

**BEFORE THE
SURFACE TRANSPORTATION BOARD
Washington, DC**

Docket No. AB 590 (Sub-No. 1X)

**MARYLAND TRANSIT ADMINISTRATION
– ABANDONMENT EXEMPTION –
IN SOMERSET COUNTY, MD**

**PETITION FOR EXEMPTION FROM CONDITIONS GOVERNING
OFFERS OF FINANCIAL ASSISTANCE AND PUBLIC USE**

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Dated: November 26, 2014

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The Maryland Transit Administration (“MTA”) files this Petition for Exemption from 49 U.S.C. §§ 10904 and 10905, the statutory provisions relating to Offers of Financial Assistance and Public Use Conditions (“Petition for Exemption”). This Petition for Exemption is being filed simultaneously and in connection with MTA’s Verified Notice of Exemption pursuant to 49 C.F.R. § 1152, Subpart F – Exempt Abandonments and Discontinuances of Service and Trackage Rights in the above-captioned proceeding (the “NOE”). MTA is submitting the NOE to effect the abandonment of a approximately 14.57 mile line of railroad in Somerset County, Maryland, approximately from Milepost 1.2 near Kings Creek and Milepost 16.3 near Crisfield, where it terminates (the “Line”). For the reasons set forth below, MTA respectfully requests that the Board exempt the abandonment of the Line from the provisions of 49 U.S.C. § 10904 (Offer of Financial Assistance or “OFA” procedures) and 49 U.S.C. § 10905 (public use conditions).

Background

The stub-ended Line constitutes a majority of the right-of-way known as the Crisfield Secondary Track, designated as Line Code 1242 and USRA Line No. 163 in the United States

Railway Association's Final System Plan for Restructuring Railroads in the Northeast and Midwest Region Pursuant to the Regional Rail Reorganization Act of 1973 (1975) ("Final System Plan"), vol. I, p. 305, and vol. II, p. 131, attached as excerpted at Exhibit B of the NOE.

Under the Final System Plan the Line was among those expressly excluded from transfer to the Consolidated Rail Corporation ("Conrail") or another profitable railroad, and instead was approved for abandonment and made available for public subsidy or acquisition. Final System Plan, vol. I, p. 369 (*see* Exhibit B of NOE). Although the Final System Plan identified the Line as being the subject of an interim application for abandonment under Section 304(d) of the Regional Railroad Reorganization Act of 1973, Pub. L. 93-236, 87 Stat. 985 (formerly codified at 45 U.S.C. 741 *et seq.*) ("3R Act"), no available records indicate that abandonment was consummated through notice to State and local governments, as required under the 3R Act. *See* 3R Act, Section 304(a), (b), codified as amended at 45 U.S.C. 744(a), (b). Instead, in an effort to preserve the Line for potential reinstatement of freight rail service, the State sought to acquire the Line after service was terminated. *See* Interstate Commerce Commission, *Evaluation of Eight Light-Density Rail Lines in Maryland*, 42 Fed. Reg. 20396, 20402-06 (Apr. 19, 1977), attached as excerpted at Exhibit C of the NOE. In 1982, the State acquired the Line and several other light-density lines on Maryland's Eastern Shore and in Western Maryland from the Penn Central Corporation, successor to Penn Central and the Pennel Company. Deed, January 8, 1982, attached at Exhibit D of the NOE.¹ MTA has preserved the inactive right-of-way since that time.

¹ Because MTA acquired the Line after it had been approved for abandonment, it was exempted from the requirement for MTA to seek ICC authority to acquire the Line. *See Common Carrier Status of States, State Agencies and Instrumentalities, and Political Subdivisions*, I.C.C. Finance Docket No. 28990F, 46 Fed. Reg. 37702, 37704 (July 22, 1981); 49 C.F.R. Part 1150, Subpart C. Similarly, pursuant to the same regulations, MTA is exempt from the STB's requirements for seeking abandonment authority. However, in order to make clear MTA's intent to abandon, and to provide an opportunity to preserve the right-of-way for the potential reactivation of freight service by railbanking the Line, MTA is submitting a notice of exempt abandonment.

Although MTA has preserved the Line since its acquisition, there have been no operations over the Line, and no demand for service throughout MTA's ownership of the Line. Furthermore, the condition of the Line is such that initiating new service would be cost-prohibitive in light of the currently non-existent demand for service. MTA has recently been engaged in discussions with Somerset County (the "County") concerning the use of the Line for trail purposes. MTA and the County agree that, given the longtime lack of demand for rail service on the Line and the County's interest in providing public recreational opportunities to its residents, it would be desirable to make interim use of the Line for trail purposes. MTA and the County are also negotiating with Delmarva Power, a subsidiary of Pepco Holdings, Inc., which also seeks to use the Line's right-of-way to accommodate a new electric transmission line. Neither creation of a trail or installation of electricity transmission lines will substantially change the character of the right-of-way, nor will they prevent potential future reactivation of freight rail service.

