

SERVICE DATE – NOVEMBER 26, 2014

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 32659 (Sub-No. 1)

CALDWELL RAILROAD COMMISSION—EXEMPTION FROM 49 U.S.C. SUBTITLE IV

Digest:¹ The Board denies a request to revoke the exemption from 49 U.S.C. Subtitle IV previously granted to Caldwell County Economic Development Commission.

Decided: November 25, 2014

By decision served on August 3, 1995, the Interstate Commerce Commission (ICC) granted a petition by Caldwell County Economic Development Commission (CCEDC) seeking an exemption from all obligations under 49 U.S.C. Subtitle IV in connection with CCEDC's purchase of a 22.1-mile rail line known as the HG Line, extending from milepost HG-90.6 at Hickory, N.C., to milepost HG-112.7 at Valmead, N.C., in Caldwell, Burke, and Catawba Counties, N.C.² In 2008, CCEDC changed its name to Caldwell Railroad Commission (Caldwell).

On August 28, 2014, Caldwell filed a petition seeking partial revocation of the exemption it received in 1995. Caldwell states that it intends to railbank 3.91 miles of the line between milepost 108.79 and milepost 112.7 in Lenoir, N.C. Caldwell further states that it “seeks to have the 1995 exemption revoked in part so that Caldwell can file a notice of exemption under 49 C.F.R. § 1152.50 for the Line and the Board can subsequently issue [a Notice of Interim Trail Use] requested by [Caldwell County Pathways, Inc.]”³

DISCUSSION AND CONCLUSIONS

We have discretion to revoke an exemption pursuant to 49 U.S.C. § 10502(d). As applicable here, we may revoke an exemption, in whole or in part, if the Board finds that regulation is necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. § 10101.

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 See Caldwell Cnty. Econ. Dev. Comm'n—Exemption from 49 U.S.C. Subtitle IV, FD 32659 (ICC served Aug. 3, 1995).

³ Caldwell Pet. 4.

See, e.g., Ind. Hi-Rail Corp.—Lease & Operation Exemption—Norfolk & W. Ry. Line Between Rochester & Argos, Ind., & Exemption from 49 U.S.C. §§ 10761, 10762, & 11141, FD 32162 et al. (STB served Jan. 30, 1998). The party seeking revocation has the burden of proof, and petitions to revoke must be based on reasonable, specific concerns. I&M Rail Link, LLC—Acquis. & Operation Exemption—Certain Lines of Soo Line R.R., FD 33326 et al. (STB served Apr. 2, 1997), aff'd sub nom. City of Ottumwa v. STB, 153 F.3d 879 (8th Cir. 1998). For example, the Board will revoke an exemption if a petitioner has demonstrated conduct that frustrates the RTP and the Board has determined that the reinstated regulatory provisions could ameliorate the alleged harms. See Entergy Ark. Inc. v. Union Pac. R.R., FD 42104, slip op at 16 (STB served Mar. 15, 2011); see also Rail Gen. Exemption Auth.—Miscellaneous Agric. Commodities—Pet. of G. & T. Terminal Pkg. Co. to Revoke Conrail Exemption, 8 I.C.C. 2d 674, 676-77 (1992), aff'd in pertinent part sub nom. Mr. Sprout, Inc. v. United States, 8 F.3d 118 (2d Cir. 1993); see also Minn. Commercial Ry.—Trackage Rights Exemption—Burlington N. R.R., 8 I.C.C. 2d 31, 35-36 (1991) (the Board's revocation analysis "focuses on the sections of the RTP [rail transportation policy] related to the underlying statutory section from which an exemption is sought").

Here, the ICC previously determined that Caldwell met the requirements for an exemption from Subtitle IV. The ICC stated that

[g]ranting the exemption will minimize the need for Federal regulatory control over rail transportation, expedite regulatory decisions, and reduce barriers to exit and entry [49 U.S.C. 10101a(2) and (7)]; ensure the continuation of a sound rail system [49 U.S.C. 10101a(4)]; foster sound economic conditions in transportation and ensure effective competition [49 U.S.C. 10101a(5)]; and promote cooperation with the States [49 U.S.C. 10101a(9)].⁴

Many of these are the same factors Caldwell cites as a basis for partial revocation of the exemption.⁵ In its petition to revoke, however, Caldwell does not explain how the RTP factors that favored the exemption it requested in 1995 now support revocation, nor does it provide any specific information explaining how the goals of the RTP are frustrated under the current situation or why regulation is now needed to carry out the RTP. Without more, Caldwell has failed to meet its burden under § 10502(d).

Therefore, Caldwell's petition to revoke will be denied without prejudice to its filing, in this docket, a new petition to revoke that provides its reasoning as to why the RTP factors warrant revocation.

⁴ Caldwell Cnty. Econ. Dev. Comm'n—Exemption from 49 U.S.C. Subtitle IV, FD 32659, slip op. at 2 (ICC served Aug. 3, 1995).

⁵ See Caldwell Pet. 4-5 (claiming that partial revocation will provide for fair and expeditious regulatory decisions, reduce regulatory barriers to entry and exit, and ensure the development and continuation of a sound rail system).

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The petition to revoke the exemption is denied.
2. This decision is effective on its date of service.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.