

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 1109X

CITY OF BELFAST, ME.—ABANDONMENT EXEMPTION—IN BELFAST, ME.

Digest:¹ This decision allows the City of Belfast, Me. (the City) to end its common carrier obligation to provide rail service over a two-mile rail line in the City, subject to trail use, standard employee protective conditions, and environmental conditions.

Decided: April 30, 2014

By petition filed on January 10, 2014, the City of Belfast, Me. (the City) seeks an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10903 to abandon approximately 2.0 miles of the rail line known as the Belfast and Moosehead Lake Railroad line (BMLRR line), extending between milepost 0.33 in downtown Belfast at the U.S. Route 1 overpass, and milepost 2.33, located approximately at Oak Hill Road in the City of Belfast, Waldo County, Me. (the Line).² The City also requests the issuance of a Notice of Interim Trail Use (NITU) for the Line. Notice of the petition was served and published in the Federal Register on January 30, 2014 (79 Fed. Reg. 5,019). The exemption will be granted subject to trail use, environmental, and standard employee protective conditions.

BACKGROUND

According to the City, the BMLRR line was built in 1870 by the Belfast and Moosehead Lake Railroad (BMLRR) and was leased to Maine Central Railroad until 1926, at which time BMLRR began operating it as a common carrier. In 1995, BMLRR sold a portion of the

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 The City originally filed a verified notice of exemption to abandon on June 25, 2013, which was held in abeyance on August 13, 2013, to allow the City to obtain the proper acquisition authority for the Line. See City of Belfast, Me.—Acquis. Exemption—Certain Assets of Belfast & Moosehead Lake R.R., FD 35766 (STB served Dec. 26, 2013). At the City's request, its notice of exemption seeking abandonment was converted into a petition for abandonment, which was deemed to have been filed on January 10, 2014, the day after its acquisition exemption in Docket No. FD 35766 became effective.

BMLRR line to the State of Maine and, since 1996, the only traffic has been intrastate tourist excursions. BMLRR began liquidating its assets in 2001, and the Line was transferred to Unity Property Management, Inc. (Unity) in 2003. Unity conveyed the Line to the City on July 2, 2010. The City obtained Board authority for its acquisition of the Line in 2013.³

The City intends to convert the Line into a public recreational trail. The City states that no freight traffic has moved over the Line since 1996. The only traffic that has moved over the Line in the past two years, according to the City, is an intrastate tourist excursion service, which will continue to operate over a portion of the BMLRR line that the City is not seeking to abandon.

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 the City's abandonment proposal under 49 U.S.C. § 10903 is not necessary in this case to carry out the rail transportation policy. There is no freight rail traffic currently on the Line, and there has been no freight rail service since 1996. By minimizing the administrative expense of the abandonment application process, an exemption would minimize the need for Federal regulatory control over the rail transportation system, expedite regulatory decisions, and reduce regulatory barriers to exit, in accordance with 49 U.S.C. §§ 10101(2) and (7). An exemption would also foster sound economic conditions and encourage efficient management by permitting the rationalization of an unnecessary common carrier rail line, consistent with 49 U.S.C. §§ 10101(5) and (9). Other aspects of the rail transportation policy would not be adversely affected.

Regulation of the proposed transaction is not necessary to protect shippers from an abuse of market power because there are no active shippers on the Line and no freight traffic has moved over the Line since 1996.⁴ Further, no shipper or other party has filed in opposition to the proposed abandonment.

³ City of Belfast, Me.—Acquis. Exemption—Certain Assets of Belfast & Moosehead Lake R.R., FD 35766 (STB served Dec. 26, 2013)

⁴ Given the market power finding here, the Board need not determine whether the proposed abandonment is limited in scope.

Employee Protection. 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, the Board 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 (Oregon Short Line), 360 I.C.C. 91 (1979).

Environmental Review. The City has submitted environmental and historic reports and has notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the environmental impacts of the proposed abandonment. See 49 C.F.R. § 1105.11. The Board’s Office of Environmental Analysis (OEA) has examined the environmental and historic reports, verified the City’s data, and analyzed the probable effects of the proposed action on the quality of the human environment.

OEA issued an Environmental Assessment (EA) in this proceeding on January 24, 2014, recommending that three conditions be imposed on any decision granting abandonment authority. First, OEA states that the U.S. Fish and Wildlife Service (USFWS) submitted comments indicating that there is an active bald eagle nest site located near the Line. Although no longer listed as federally threatened or endangered, the bald eagle is protected under the Bald and Gold Eagle Protection Act⁵ and the Migratory Bird Treaty Act.⁶ Because salvage activity related to the proposed abandonment would be minor and confined to the rail right-of-way, OEA believes that disturbance of the nest is unlikely; however, as the nest appears to be located approximately 200 feet from the Line at its nearest point, OEA recommends a condition requiring the City to consult with USFWS regarding appropriate measures that can be taken during any salvage activities to avoid disturbing the nest site and to comply with all reasonable recommendations.

