

SERVICE DATE – JULY 22, 2019

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36095

PALMETTO RAILWAYS—CONSTRUCTION AND OPERATION EXEMPTION—
IN BERKELEY COUNTY, S.C.

Digest:¹ This decision authorizes Palmetto Railways to construct and operate approximately 28.01 miles of new rail line in Berkeley County, S.C., subject to environmental mitigation conditions.

Decided: July 19, 2019

On August 3, 2017, the Palmetto Railways (Palmetto), a Class III rail carrier and an instrumentality of the State of South Carolina and a Division of the South Carolina Department of Commerce, filed a petition for exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10901 to construct and operate a new rail line in Berkeley County, S.C. (the Line).² The purpose of the Line is to provide rail service for Volvo Cars of North America (Volvo Cars) and other potential shippers in the Camp Hall Commerce Park (CHC Park). The Line is also intended to support infrastructure needs in Berkeley County and South Carolina generally and help alleviate future highway congestion that would result from handling shipments from Volvo Cars and other potential CHC Park tenants if no rail service were available.

In a decision served on October 31, 2017, the Board instituted a proceeding under 49 U.S.C. § 10502(b). No comments opposing the transportation merits of Palmetto's petition were filed.

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 Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² Although the petition described an approximately 22.7-mile line, the mileage Palmetto calculated for the Environmental Assessment (EA) varied from 22.5 to 28.01. The final mileage calculation, which was used for the environmental analysis, is 28.01 miles. (See Pet. 2; Draft EA 1-1 n.1; Final EA 1-4).

As discussed below, the Board's Office of Environmental Analysis (OEA) and the U.S. Corps of Army Engineers (Corps)³ jointly issued a Draft EA on November 30, 2018, analyzing the potential environmental impacts of the proposal and requesting public comments, as required by the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321-4370i.⁴ A Final EA containing additional environmental analysis and responding to the comments received on the Draft EA was issued on April 30, 2019. The Final EA recommends environmental conditions, including voluntary mitigation measures proposed by Palmetto, to avoid, minimize, or mitigate the potential environmental impacts of the proposed construction and operation of the Line.

After considering both the rail transportation merits and environmental issues, the Board will grant the exemption Palmetto requests, authorizing it to construct and operate over the approximately 28.01-mile Line, subject to the environmental mitigation measures set forth in the Final EA.

BACKGROUND

The Line would extend from the CHC Park to the A-Line of CSX Transportation, Inc. (CSXT), near Santee Cooper's Cross Generating Station⁵ (through the CSXT Cross Subdivision connection). (Pet. 3.) Volvo Cars is the primary tenant of CHC Park. (*Id.*) Of CHC Park's 6,781 acres, 2,880 acres are permitted for development of Volvo Cars' automotive manufacturing facility. (*Id.* at 6.) An additional 1,387 acres are permitted for industrial development by Santee Cooper. (*Id.*) Palmetto states that the Line is intended to bring industrial rail service to the entirety of CHC Park. (*Id.*) According to Palmetto, development of CHC Park has led to the need for a connection to Class I rail service, (*id.* at 3), which, Palmetto asserts, the Line will provide in addition to providing capacity for future development and support for infrastructure needs, (*id.* at 7).

DISCUSSION AND CONCLUSIONS

Rail Transportation Analysis. The construction and operation of new railroad lines requires prior Board authorization, either through issuance of a certificate under 49 U.S.C. § 10901 or, as requested here, through an exemption under 49 U.S.C. § 10502 from the formal application procedures of § 10901. Section 10901(c) directs the Board to grant rail construction

³ The Corps will use the environmental review process in making its decision on Palmetto's U.S. Department of the Army permit application. (Final EA 1-1.)

⁴ The U.S. Coast Guard and the Federal Railroad Administration participated in the environmental review as cooperating agencies.