ARGUMENT

Where a right-of-way is needed for a valid public purpose and there is no overriding public need for continued rail service, the Board will grant exemptions from the requirements of 49 U.S.C. §§ 10904 and 10905. *See, e.g., K & E R. Co. – Abandonment Exemption – In Alfalfa, Garfield, and Grant Cos., OK, and Barber Cos., KS*, STB Docket No. AB-480X (Service Date December 31, 1996), *slip op.* at 4-5. The circumstances here fully warrant an exemption from OFA and public use requirements.

A. Exemption from OFA Requirements Would Be Consistent with Board Precedent

In circumstances like those here, where there are no shippers on the line and none have sought to use the line for many years, and where a public agency proposes a public use of the

line, Board precedent supports the exemption MTA requests. The OFA provisions are intended to permit a party genuinely interested in ensuring the continued availability of rail service on a line that would otherwise be abandoned. The OFA proponent may either acquire that line for continued rail service, or subsidize continuing operations. Exemptions from 49 U.S.C. § 10904 have been granted when the record shows that a right-of-way is needed for a valid public purpose, including recreational trails, and there is no overriding public need for continued rail service. *See, e.g., Georgia Southwestern Railroad, Inc. – Abandonment Exemption – In Barbour County, AL*, STB Docket No. AB-1000X (Service Date April 25, 2007) (no shippers in over seven years; right-of-way to be used for public trail); *Union Pacific Railroad Co. – Abandonment Exemption – In Kane County, IL*, STB Docket No. AB-33 (Sub-No. 105X) (Service Date Apr. 29, 1997) (OFA exemption granted in light of valid public purpose plans for railbanking line); *CSX Transportation, Inc.—Abandonment Exemption—in Pike County, KY*, STB Docket No. AB-55 (Sub-No. 653X) (Service Date September 13, 2004) (no existing shippers, right-of-way to be used for highway expansion); *Norfolk Southern Ry. Co. – Abandonment Exemption – In Washington County, NC*, STB Docket No. AB-290 (Sub-No. 248X) (Service Date July 26, 2004) (single remaining shipper had moved shipments to other facility; right-of-way needed for improvements to electric distribution facilities owned by power company).

Here, the County intends to use the Line for the development of a recreational trail. Additionally Delmarva Power, a publicly regulated company serving the general public, seeks to use the Line right-of-way to provide additional electrical access and capacity. The facts and circumstances supporting MTA’s requested exemption from OFA conditions are consistent with those the Board has previously accepted as the basis for such an exemption. There is no freight

service to be preserved and the abandonment will clear the path for planned public uses to be established. There are no shippers on the Line and no freight has moved over this line for well over 10 years.

Because the facts and circumstances in this case are consistent with those the Board has previously relied on to grant an exemption from OFA conditions, the Board should exempt MTA's abandonment request from the application of the OFA requirements.

B. In View of the Public Interest and Intended Use of the Line, Exemption from Public Use Requirements Would Be Consistent with Board Precedent

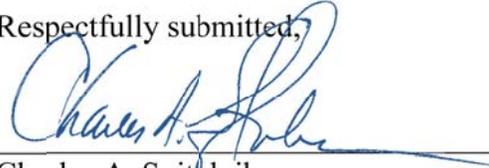
Where there is no overriding public need for continued rail service, a right-of-way is needed for a valid public purpose and is owned by a public entity, the Board will grant exemptions from the requirements governing the imposition of public use conditions. *See, e.g., Washington County, slip op.* at 2, 4. The Board should exempt MTA from the imposition of public use conditions because MTA seeks abandonment of the Line in order to devote the corridor to a valid and compelling public purpose through development of a recreational trail.

The Line has seen no traffic for many years, and customer demand is currently non-existent. Once MTA receives abandonment authority and abandons the Line, the County intends to file a notice of interim trail use to develop a recreational trail and preserve the Line for future rail service. *See Georgia Southwestern, slip op.* at 4 (Board granted OFA and public use exemptions for abandonment in anticipation of trail use). The facts in this proceeding clearly justify an exemption from the public use requirements as well.

CONCLUSION

MTA respectfully requests that the Board exempt the proposed abandonment from the provisions of 49 U.S.C. § 10904 (OFA procedures) and 49 U.S.C. § 10905 (public use conditions).

Respectfully submitted,



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