

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35369

CITY OF TEMPLE, TEX.—ACQUISITION AND OPERATION EXEMPTION—
GEORGETOWN RAILROAD COMPANY

Decided: April 23, 2010

On April 8, 2010, the City of Temple, Tex. (Temple), a noncarrier, filed a verified notice of exemption under 49 C.F.R. § 1150.31 to acquire from the Georgetown Railroad Company (Georgetown), and to operate, a rail line approximately 6.277 miles long, between milepost 0.00, near Belton, and milepost 6.277, in Smith, Bell County, Tex. (the line).¹ According to Temple, there has not been any traffic on the line for at least 20 years. For the reasons set forth below, the notice is rejected.

Board authority to acquire a rail line involves the obligation to operate common carrier service over the line upon reasonable request. Temple has disclosed, however, that while it would provide common carrier service over the line “in the unlikely event there is a demand for service,”² its purpose in acquiring the line is to construct a water pipeline beneath the surface of the right-of-way. Temple’s statement that, once the water pipeline is completed, its goal is to convert the right-of-way into a trail under the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act) and 49 C.F.R. § 1152.29, raises further questions about the appropriateness of the acquisition exemption process for this transaction. To convert a line of railroad into a trail, the carrier operating over the line must first be otherwise authorized to abandon it. However, the policy underlying the governing acquisition exemption procedures is to support the continued operation of rail lines that railroads might otherwise seek to abandon. The Board has found that acquiring a line of railroad for the purpose of abandoning rather than operating over it constitutes a misuse of these procedures. See The Land Conservancy of Seattle & King County—Acquis. & Operation Exemption—The Burlington N. & Santa Fe Ry., FD 33389, slip op. at 3 (STB served Sept. 26, 1997) (notice of acquisition exemption revoked where acquiring party filed for abandonment within 2 months of acquiring the line), reconsideration denied, The Land Conservancy of Seattle & King County—Acquis. & Operation Exemption—The Burlington N. & Santa Fe Ry., FD No. 33389 et al. (STB served May 13, 1998), pet. for judicial review dismissed sub nom. The Land Conservancy of Seattle & King County v. STB, 238 F.3d 429 (9th Cir. 2000).

¹ Temple also seeks to acquire trackage rights granted to Georgetown. Georgetown acquired the line and the trackage rights from the Belton Railroad Co. in 1991.

² Pet. to Revoke 4.

It might be possible for the parties here to structure this transaction in a different manner in order to meet their goals. For example, Georgetown could seek to abandon the line and discontinue service, and Temple could request a public use condition and a trail use condition, as appropriate. Nevertheless, the notice, as presented here, is rejected for the reasons set forth above.

It is ordered:

1. The notice of exemption is rejected without prejudice.
2. This decision will be effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.