

THE
SURFACE TRANSPORTATION BOARD

STB EX PARTE No. 647

CLASS EXEMPTION FOR EXPEDITED ABANDONMENT PROCEDURE
FOR CLASS II AND CLASS III RAILROADS

COMMENTS OF THE
ASSOCIATION OF AMERICAN RAILROADS

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This is the written testimony of the Association of American Railroads (“AAR”) submitted in response to the Surface Transportation Board’s (STB) “Notice of Public Hearing” served July 22, 2004, in the above captioned proceeding. Since 1934, AAR, a non-profit trade association, has represented the interest of major freight railroads in North America, as well as Amtrak. AAR membership includes both Class I railroads and smaller railroads, some of whom are petitioners in this proceeding. AAR members have a vital interest in maintaining rationalized rail lines, and in streamlining the STB’s regulatory processes related thereto. And over the years, AAR members have participated in hundreds of abandonment and discontinuances proceedings. As such, the AAR has a keen interest in the nature of this proceeding and provides the comments that follow.

Statement by the Association of American Railroads in STB Ex Parte 647

The AAR appreciates the opportunity to present its views in Ex Parte 647. The STB initiated this rulemaking to examine a proposal made by 65 Class II and Class III railroads to create a class exemption under 49 U.S.C. 10502 for this class of railroad from the prior approval from abandonment requirements of 49 U.S.C. 10903. The AAR fully supports this smaller railroad initiative, and notes in this connection that two of the 65 smaller railroads supporting the proposal, the Genesee & Wyoming Railroad Company and the Wheeling & Lake Erie Railway Company, are members of the AAR.

Overview of the Proposal

This class exemption proposal is intended to remove unnecessary and burdensome regulation, a focus that the AAR strongly supports. In the past, the STB has sought appropriate opportunities to use its exemption authority, and we commend the agency for initiating this proceeding to address another such proposal for streamlining its regulatory process.

Another key focus of the proposal is to ensure a regulatory process that promotes the most efficient allocation of capital resources for railroad capacity, a focus that again the AAR strongly supports. The proposal would allow a smaller railroad to redirect its resources more effectively and to entertain an offer of financial assistance more expeditiously. In this way, the proposal also promotes the continuation of important rail service.

Specifics of the Proposal

The AAR believes that the small railroad proposal makes good sense. A class exemption is a tried and true method for reducing regulation by the STB and relieving administrative burdens on the agency. Here the exemption would seem appropriate based on the fact that regulation is not necessary to carry out the rail transportation policy, and the transaction is of limited scope and continued regulation is unnecessary to protect shippers from an abuse of market power.

The proposal would ensure that the exemption is applied where regulation is not necessary based on the carrier's determination of economic viability justified by evidence submitted to the STB concerning traffic and revenues and the condition of the line. In addition, where a new carrier would assume the operations of the existing carrier, the proposal would require continued access to third-party carriers through trackage or haulage rights so long as the new carrier would have no more rights than the existing carrier had for the preceding 24-month period. This should mean that, where a smaller railroad has trackage or haulage rights over a Class I railroad, the new carrier's rights would not extend on the Class I carrier beyond those of the abandoning small carrier. And the proposal would facilitate the continuation of rail service through a more streamlined offer of financial assistance (OFA) process that would ensure the dissemination of needed information, consider only the net liquidation value of the line, and delay any environmental review until after the OFA process has run its course. This entire exemption process should allow for a sounder deployment of resources and continued rail service where justified.

Suggested Clarifications of the Proposal

The AAR believes that the proposal would be strengthened if it were to reflect common relationships between Class I railroads and smaller railroads. More specifically, in the common situation where a Class II or Class III is leasing a line from a Class I and seeks discontinuance under the proposed class exemption, the Class I should be able to seek abandonment authority under the same process at the same time. Where a Class II or III is seeking a partial abandonment or discontinuance in connection with a Class I line, the Class I involved should likewise be able to use the procedures simultaneously. And, as stated earlier, it should be made clear that any trackage rights over a Class I railroad acquired through an OFA process would not extend any further on the Class I line than the abandoning smaller carrier rights would have provided, and that in this situation an OFA purchaser would be required to accept the same terms as those by which the abandoning small carrier had to abide, including insurance and indemnification requirements.

In making these suggestions, however, the AAR does not want to delay in any way final disposition of the smaller railroad proposal. If our suggestions could be incorporated into the final rule without delaying the process, we ask for that consideration. Otherwise, we request that STB consider our suggestions separately.

Comments on the Abandonment Process in General

In its notice commencing this rulemaking, the STB also encouraged any other comments on the abandonment process in general. The AAR is pleased to offer some additional thoughts in this regard.

In particular, we urge the STB to continue to explore ways to streamline the environmental review process as it pertains to all abandonments. The idea under the smaller railroad proposal, for example, of not doing an environmental review until after an OFA is considered and rejected seems sound and should be adopted for all abandonments.

Also, we urge the STB to continue to look for ways to streamline the historic preservation review process, which has tended to slow down the abandonment process considerably. For example, the STB should consider adopting reasonable categorical exclusions from the historic preservation review process. More specifically, there are situations where an original bridge or track structure has been repaired or replaced. The fact that the original bridge or track structure was historic should not mean that the new bridge or track structure is historic. The Federal Highway Administration provides a process for such exclusions from its environmental review process at 23 CFR § 771.117 for track maintenance on existing right-of-way, bridge rehabilitation, and construction of rail storage facilities. Categorical exclusions in the STB process would ensure that the process is not unnecessarily delayed because a State Historic Preservation Organization (SHPO) declares a site that has clearly lost its historic integrity to be historic and require review.

In addition, the STB should consider ways to strengthen existing time deadlines on SHPO activity in general with a view toward ensuring that the process can continue expeditiously from one phase to another. In particular, the STB should consider shifting the burden of proof to the SHPOs to clearly show that their historic designations are valid.

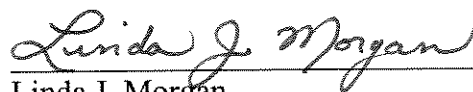
All of these issues go to the heart of the historic preservation process and AAR's concern that this process move expeditiously to conclusion. However, the AAR does not want its suggestions about the historic preservation process to delay final disposition of the smaller railroad proposal. Thus, the AAR requests that a separate rulemaking proceeding be initiated to address these historic preservation issues.

Conclusion

In closing, we support the proposal by the smaller railroads and suggest some changes to include the Class I railroads that are reflective of existing relationships between the Class I and the Class II and III railroads. We also support proposals to further streamline the abandonment review proposal separate from the smaller railroad proposal, particularly in the troublesome area of historic preservation.

We applaud the STB's willingness to continue to search for ways to further streamline the regulatory process and remove unnecessary and burdensome regulation. The AAR looks forward to working with the agency to this end.

Respectfully submitted,


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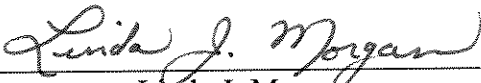
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August 24, 2004

CERTIFICATE OF SERVICE

I, Linda J. Morgan, certify that, on this 24th day of August, 2004, I caused a copy of the foregoing document to be served by first-class mail, post prepaid on all parties of record in Ex Parte No. 647.



Linda J. Morgan