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Transportation Solutions for the 21st Century

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April 1, 2025

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VIA E-FILING

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

ENTERED
Office of Proceedings
April 1, 2025
Part of
Public Record

Re: Knoxville & Holston River Railroad Co., Inc., a wholly-owned subsidiary of Gulf & Ohio Railways Holding Co., Inc.—Abandonment Exemption – In Knox County, TN, AB 580 (Sub-No. 1X)

Dear Ms. Brown:

On December 11, 2024, Knoxville & Holston River Railroad Co., Inc. (“KXHR”), a Class III rail carrier and wholly owned subsidiary of Gulf & Ohio Railways, Inc., filed a petition under 49 U.S.C. § 10502 for an exemption from the prior approval requirements of 49 U.S.C. § 10903 to abandon an approximately 3.8-mile rail line between milepost 0.1 and the end of the line, in Knoxville, Knox County, Tenn. (the “Line”). On March 28, 2025, the Surface Transportation Board (the “Board”) permitted KXHR to abandon the Line, subject to trail use, environmental, and standard employee protective conditions. The Board also directed KXHR to serve a copy of the decision on Ergon and certify to the Board that it has done so by April 2, 2025. By this letter, the undersigned hereby certifies that today, counsel for KXHR served a copy of the Board’s March 28, 2025, decision on Ergon.

Sincerely,

/s/ Crystal M. Zorbaugh

Crystal M. Zorbaugh
Counsel for Knoxville & Holston River Railroad
Co., Inc., a wholly owned subsidiary of Gulf &
Ohio Railways, Inc.

cc: Pete Claussen
Greg Hall
Ergon Terminating

SERVICE DATE – MARCH 28, 2025

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 580 (Sub-No. 1X)

KNOXVILLE & HOLSTON RIVER RAILROAD CO., INC.,
A WHOLLY OWNED SUBSIDIARY OF GULF & OHIO RAILWAYS, INC.—
ABANDONMENT EXEMPTION—IN KNOX COUNTY, TENN.

Digest:¹ This decision permits Knoxville & Holston River Railroad Co., Inc., to abandon approximately 3.8 miles of rail line in Knox County, Tenn., subject to trail use, environmental, and standard employee protective conditions.

Decided: March 27, 2025

On December 11, 2024, Knoxville & Holston River Railroad Co., Inc. (KXHR), a Class III rail carrier and wholly owned subsidiary of Gulf & Ohio Railways, Inc., filed a petition under 49 U.S.C. § 10502 for an exemption from the prior approval requirements of 49 U.S.C. § 10903 to abandon an approximately 3.8-mile rail line between milepost 0.1 and the end of the line, in Knoxville, Knox County, Tenn. (the Line).² Notice of KXHR's petition was served and published in the Federal Register on December 31, 2024 (89 Fed. Reg. 107,189).

On January 17, 2025, the City of Knoxville, Tenn. (the City), timely filed a request for the issuance of a notice of interim trail use or abandonment (NITU). KXHR replied on January 22, 2025, indicating its willingness to engage in negotiations with the City. No replies to KXHR's petition were filed.³

The Board will grant the exemption from 49 U.S.C. § 10903 for the Line, subject to trail use, environmental, and standard employee protective conditions.

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 On December 17, 2024, KXHR filed an errata with an updated map.

³ By decision served February 20, 2025, a late-filed a notice of intent to file an offer of financial assistance (OFA) to purchase the Line was rejected. See Knoxville & Holston River R.R.—Aban. Exemption—in Knox Cnty., Tenn., AB 580 (Sub-No. 1X), slip op. at 2 (STB served Feb. 20, 2025).

BACKGROUND

KXHR states that its operations on the Line began in 1998 when it purchased the Line and other rail assets from Norfolk Southern Railway Company (NSR). (Pet. 5.) From 1998 to around 2014, KXHR provided service on the Line to two shippers, Holston Gases⁴ and Ergon Terminating, Inc. (Ergon). (*Id.*, Ex. E, V.S. Starnes 1-2, 4.) According to KXHR, Holston Gases relocated off the Line in or before 2014,⁵ leading to a significant decrease in the amount of traffic on the Line. (*Id.*, Ex. E, V.S. Starnes 4.) KXHR states that Ergon utilizes KXHR's services to move asphalt from its Knoxville terminal to an interchange with NSR but that rail is a secondary mode of transportation for Ergon. (*Id.*, Ex. E, V.S. Starnes 3.) KXHR further states that Ergon receives inbound freight via barge and ships outbound freight via truck, with rail as a backup for barge services. (*Id.*)

According to KXHR, abandonment authority should be granted because it faces "significant hardship" from its continued operation of the Line. (Pet. 4.) KXHR asserts that Ergon ships infrequently and carload amounts vary significantly from year to year. (*Id.*, Ex. E, V.S. Starnes 7.) KXHR states that, in 2019, Ergon shipped 22 carloads but that, in both 2021 and 2023, Ergon shipped just one carload per year. (*Id.*) In total, between 2019 and 2024, Ergon shipped 49 carloads, averaging 8.2 carloads per year.⁶ (*Id.*) According to KXHR, Ergon pays a tariff rate of \$775 per carload of asphalt. (*Id.*, Ex. E, V.S. Starnes 6-7.) KXHR claims that these shipping levels are insufficient to cover the cost of operations on the Line, which amounted to \$92,982 in 2024. (*Id.*, Ex. E, V.S. Starnes 8.) KXHR estimates that it would need to receive over 120 carloads in order for revenues on the Line at the current tariff rate of \$775 to cover the cost of operations.⁷ (*Id.*) According to KXHR, the Line also requires significant repairs to bring it to Federal Railroad Administration Class 1 standards and that a bridge and tunnel on the Line need repairs. (*Id.*, Ex. E, V.S. Starnes 8-9.)

KXHR asserts that there is no prospect for new shippers or traffic on the Line. (*Id.*, Ex. E, V.S. Starnes 5.) According to KXHR, the first 1.5 miles of the Line is situated within a "mixed-use residential/commercial development area," and the remainder of the Line, which contains no industrial sites and extends towards the Ergon terminal, runs through a post-industrial marble quarry and nature preserve, both of which are used for recreational purposes. (*Id.* at 6; *id.*, Ex. E, V.S. Starnes 5.) KXHR states that it informed Ergon in July 2024 that it intended to seek abandonment authority for the Line. (*Id.*, Ex. E, V.S. Starnes 4.) KXHR further

⁴ The petition also refers to this shipper as Holston Gates. (*See, e.g.*, Pet. 5 n.6.)

⁵ The petition states that Holston Gases relocated "in 2014," (Pet. 5 n.6), and the Verified Statement states that there were "two shippers from 1998 to 2014," (*id.*, Ex. E, V.S. Starnes 1). The Verified Statement also states, however, that Holston Gases relocated "before 2014," and it suggests that the relocation year is unknown because KXHR's carload records go back only as far as 2014. (*Id.*, Ex. E, V.S. Starnes 2, 4.)

⁶ KXHR states that there is no overhead traffic on the Line. (*Id.* at 7.)

⁷ According to KXHR, competition from barge and truck precludes KXHR from increasing the tariff rate to an amount that would make continued rail service economically practicable. (*Id.* at 10.)

states that it offered Ergon an alternative rail transportation option over another KXHR line, which is serviced five days per week. (*Id.*) KXHR also states that it served a copy of its petition on Ergon. (Pet. 7.)

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.

KXHR has demonstrated that revenues on the Line are inadequate to cover the cost of operating the Line. In 2024, KXHR received \$6,200 in revenue for moving eight carloads for Ergon—significantly less than the nearly \$93,000 required to operate the Line. (*See* Pet., Ex. E, V.S. Starnes 7.) Indeed, over the past five years, Ergon has shipped significantly fewer carloads than would be needed for KXHR's revenue to cover the cost of operations. (*See id.*) Given the changing landscape in the area adjacent to the Line, there is no indication that traffic levels will increase in the future. (*See id.*, Ex. E, V.S. Starnes 2, 5-6.) Additionally, no replies to KXHR's petition were filed, including from Ergon, the sole shipper on the Line.

In this case, detailed scrutiny of the proposed abandonment under 49 U.S.C. § 10903 is not necessary to carry out the RTP. Granting an exemption here would enable KXHR to promptly dispose of unprofitable assets, thereby ensuring the development and continuation of a sound rail transportation system, 49 U.S.C. § 10101(4), fostering sound economic conditions in transportation, 49 U.S.C. § 10101(5), and encouraging efficient management of railroads, 49 U.S.C. § 10101(9). Additionally, an exemption here would avoid the increased burden, time, and costs required to file and process an abandonment application, thereby expediting regulatory decisions by minimizing the need for regulatory control over operation of the Line, 49 U.S.C. § 10101(2), reducing regulatory barriers to exit the industry, 49 U.S.C. § 10101(7), and providing for the expeditious handling and resolution of all proceedings required or permitted to be brought under this part, 49 U.S.C. § 10101(15). Other aspects of the RTP would not be adversely affected.

Regulation of the proposed transaction under 49 U.S.C. § 10903 also is not necessary to protect shippers from the abuse of market power. Ergon, the sole shipper on the Line, has shipped only nine carloads over the past two years. (*See* Pet., Ex. E, V.S. Starnes 7.) In two of the past five years, Ergon has shipped just one carload per year. (*See id.*) According to the petition, Ergon has access to other modes of transportation, such as barge and truck, both of which it already utilizes. (*See* Pet. 10.) Notably, neither Ergon (who, based on the record, was aware of KXHR's petition) nor any other party has challenged KXHR's assertion that Ergon has access to other competitive transportation options or otherwise opposed KXHR's petition.

Nevertheless, to ensure that Ergon is informed of the Board's decision, KXHR will be required to serve a copy of it on Ergon, and certify to the Board that it has done so by April 2, 2025.⁸

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 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).

Environmental and Historic Review. KXHR submitted a combined environmental and historic report with its petition and 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 report, verified the data it contains, and analyzed the potential effects of the proposed action on the quality of the human environment.

In a Draft Environmental Assessment (Draft EA) served on February 7, 2025, OEA recommended that the Board impose one condition on any decision granting abandonment authority. (Draft EA 5-6.) The condition would require KXHR to retain its interest in and take no steps to alter the historic integrity of all historic properties, including sites, buildings, structures and objects within the right-of-way (the Area of Potential Effect) eligible for listing or listed in the National Register of Historic Places until the Section 106 process of the National Historic Preservation Act, 54 U.S.C. § 306108, has been completed. (*Id.* at 6.) The recommended condition also would require that KXHR report back to OEA regarding any consultations with the Tennessee Historical Commission and the public and would direct KXHR not to file its consummation notice or initiate any salvage activities related to the abandonment until the Section 106 process has been completed and the Board removes the condition. (*Id.*)

Comments on the Draft EA were due by March 10, 2025. OEA received one comment from the Tennessee Department of Environment and Conservation (TDEC) regarding potential impacts from abandonment-related salvage activities, and pertaining specifically to air quality, waste disposal, and underground storage tanks. (See TDEC Letter 1, Mar. 10, 2025, EI-33703.)

In its Final Environmental Assessment (Final EA), issued on March 14, 2025, OEA recommends a second condition that would require KXHR to consult with TDEC before commencing any abandonment-related salvage activities and follow best practices during salvage to minimize any potential impacts. (*Final EA* 2-3.) OEA also continues to recommend the condition proposed in the Draft EA. (*Id.* at 2.)

The Board adopts the analysis and recommendations in the Final EA. Based on OEA's recommendations, the Board concludes that the proposed abandonment, as conditioned, will not

⁸ 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).

significantly impact the quality of the human environment or the conservation of energy resources.

Offers of Financial Assistance. Because no formal expressions of intent to file an OFA to acquire the Line or subsidize continued rail service were timely filed by the January 10, 2025 deadline, the Board will not consider OFAs in this case.

Public Use. No requests to negotiate for public use under 49 U.S.C. § 10905 were filed by the January 21, 2025 deadline.

Interim Trail Use. As noted above, the City timely filed a request for the issuance of a NITU for the right-of-way. The request included a statement of willingness to assume full responsibility for the management of the right-of-way, for any legal liability arising out of the transfer or use of the right-of-way, and for the payment of any and all taxes that may be levied or assessed against the right-of-way, as required by 49 C.F.R. § 1152.29. The City also provided a map and acknowledged that the use of the right-of-way for trail purposes is subject to the user's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service. KXHR has replied indicating its willingness to engage in negotiations with the City.

Because the City's request complies with the requirements of 49 C.F.R. § 1152.29 and KXHR agrees to negotiate, the Board will issue a NITU for the Line. The parties may negotiate an interim trail use/railbanking agreement during the one-year period prescribed below. If an interim trail use/railbanking agreement is reached (and thus interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. See 49 C.F.R. § 1152.29(d)(2), (h). If no agreement is reached within one year, KXHR may fully abandon the Line, subject to any outstanding conditions. See 49 C.F.R. § 1152.29(d)(1)(i). Use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the right-of-way.

It is ordered:

1. Under 49 U.S.C. § 10502, the Board exempts from the prior approval requirements of 49 U.S.C. § 10903 KXHR's abandonment of the Line, subject to the employee protective conditions set forth in Oregon Short Line and the following conditions⁹:

- a. KXHR shall retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register of Historic Places until the Section 106 process of the National

⁹ If an interim trail use/railbanking agreement under 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29 is reached for the Line (or a portion thereof), compliance with the conditions set forth in this decision is not required with respect to any portion of the Line covered by the interim trail use agreement for the duration of the agreement.

Historic Preservation Act, 54 U.S.C. § 306108, has been completed. KXHR shall report back to OEA regarding any consultations with the Tennessee Historical Commission (State Historic Preservation Office or SHPO) and the public. KXHR may not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed this condition.

- b. Prior to the commencement of any abandonment-related salvage activities, KXHR shall consult with TDEC's DPAC, DSWM, and UST and follow best practices during salvage to minimize any potential impacts.

2. KXHR is directed to serve a copy of this decision on Ergon and certify to the Board that it has done so by April 2, 2025.

3. The City is permitted to negotiate with KXHR for interim trail use/railbanking for the Line, for a period of one year from the service date of this decision and notice, until March 28, 2026.

4. If an interim trail use/railbanking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way.

5. Interim trail use/railbanking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the right-of-way described in paragraph 4, above.

6. If an interim trail use/railbanking agreement is reached (and thus, interim trail use/railbanking is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached.

7. If interim trail use/railbanking is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way covered by the interim trail use/railbanking agreement, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

8. If an agreement for interim trail use/railbanking is reached by March 28, 2026, interim trail use/railbanking may be implemented. If no agreement is reached, the Line may be fully abandoned, subject to any outstanding conditions.

9. The exemption will be effective on April 27, 2025.

10. Petitions to reopen and petitions to stay must be filed by April 14, 2025.

11. Pursuant to 49 C.F.R. § 1152.29(e)(2), KXHR 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 KXHR's filing of a notice of consummation by March 28, 2026, 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, Primus, and Schultz.