

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1076 (Sub-No. 1X)

CADDO VALLEY RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN PIKE
AND CLARK COUNTIES, ARK.

Digest:¹ This decision allows Caddo Valley Railroad Company to end its responsibility to provide rail service over a 17.55-mile rail line in Pike and Clark Counties, Ark.

Decided: February 10, 2012

On October 27, 2011, Caddo Valley Railroad Company (CVRR) filed a petition under 49 U.S.C. § 10502 for exemption from the provisions of 49 U.S.C. § 10903 to abandon a portion of the Norman Branch Line between milepost 429.45, near Gurdon, and milepost 447, near Antoine, a distance of 17.55 miles, in Pike and Clark Counties, Ark. (the Line). Notice of the petition was served and published in the Federal Register on November 16, 2011 (76 Fed. Reg. 71,124-25). For the reasons discussed below, the Board will grant the exemption from the prior approval requirements of 49 U.S.C. § 10903, thereby authorizing the abandonment of the Line, subject to standard employee protective conditions and environmental conditions developed during the Board's environmental review under the National Environmental Policy Act (NEPA).

BACKGROUND

CVRR acquired the Norman Branch Line from Arkansas Midland Railroad Company, Inc. (AKMD) in September 2000, pursuant to the Feeder Line Development Program, under 49 U.S.C. § 10907.² After operating the Norman Branch Line for several years, CVRR began to experience operational and financial difficulties. CVRR sought to transfer its stock to Pioneer Railcorp (Pioneer) in 2005, but the Board found that such a transfer was tantamount to a line sale

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 Caddo Antoine & Little Mo. R.R.—Feeder Line Acquis.—Ark. Midland R.R. Line Between Gurdon & Birds Mill, Ark., 4 S.T.B. 326 (1999).

to Pioneer and would violate 49 U.S.C. § 10907(h), unless AKMD was first offered the opportunity to buy back the line under the terms provided in that subsection.³

CVRR states that its financial condition continued to deteriorate, which further adversely affected its ability to maintain the Norman Branch Line. According to CVRR, the Norman Branch Line became inoperable, and 2 shippers, CertainTeed Corporation and Bean Lumber (a corporate affiliate of CVRR), turned to transload operations for their transportation needs. In September 2010, the Board granted AKMD's request for emergency service on 3 miles of the Norman Branch Line in Gurdon, Ark. (Gurdon Segment), to serve Georgia-Pacific LLC, the only remaining shipper on the Gurdon Segment. The Board found that CVRR was in financial dire straits and was unable to provide service to shippers on the Gurdon Segment.⁴

In a letter addressed to the Board, dated October 7, 2011 (and submitted by CVRR on November 9, 2011), AKMD indicates that CVRR eventually sold most of the Gurdon Segment back to AKMD in September 2011, pursuant to AKMD's rights under § 10907(h).⁵ As part of the same transaction, AKMD waived its statutory rights with respect to the remainder of the Norman Branch Line.

CVRR now seeks to abandon the remainder of its Norman Branch Line. In addition to the segment at issue in this proceeding (between milepost 429.45 and milepost 447), CVRR seeks to abandon the adjoining segment of the Norman Branch Line between milepost 447, near Antoine, and milepost 479.2, at the end of the line near Birds Mill, in Clark, Pike, and Montgomery Counties, Ark., through a verified notice of exemption in Docket No. AB 1076X.⁶

³ Ark. Midland R.R.—Petition for Declaratory Order—Caddo Valley R.R., FD 34865 (STB served May 2, 2007), aff'd sub nom. Caddo Valley R.R. v. STB, 512 F.3d 1021 (8th Cir. 2008).

⁴ Ark. Midland R.R.—Alternative Rail Service—Line of Caddo Valley R.R., FD 35416 (STB served Sept. 17, 2010). The Board subsequently extended the emergency service order in decisions served on October 15, 2010, and February 11, 2011.

⁵ The Gurdon Segment, as described in the Board's emergency service order, extended between milepost 426.87 and milepost 430.0. In its October 7, 2011 letter, AKMD indicates that it reacquired the portion between milepost 426.88 and milepost 429.45.

