

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-842X

ALMONO LP—ABANDONMENT EXEMPTION—IN ALLEGHENY COUNTY, PA

Decided: January 28, 2004

By decision served on January 13, 2004 (January 13 decision), the Board, under 49 U.S.C. 10502, exempted from the prior approval requirements of 49 U.S.C. 10903 the abandonment by Almono LP (Almono) of its entire line of railroad extending between the plant of shipper MetalTech on the north side of the Monongahela River and an interchange point with CSX Transportation, Inc. (CSXT) north of CSXT's Glenwood Yard in Hazelwood, Allegheny County, PA, a distance of approximately 2 miles (the line). Almono also sought exemption from the offer of financial assistance (OFA) procedures of 49 U.S.C. 10904 and the public use provisions of 49 U.S.C. 10905. On January 9, 2004, the Allegheny Valley Railroad Company (AVR) filed with the Board a copy of a letter it was sending to counsel for Almono expressing an intent to file an OFA. On January 12, 2004, AVR filed a motion for leave to intervene in this proceeding for the purpose of opposing the proposed exemption from the OFA provisions of section 10904. The January 13 decision granted AVR's motion for leave to intervene, and granted an exemption from the public use provisions of 49 U.S.C. 10905, but denied the request for an exemption from the OFA procedures of 49 U.S.C. 10904.

The exemption was scheduled to become effective on February 12, 2004, unless stayed by the Board or unless a formal OFA under 49 U.S.C. 10904 and 49 CFR 1152.27(c) was filed within 10 days of the service date of the January 13 decision or by January 23, 2004. On January 16, 2004, AVR filed a petition to toll the 10-day period for submitting an OFA until 30 days after Almono furnished it with requested documents and information.

On January 21, 2004, Almono filed a notice of withdrawal of its petition for exemption. On January 22, 2004, AVR filed an objection to Almono's notice of withdrawal. AVR argues that Almono's notice of withdrawal does not disavow its original intent to redevelop the right-of-way and adjoining property, nor does it assure continued responsive rail service over the line, as AVR claims it would provide were it to acquire the line through the OFA process. On January 26, 2004, Almono filed a reply to AVR's objection wherein it states its intention to continue to honor its common carrier obligations.

When a carrier is authorized to abandon a line, that authority is permissive, not mandatory. The carrier can choose to exercise that authority or not. Because carriers are not compelled to abandon lines, the Board normally grants a carrier's motion to withdraw its request

for abandonment authority. See Maine Central Railroad Company–Abandonment Exemption–In Androscoggin County, ME, STB Docket No. AB-83 (Sub-No. 16X) (STB served Sept. 15, 2000). Until Almono exercises the abandonment authority it has received, which it has not under 49 CFR 1152.29(e)(2), the line is not abandoned and the Board’s primary jurisdiction over the line continues. Almono has indicated its intent to continue common carrier service over the line if authority to withdraw its abandonment petition for exemption is granted. In light of the above, AVR has failed to show why Almono’s request to withdraw should not be permitted. Almono’s petition for exemption will therefore be dismissed. The effect of dismissal is that Almono’s common carrier obligation to provide rail service over the line will remain in place. Because the request to withdraw the petition for exemption is being granted, AVR’s petition to toll the deadline for filing OFAs is now moot.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Almono’s request to withdraw its petition for exemption is granted and, accordingly, the petition for exemption is dismissed.
2. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary