

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1011 (Sub-No. 1X)

NORTHERN LINES RAILWAY, LLC–DISCONTINUANCE OF SERVICE EXEMPTION–
IN STEARNS COUNTY, MINN.

Digest:¹ Northern Lines Railway, LLC is permitted to stop providing rail service over approximately 7.05 miles of rail line owned by BNSF Railway Company (BNSF) that is located in Stearns County, Minn.

Decided: May 20, 2011

By petition filed on March 3, 2011, Northern Lines Railway, LLC (NLR) seeks an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10903 to discontinue service over approximately 7.05 miles of rail line owned by BNSF Railway Company (BNSF) located between milepost 9.16 at Rockville and milepost 16.21 at Cold Spring, in Stearns County, Minn. (the Line).² Pursuant to 49 U.S.C. § 10502(b), the Board served and published a notice in the Federal Register on March 23, 2011 (76 Fed. Reg. 16,475), instituting an exemption proceeding. No comments were filed in response to the notice. We will grant the exemption subject to standard employee protective conditions.

BACKGROUND

In 2005, NLR was authorized to lease and operate the Line, along with other rail lines. N. Lines Ry.–Lease & Operation Exemption–Burlington N. & Santa Fe Ry., FD 34627 (STB served Jan. 6, 2005). Now, according to NLR, the Line has no active rail customers. The last active customer, Wenner Gas Company, Inc. (Wenner), relocated its facility to a new industrial park located in Rockville, Minn. in October 2009, and BNSF filed for authority to abandon the Line. Thus, NSR seeks to terminate its common carrier obligation to provide service over the Line.

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

² We are concurrently serving a decision granting a petition for exemption filed by BNSF to abandon the Line in BNSF Railway–Abandonment Exemption–in Stearns County, Minn., AB 6 (Sub-No. 472X).

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 10903, a rail carrier may not discontinue operations without the Board's prior approval. 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 NLR's proposed discontinuance under 49 U.S.C. § 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of the application process, an exemption will expedite regulatory action and 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 also will foster sound economic conditions and encourage efficient management by relieving NLR of its common carrier obligation to provide service over a line that no longer has any active rail customers. Other aspects of the rail transportation policy will not be adversely affected.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power. No shipper is currently using the Line, and no shipper has opposed the proposed discontinuance. Nevertheless, to ensure that Wenner and BNSF are informed of our action, we will require NLR to serve a copy of this decision on Wenner and on BNSF so that it is received by them within 5 days of the service date of this decision and to certify contemporaneously to us that it has done so. Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, we will impose the employee protective 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).

Because NLR seeks a discontinuance of service in this proceeding and not an abandonment, the Board need not consider offers of financial assistance (OFAs) to acquire the Line for continued rail service under 49 U.S.C. § 10904 (although the OFA provisions for a subsidy to provide continued rail service do apply to discontinuances), trail use requests under 16 U.S.C. § 1247(d), or requests to negotiate for public use of the Line under 49 U.S.C. § 10905. This proceeding is also exempt from environmental reporting requirements under 49 C.F.R. § 1105.6(c) and from historic reporting requirements under 49 C.F.R. § 1105.8(b). Therefore, this decision 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, the Board exempts from the prior approval requirements of 49 U.S.C. § 10903 the discontinuance of service by NLR of its operations over the above-described line, subject to the employee protective 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).

2. NLR is directed to serve a copy of this decision on Wenner and on BNSF so that they receive a copy within 5 days after the service date of this decision and to certify to the Board contemporaneously that it has done so.

3. An OFA under 49 C.F.R. § 1152.27(b)(2) to subsidize continued rail service must be received by the railroad and the Board by May 27, 2011, subject to time extensions authorized under 49 C.F.R. § 1152.27(c)(1)(i)(C). Any 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, which currently is set at \$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. Petitions to stay must be filed by June 6, 2011. Petitions to reopen must be filed by June 14, 2011.

6. Provided no OFA to subsidize continued rail service has been received, this exemption will be effective on June 19, 2011.

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