⁶ On November 28, 2011, the Southwest Arkansas Regional Intermodal Authority (Intermodal Authority) filed a formal expression of intent to file an offer of financial assistance (OFA) to purchase both the segment in AB 1076X and the segment at issue here. This filing automatically stayed the effective date of the exemption in AB 1076X for 10 days, until December 26, 2011. See 49 C.F.R. § 1152.27(c)(2)(i). In a decision served on December 13, 2011, the Board extended the deadline for filing an OFA for the segment in AB 1076X to February 24, 2012, so that it would coincide with the OFA deadline for the segment at issue here.

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CVRR states that no active shippers are located on the Line and the Line has had only 2 shippers, Bean Lumber and CertainTeed Corporation's subsidiary, GS Roofing Products Company, in the past 10 years. For a brief period, Bean Lumber established a transload facility at milepost 447 and used the Line until the transload facility was moved to a location near the Gurdon Segment in June 2010. CVRR further notes that Bean Lumber has since declared bankruptcy and has ceased all operations. According to CVRR, CertainTeed continues to use truck/rail transload service to satisfy its transportation needs.

DISCUSSION AND CONCLUSIONS

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, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy 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 CVRR's proposal under 49 U.S.C. § 10903 is not necessary to carry out the rail transportation policy in this case. No traffic has moved on the Line since June 2010, when Bean Lumber relocated its transload facility. With no active rail shippers on the Line, resumption of service appears unlikely. By minimizing the administrative expense of the application process, an exemption will reduce regulatory barriers to exit, in accordance with 49 U.S.C. §§ 10101(2) and (7). Consistent with 49 U.S.C. §§ 10101(5) and (9), an exemption will also foster sound economic conditions and encourage efficient management by allowing CVRR to avoid the unnecessary expenses associated with retaining the Line. Other aspects of the rail transportation policy will not be adversely affected by the use of the exemption process.

Regulation of the proposed transactions is not necessary to protect shippers from the abuse of market power.⁷ There are no active shippers on the Line, and no traffic has moved on the Line since June 2010. Moreover, no shipper or any other interested entity has objected to the

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Because OFAs must be submitted before an abandonment takes effect (lest the carrier consummate abandonment before an OFA is filed), the Board also incidentally postponed the effective date of the exemption for the segment in AB 1076X until 10 days after the due date for filing of an OFA, consistent with the standard 10-day postponement that occurs under the Board's regulations when an OFA is filed in a class exemption proceeding. See 49 C.F.R. § 1152.27(c)(2).

⁷ Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

proposed abandonment.⁸ Nevertheless, to ensure that the most recent former shippers are informed of our action, we will require CVRR to serve a copy of this decision on Bean Lumber and CertainTeed within 5 days of the service date of this decision, and to certify to the Board that it has done so.

Employee protection. Under 49 U.S.C. § 10502(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect the interests of its affected employees. CVRR states that any adversely affected employees will be adequately protected by the labor 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) (Oregon Short Line). Accordingly, as a condition to granting the exemptions, we will impose the standard employee protective conditions set forth in Oregon Short Line.

Environmental review. CVRR submitted environmental and historical reports with its petition and has notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the potential environmental impacts of the proposed transaction. See 49 C.F.R. § 1105.11. The Board's Office of Environmental Analysis (OEA) has examined the report, verified the data it contains, and analyzed the probable effects of the proposed actions on the quality of the human environment.

OEA served an Environmental Assessment (EA) in this proceeding on December 23, 2011, recommending that 3 conditions be imposed on any decision granting abandonment and discontinuance authority. In the EA, OEA notes that the Arkansas Natural Resources Commission, Water Management Division (ARNC-WMD) does not oppose the proposed abandonment, so long as the mitigation process is adhered to with regard to wetlands and streams, and that ARNC-WMD also recommends that best management practices be made a part of the planning process for the removal of the track and crossties. Therefore, OEA recommends a condition requiring CVRR to contact ARNC-WMD prior to beginning salvage activities to discuss ARNC-WMD's concerns regarding wetlands, streams, and implementation of best management practices and requiring CVRR to report the outcome of its discussions with ARNC-WMD to OEA.⁹

In the EA, OEA states that the U.S. Fish and Wildlife Service, Arkansas Ecological Services Office (USFWS) has identified several federally listed threatened, endangered, and

⁸ The Board has received comments from Intermodal Authority and Arkansas Governor Mike Beebe. Those comments, however, pertain to Intermodal Authority's interest in purchasing the Norman Branch Line under the OFA process. See note 6, supra

⁹ OEA prepared a final EA to modify the ARNC-WMD condition that appeared in the EA so that this condition more specifically addresses the concerns raised by ARNC-WMD.

candidate species known to occur in the region.¹⁰ Although OEA believes that salvage operations would not affect the federally listed endangered, threatened, or candidate species, it recommends a condition requiring CVRR to consult with USFWS prior to beginning any salvage operations to ensure that USFWS is aware of how salvage would proceed.

Also in the EA, OEA states that the National Geodetic Survey (NGS) identified approximately 42 geodetic station markers located in the area of the proposed abandonment. Therefore, OEA recommends that CVRR be required to consult with NGS at least 90 days before beginning any salvage activities that will disturb or destroy any geodetic station markers.

Comments on the EA were due by January 23, 2012. CVRR submitted a comment, clarifying that no traffic has moved on the Line at issue since June 2010, rather than May 2009, as indicated in the EA. No other comments were received. Accordingly, we will impose the conditions recommended by OEA in the EA. Based on OEA's recommendation, we conclude that the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. § 10502, we exempt from the prior approval requirements of 49 U.S.C. § 10903 the abandonment by CVRR of the Line, subject to the employee protective conditions set forth in Oregon Short Line, and the conditions that CVRR shall: (1) contact ARNC-WMD prior to beginning salvage activities to discuss ARNC-WMD's concerns regarding wetlands, streams, and implementation of best management practices and report the outcome of its discussions with ARNC-WMD to OEA; (2) contact USFWS prior to beginning salvage activities to discuss potential impacts to any federally listed endangered or threatened species and consult with OEA and USFWS to develop appropriate mitigation measures should any potential impacts be identified; and (3) consult with NGS at least 90 days prior to the beginning of salvage activities that will disturb or destroy any geodetic station markers.

¹⁰ USFWS states that the following federally listed threatened and endangered species are known to occur in the region: 1) Ouachita rock-pocketbook (*Arkansia wheeleri*), 2) Pink mucket (*Lampsilis abrupta*), 3) Red-cockaded woodpecker (*Picoides borealis*), 4) winged mapleleaf (*Quadrula fragosa*), 5) Florida panther (*Felis concolor coryi*), 6) scaleshell (*Leptodea leptodon*), 7) Arkansas fatmucket (*Lampsilis powellii*), and 8) piping plover (*Charadrius melodus*). In addition the following 2 candidate species are also known to occur in the area: 1) spectaclecase (*Cumberlandia monodonta*) and 2) rabbitsfoot (*Quadrula cylindrical cylindrical*).

2. CVRR shall serve a copy of the decision on Bean Lumber and CertainTeed within 5 days after the service date of this decision and certify to the Board that it has done so.

3. An OFA under 49 C.F.R. § 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by February 24, 2012, subject to time extensions authorized under 49 C.F.R. § 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27(c)(1). Each OFA must be accompanied by the filing fee of \$1,500. See 49 C.F.R. § 1002.2(f)(25).

4. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **“Office of Proceedings, AB-OFA.”**

5. Provided no OFA has been received, this exemption will be effective on March 15, 2012. Petitions to stay must be filed by February 24, 2012. Petitions to reopen must be filed by March 5, 2012.

6. Pursuant to the provisions of 49 C.F.R. § 1152.29(e)(2), CVRR 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 CVRR's filing of a notice of consummation by February 14, 2013, 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 1-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, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Begeman.