § 10903 to abandon approximately 3.67 miles of rail line in Campbell County, Tenn. (the Line). The Line begins as an extension from the Oneida Line at milepost 33 and extends approximately 2.0 miles along the Beech Fork (the Beech Fork Segment) reaching a junction from which it continues in a southeasterly direction along the Stony Fork towards Clinchmore, Tenn., for approximately 1.67 miles, where it reaches a dead-end at the former Clinchmore Mine (the Stony Fork Segment). RJC Railroad Property also seeks exemptions and waivers relating to the Board's offer of financial assistance (OFA), public use, and interim trail use provisions. Notice of RJC Railroad Property's petition was served and published in the Federal Register on December 8, 2023 (88 Fed. Reg. 85,716).

No replies to RJC Railroad Property's petition were filed. The Board will grant the exemption from 49 U.S.C. § 10903 for the Line, subject to standard employee protective conditions.

BACKGROUND

RJC Railroad Property explains that this petition for exemption relates to the notice of exemption it filed in R.J. Corman Railroad Property, LLC—Abandonment Exemption—in Scott, Campbell, & Anderson Counties, Tenn. (Oneida Line Proceeding), Docket No. AB 1296X, where RJC Railroad Property sought authority to abandon the Oneida Line. (Pet. 3.) Notice of that exemption was served and published in the Federal Register on March 9, 2020 (85 Fed. Reg. 13,696), and became effective on June 26, 2020. Oneida Line Proceeding, AB 1296X, slip op. at 1 (STB served Nov. 17, 2022). However, on May 26, 2021, Anderson County, Tenn., filed a

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).

petition to reopen that proceeding, claiming that abandonment of the Oneida Line would strand a branch line from the interstate rail network and asking the Board to reopen the proceeding and either deny the exemption or vacate the proceeding. (*Id.*) The Board granted Anderson County's petition in part, reopening the proceeding and conditioning the abandonment of the Oneida Line on the abandonment of other 49 U.S.C. § 10901 track that could otherwise be stranded by abandonment of the Oneida Line. (*Id.* at 5-6.) According to RJC Railroad Property, the Line is the only 49 U.S.C. § 10901 track at issue, and it now seeks to abandon the Line to resolve the final condition imposed by the Board on the abandonment of the Oneida Line.² (Pet. 3, 5.)

RJC Railroad Property asserts that there are no shippers on the Line and that there has been no local or other traffic over the Line since RJC Railroad Property acquired it in 2011.³ (*Id.* at 7.) RJC Railroad Property states that little, if any, of the physical line remained at the time of the acquisition: the Beech Fork Segment's right-of-way had been paved over by the New River Road in Campbell County, while the Stony Fork Segment's right-of-way could no longer be discerned other than the footings of a bridge that no longer exists. (*Id.*) Moreover, the Department of the Interior's Summary of Floods in the United States During 1965, attached as an exhibit to the petition for exemption, describes a July 1965 flood around Clinchmore in which "[s]everal bridges were washed away" and "[t]he railroad and the county road which paralleled [sic] Stony Fork up to Clinchmore were completely destroyed." (Pet. 6, App. B, Ex. 5.) A United States Geological Survey historical topographical map from 1973, also appended to the petition, shows no evidence of the Stony Fork Segment. (Pet. 7, App. B, Ex. 6.)

The Board instituted a proceeding on July 20, 2023, and requested clarification from RJC Railroad Property on October 11, 2023, regarding the Line's endpoint. R. J. Corman R.R. Prop.,

² According to RJC Railroad Property, the Interstate Commerce Commission (ICC) authorized construction of the Line in 1921. (Pet. 4); see also In re the Appl. of the Tenn. R.R. for a Certificate of Pub. Convenience & Necessity (In re Tenn. R.R.), 65 I.C.C. 654 (1921). The ICC authorized construction "from a point on applicant's main line at the mouth of Beech Fork of New River, in Campbell County, Tenn., in a southeasterly direction along Beech Fork and Rocky [sic] Fork in Anderson County, a distance of 6 miles." In re Tenn. R.R., 65 I.C.C. at 654. However, according to RJC Railroad Property, "[t]here is . . . no evidence that the Line ever extended into Anderson County." (Pet. 4 n.5.) RJC Railroad Property further explains that an approximately 3.0-mile dead-end spur extends from the Line to Carbon Hill, Tenn. (the Spur), but the Tennessee Railroad Company's 1940 application to build the Spur was dismissed by the ICC for lack of jurisdiction; thus, RJC Railroad Property asserts, Board authority is not needed to abandon the Spur. (*Id.* at 4-5); see also Appl. of Tenn. R.R. for a Certificate of Pub. Convenience & Necessity Authorizing the Const. of Line of R.R. in Campbell Cnty., Tenn., FD 12747 (ICC served Mar. 7, 1940).

³ RJC Railroad Property explains that it acquired the Line from NC Railroad, Inc. (NCR), in 2011 as part of its acquisition of the Oneida Line. (Pet. 5); see also R. J. Corman R.R. Prop., LLC—Acquis. Exemption—NC R.R., FD 35363 (STB served June 29, 2011). RJC Railroad Property asserts that the quitclaim deed it received from NCR "granted RJC Railroad Property ownership rights to the main tracks, sidings, spurs, and other appurtenant railway facilities of the Oneida Line." (Pet. 5.)