⁵ Also known as the South Carolina Public Service Authority, Santee Cooper is a state-owned electric and water utility headquartered in Moncks Corner, S.C. (Pet. 3 n.1.)

proposals unless it finds the proposal “inconsistent with the public convenience and necessity.” See Alaska R.R.—Constr. & Operation Exemption—A Rail Line Extension to Port MacKenzie, Alaska, FD 35095, slip op. at 5 (STB served Nov. 21, 2011), aff’d sub nom. Alaska Survival v. STB, 705 F.3d 1073 (9th Cir. 2013) (addressing the Board’s construction exemption process).

Under § 10502(a), the Board must exempt a proposed rail line construction from the prior approval requirements of § 10901 when it finds that: (1) those procedures are not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either (a) the proposal is of limited scope, or (b) the full application procedures are not needed to protect shippers from an abuse of market power.

Based on the record, the proposed construction, which was unopposed on the transportation merits, qualifies for an exemption under § 10502 from the formal application procedures of § 10901. The record here shows that the Line would provide rail service to Volvo Cars as well as to other potential shippers in the area. Currently, there is no rail service to CHC Park. Without rail service, the record shows that trucks on local roads and highways, or a combination of truck and rail transload service, would be used to provide transportation to CHC Park. The Line would enhance competition by providing shippers in the area with a freight rail option that does not currently exist, consistent with 49 U.S.C. §§ 10101(4) & (5). Exempting the proposed construction from the requirements of § 10901 would also minimize unnecessary expense associated with the preparation and filing of a formal construction application, expedite regulatory decisions, and reduce regulatory barriers to entry for the Line in furtherance of 49 U.S.C. §§ 10101(2), (7) & (15). Other aspects of the rail transportation policy would not be adversely affected.

In addition, consideration of the Line under § 10901 is not necessary to protect shippers from an abuse of market power.⁶ Rather, as explained above, the Line would enhance competition by providing rail service where it does not currently exist, and thereby create an alternative mode of transportation.

Environmental Analysis. NEPA requires federal agencies to examine the environmental effects of proposed federal actions and to inform the public concerning those effects. Balt. Gas & Elec. Co. v. Nat. Res. Def. Council, 462 U.S. 87, 97 (1983). Under NEPA and related environmental laws, the Board must consider significant potential beneficial and adverse environmental impacts in deciding whether to authorize a railroad construction project as proposed, deny the proposal, or grant it with conditions (including environmental mitigation conditions). Lone Star R.R.—Track Constr. & Operation Exemption—in Howard Cty., Tex., FD 35874, slip op at 4 (STB served Mar. 3, 2016). While NEPA prescribes the process that must

⁶ Given this finding regarding the lack of need for shipper protection, the Board need not determine whether the transaction is limited in scope.

be followed, it does not mandate a particular result. Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 350 (1989). Once the adverse environmental effects have been adequately identified and evaluated, an agency may conclude that other values outweigh the environmental costs. Id.

There has been a thorough NEPA review in this case. The Draft EA considered six alternative route alignments in detail, including four options for the route alignment known as the Cross Route. (Draft EA 2-1 to 2-17.) Ultimately, the Draft EA advanced the approximately 28.01-mile route alignment known as Cross Option 3, (see id. at 2-19, Figure 2-5), Palmetto's preferred route, as the alternative with the fewest overall potential environmental impacts and compared those potential impacts to the potential impacts of the No-Action Alternative. (Id. at 2-17, 2-20, 3-1; see id. at 3-1 to 3-103; see also Final EA 1-4 to 1-5.) To avoid or minimize the potential environmental impacts of the proposed project, the Draft EA preliminarily recommended 41 voluntary environmental mitigation measures proposed by Palmetto and 15 additional mitigation measures developed during the Draft EA process. (See Draft EA 4-1 to 4-13.) The Draft EA explained that an Environmental Impact Statement (EIS) is unnecessary and that an EA is the appropriate level of environmental documentation for this case. (Id. at 1-6 to 1-7.)