Second, USFWS recommends that the City consult with the Maine Department of Inland Fisheries and Wildlife (MDIF&W) and the Maine Natural Areas Program (MNAP) regarding potential impacts to state threatened and endangered species. Accordingly, OEA recommends a condition requiring the City to consult with these agencies prior to beginning any salvage activities. And third, because the National Geodetic Survey (NGS) did not submit comments regarding the potential impact of the proposed abandonment to any geodetic station markers that may be present, OEA recommends a condition requiring the City to consult with NGS at least 90 days prior to beginning any salvage activities.

Comments to the EA were due by February 3, 2014. No comments were received. Accordingly, we will impose the conditions recommended by OEA in the EA. Based on OEA’s

⁵ 16 U.S.C. § 668.

⁶ 16 U.S.C. § 703.

recommendation, the Board concludes that the proposed abandonment, if implemented as conditioned, would not significantly affect either the quality of the human environment or the conservation of energy resources.

Interim Trail Use. As indicated above, the City has filed a request for the issuance of a NITU for the Line under the National Trails System Act, 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29. The City has submitted a statement of willingness to assume full responsibility for the management of the right-of-way, for any legal liability arising out of the transfer or use of the right-of-way, and for the payment of any and all taxes that may be levied or assessed against the right-of-way, as required by 49 C.F.R. § 1152.29(a)(2). The City has also acknowledged that the use of the right-of-way for trail purposes is subject to its continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service. Because the City's request complies with the requirements of 49 C.F.R. § 1152.29, we will issue a NITU for the Line. The City is free to negotiate an interim trail use agreement during the 180-day period prescribed below. If an interim trail use agreement is reached (and thus, interim trail use is established), the City shall notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h); Nat'l Trails Sys. Act & R.R. Rights-of-Way, EP 702 (STB served Apr. 30, 2012). If no agreement is reached within 180 days, the City may fully abandon the Line, provided the conditions imposed below are met. See 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

The parties should note that operation of the interim trail use procedures could be delayed, or even foreclosed, by the offer of financial assistance process under 49 U.S.C. § 10904. As stated in Rail Abandonments—Use of Rights-of-Way as Trails, 2 I.C.C. 2d 591, 608 (1986), an offer of financial assistance (OFA) to acquire rail lines for continued rail service or to subsidize rail operations takes priority over interim trail use/rail banking. Accordingly, if an OFA is timely filed under 49 C.F.R. § 1152.27(c)(1), the effective date of this decision and notice will be postponed beyond the effective date indicated here. See 49 C.F.R. § 1152.27(e)(2). In addition, the effective date may be further postponed at later stages in the OFA process. See 49 C.F.R. § 1152.27(f). Finally, if the Line is sold under the OFA procedures, the petition for abandonment exemption will be dismissed and interim trail use precluded. Alternatively, if a sale under the OFA procedures does not occur, the interim trail use process may proceed.

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 the City of the above-described line, subject to the employee protective conditions set forth in Oregon Short Line and the conditions that: (a) the City shall consult with USFWS prior to beginning salvage activities regarding potential impacts to an active bald eagle nest that has been identified near the project site and comply with all

reasonable recommendations in order to prevent the disturbance of the nest; (b) the City shall consult with MDIF&W and MNAP prior to beginning salvage activities regarding potential impacts to state threatened and endangered species, species of special concern, and significant wildlife habitats and comply with these agencies' reasonable recommendations; (c) the City shall consult with NGS prior to beginning salvage activities and, if NGS identifies geodetic station markers that may be affected by the proposed abandonment, the City shall notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers in order to plan for the possible relocation of the geodetic station markers by NGS.

2. If interim trail use is implemented, the interim trail use/railbanking agreement must require the City to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way.

3. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the City's continuing to meet its responsibilities described in ordering paragraph 2 above.

4. If an agreement for interim trail use/rail banking is reached by October 27, 2014, the City shall notify the Board within 10 days that an agreement has been reached, 49 C.F.R. § 1152.29(d)(2) and (h), and interim trail use may be implemented. If no agreement is reached by that time, the City may fully abandon the Line, provided the conditions imposed above are met. See 49 C.F.R. § 1152.29(d)(1).

5. If interim trail use is implemented, and subsequently the City intends to terminate trail use on all or any portion of the rail line covered by the interim trail use agreement, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

6. An offer of financial assistance 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 May 9, 2014, 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 \$1,600. See 49 C.F.R. § 1002.2 (f)(25).

7. 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."

8. Provided no OFA has been received, this exemption will be effective on May 30, 2014. Petitions to stay must be filed by May 12, 2014. Petitions to reopen must be filed by May 20, 2014.

9. Pursuant to the provisions of 49 C.F.R. § 1152.29(e)(2), the City 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 the City's filing of a notice of consummation by April 30, 2015, 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 one-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 Begeman, and Commissioner Miller.