LLC—Aban. Exemption—in Campbell Cnty., Tenn., AB 1296 (Sub-No. 1X), slip op. at 6 (STB served Oct. 11, 2023). RJC Railroad Property had initially stated that the Line was only 3.5 miles in length, but on November 13 and 28, 2023, clarified and confirmed that the Line was 3.67 miles in length and reached a dead-end at the former Clinchmore Mine. (Supp. 1-2, Nov. 13, 2023; Supp. 1-2, Nov. 28, 2023.)

DISCUSSION AND CONCLUSIONS

Exemption from 49 U.S.C. § 10903. Under 49 U.S.C. § 10903, a rail line may not be abandoned without prior approval from the Board. Under 49 U.S.C. § 10502, however, the Board shall, to the maximum extent consistent with 49 U.S.C. subtitle IV, part A, exempt a transaction or service from regulation when the Board 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.

Detailed scrutiny of RJC Railroad Property's abandonment proposal under 49 U.S.C. § 10903 is not necessary to carry out the RTP here. There are no shippers on the Line and there has been no freight rail service over the Line since at least 2011. Under these circumstances, granting an exemption would minimize the need for regulatory control and expedite regulatory decisions, reduce regulatory barriers to exit, encourage honest and efficient management of railroads, and provide for the expeditious handling of this proceeding. See 49 U.S.C. § 10101(2), (7), (9), (15). Other aspects of the RTP would not be adversely affected.

Regulation of the proposed transaction is also not necessary to protect shippers from an abuse of market power because there are no active shippers on the Line and no freight traffic has moved over the Line since at least 2011. Further, no shipper or other party has filed in opposition to the proposed abandonment. The record includes no indication that regulation is needed to protect shippers from the abuse of market power.⁴

Employee Protection. 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. Accordingly, as a condition to granting this exemption, the Board will impose upon RJC Railroad Property 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).

Offers of Financial Assistance. RJC Railroad Property also petitions the Board to exempt it from the OFA requirements of 49 U.S.C. § 10904 and waive the related OFA regulations at 49 C.F.R. § 1152.27. Because no formal expressions of intent to file an OFA to acquire the Line or subsidize continued rail service were filed by the December 18, 2023 deadline, the Board will

⁴ Because regulation of the proposed abandonment is not needed to protect shippers from the abuse of market power, the Board need not determine whether the proposed abandonment is limited in scope.

not consider OFAs in this case, and RJC Railroad Property's petition for exemption from 49 U.S.C. § 10904 and waiver of § 1152.27 will be denied as moot.

Public Use. RJC Railroad Property further seeks exemption from the public use provisions of 49 U.S.C. § 10905 and waiver of the associated regulations at 49 C.F.R. § 1152.28. Because requests for a public use condition were due by December 28, 2023, and no requests were received, RJC Railroad Property's petition for exemption from 49 U.S.C. § 10905 and waiver of § 1152.28 will be denied as moot.

Interim Trail Use. RJC Railroad Property seeks a waiver of the interim trail use regulations at 49 C.F.R. § 1152.29. However, waiver is unnecessary here because under the Trails Act, the trails use program is voluntary and consensual between the railroad and the trail sponsor. See 49 C.F.R. § 1152.29; Nat'l Wildlife Fed'n v. ICC, 850 F.2d 694, 699-702 (D.C. Cir. 1988); Rail Abans.—Use of Rights-of-Way as Trails (49 C.F.R. Parts 1105 & 1152), 2 I.C.C.2d 591, 598 (1986). Accordingly, if RJC Railroad Property does not consent to a request for a notice of interim trail use or abandonment (NITU), none will be issued. In any event, requests for a NITU under § 1152.29 were due by December 28, 2023, and none were filed. For these reasons, RJC Railroad Property's request for waiver of the interim trail use regulations will be denied.

Environmental and Historic Review. RJC Railroad Property has submitted a combined environmental and historic report and an amendment to the report, and it has 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 environmental and historic report and analyzed the probable effects of the proposed action on the quality of the human environment.

In a Draft Environmental Assessment (Draft EA) issued on January 9, 2024, 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 February 8, 2024, and no comments were received. In the Final EA, issued on February 14, 2024, OEA did not recommend any 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 and that no environmental or historic preservation conditions are required.

It is ordered:

1. Under 49 U.S.C. § 10502, the Board exempts from the prior approval requirements of 49 U.S.C. § 10903 RJC Railroad Property's abandonment of the Line, subject to the employee protective conditions set forth in Oregon Short Line.
2. This exemption will be effective on March 31, 2024.
3. RJC Railroad Property's requests for exemptions and waivers of the OFA procedures and public use condition provisions are denied as moot.

4. RJC Railroad Property's request for waiver of the interim trail use regulations is denied.

5. Petitions to reopen and petitions to stay must be filed by March 18, 2024.

6. Pursuant to 49 C.F.R. § 1152.29(e)(2), RJC Railroad Property 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 RJC Railroad Property's filing of a notice of consummation by March 1, 2025, 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.