Comments on the Draft EA were received from the U.S. Environmental Protection Agency; the South Carolina Department of Natural Resources; the U.S. Department of Commerce; the National Oceanic and Atmospheric Administration; the National Marine Fisheries Service; Weyerhaeuser Company (Weyerhaeuser); the Historic and Cultural Preservation Department of the Muscogee (Creek) Nation; and two private citizens. Weyerhaeuser's comment raised concerns regarding the potential for changes to occur on land in the project area that is currently used for agriculture and forestry. (Weyerhaeuser Comment 1-2.) Palmetto submitted a letter suggesting minor edits to the Draft EA and a letter responding to Weyerhaeuser's comment.

The Final EA responded to all comments received on the Draft EA. The Final EA addressed comments requesting that further consideration be given to alternative route alignments (in particular, an alternative route known as the Ridgeville Route). (Final EA 3-1 to 3-2.) The Final EA explained that, as discussed in the Draft EA, (see Draft EA 2-3 to 2-4, 2-11), Palmetto's ability as a state agency to obtain operational control of the Line is a fundamental component of the project's purpose and need. (Final EA 3-1.) Because Palmetto's ability to obtain operational control of the Ridgeville Route had not been assured, the Final EA confirmed that the Ridgeville Route was properly eliminated from consideration and that the only build alternative that should be carried forward for analysis in the Final EA was Cross Option 3. (Id.)

Regarding Weyerhaeuser's comments requesting additional consideration of future land use changes in the project area, the Final EA explained that the 2010 Berkeley County Comprehensive Plan 5-Year Review indicates that the planned growth area boundary for development would remain well south and southeast of the area of the Line and that the plan

specifically calls for the project area to remain in agricultural and rural uses, including forestry. (Id. at 3-6 to 3-7.) Accordingly, the Final EA concluded that environmental analysis of land use plans in the project area was adequate. (Id. at 3-7.)

Finally, in response to comments received on the Draft EA, the Final EA included three new mitigation measures (two addressing water resources and one addressing how to avoid potential impacts to fish migration and spawning in the project area) and made minor revisions to two mitigation measures⁷ that were proposed in the Draft EA.⁸ (Id. at 5-1.)

Based on a review of the available information, the Final EA recommended that any final decision by the Board authorizing the construction and operation of the Line be subject to the mitigation conditions in the Final EA, including Palmetto's voluntary mitigation measures. (Id.)

The Board's Analysis of the Environmental Issues. The Board adopts the analysis and conclusions in both the Draft EA and Final EA and the final voluntary and recommended mitigation measures. (See id. at 5-1 to 5-7.) The Board is satisfied that OEA, together with the Corps and the cooperating agencies, has taken the requisite hard look at the potential environmental impacts associated with Palmetto's proposal and properly determined that, with the recommended environmental mitigation in the Final EA, the proposed project will not have potentially significant environmental impacts and that preparation of an EIS is unnecessary.

CONCLUSION

After weighing the transportation merits and environmental issues, and considering the entire record, the Board finds that the petition for exemption to allow Palmetto's construction and operation of the approximately 28.01-mile line of railroad in Berkeley County assessed in the Draft and Final EAs should be granted, subject to compliance with the mitigation measures listed in the Final EA.

This action, as conditioned, will not significantly impact the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. § 10502, the Board exempts Palmetto's construction and operation of the Line from the prior approval requirements of 49 U.S.C. § 10901.

⁷ Of the minor revisions, one was made to a voluntary mitigation measure proposed by Palmetto and one was made to a mitigation measure recommended by OEA. (See Id. at 5-1.)

⁸ The Final EA combines the mitigation measures volunteered by Palmetto and those developed during the EA process. (Id. at 5-1 to 5-7.)

2. The Board adopts the environmental mitigation measures set forth in Final EA to this decision and imposes them as conditions to the exemption granted here.

3. Notice will be published in the Federal Register on July 25, 2019.

4. Petitions for reconsideration must be filed by August 12, 2019.

5. This decision is effective August 21, 2019.

By the Board, Board Members Begeman, Fuchs, and Oberman.