

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-364 (Sub-No. 15X)

MID-MICHIGAN RAILROAD, INC.–DISCONTINUANCE OF SERVICE EXEMPTION–
IN KENT AND OTTAWA COUNTIES, MI

Decided: May 21, 2009

By petition filed on February 11, 2009, Mid-Michigan Railroad, Inc. (MMRR) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to discontinue service over a 6.94-mile line of railroad between milepost 159.5 at Grand Rapids (Walker) and milepost 166.44 at Marne, in Kent and Ottawa Counties, MI. Notice of the filing was served and published in the Federal Register on March 3, 2009 (74 FR 9334). We will grant the petition for exemption, subject to the standard employee protective conditions.

BACKGROUND

MMRR has operated the line since 1999 as successor-by-merger to the Grand Rapids Eastern Railroad, Inc. (GRE).¹ GRE had leased the line in 1997 from the Coopersville and Marne Railway Company Line (C&M).² C&M had acquired the line in 1996 from the Central Michigan Railway Company (CMR).³

MMRR submits that it terminated the lease pursuant to the terms of the lease and ceased operations on the line on December 31, 2008.⁴ MMRR seeks Board authority to end its common carrier obligation to operate over the line and emphasizes that C&M retains the residual common

¹ As part of a corporate family transaction, GRE was merged into MMRR in 1999. See RailTex, Inc., Mid-Michigan Railroad, Inc., Michigan Shore Railroad, Inc., and Grand Rapids Eastern Railroad, Inc.–Corporate Family Transaction, STB Finance Docket No. 33693 (STB served Jan. 20, 1999).

² See Grand Rapids Eastern Railroad, Inc.–Lease and Operation Exemption–Coopersville and Marne Railway Company Line, STB Finance Docket No. 33344 (STB served Feb. 10, 1997).

³ See Coopersville & Marne Railway Company–Acquisition and Operation Exemption–Central Michigan Railway Company, STB Finance Docket No. 32942 (STB served May 21, 1996).

⁴ See Petition at 4 and Exhibit D.

carrier obligation to operate the line and provide service to shippers on the line beginning January 1, 2009.⁵ No opposition to MMRR's exemption request has been filed.

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 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 reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions, and encourage efficient management by relieving MMRR of the costs of maintaining and operating the line [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation is not necessary to protect shippers from the abuse of market power. C&M, the owner of the line, retains the common carrier obligation to provide future rail service over the line, and no one has objected to the proposed discontinuance. Nevertheless, to ensure that the shippers and C&M are informed of our action, we will require MMRR to serve a copy of this decision on the shippers on the line and on C&M within 5 days of the service date of this decision and to certify to the Board that it has done so. Given our finding regarding market power, we need not determine whether the proposed discontinuance 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, the employee protective conditions set forth in Oregon Short Line R. Co.–Abandonment–Goshen, 360 I.C.C. 91 (1979), will be imposed.

Because this is a discontinuance proceeding and not an abandonment, the Board need not consider offers of financial assistance (OFAs) to acquire the line for continued rail service, trail use requests, or requests to negotiate for public use of the line. The Board will consider any offers for a subsidy to provide continued rail service under 49 U.S.C. 10904. This proceeding is also exempt from environmental reporting requirements under 49 CFR 1105.6(c) and from

⁵ See Twin State Railroad Company–Abandonment Exemption–In Caledonia and Essex Counties, VT, STB Docket No. AB-862X (STB served Nov. 18, 2005) at 2, and Atlantic & Pacific Railroad and Transportation Company–Discontinuance of Service of Exemption–In Rice County, KS, STB Docket No. AB-992X (STB served June 20, 2006). We point out, however, that MMRR may not discontinue its operations on the line until it receives authority from the Board.

historic reporting requirements under 49 CFR 1105.8(b).⁶ 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 MMRR of its operations over the above-described line, subject to the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

2. MMRR is directed to serve a copy of this decision on the shippers on the line and on C&M within 5 days of the service date of this decision and to certify to the Board that it has done so.

3. An OFA under 49 CFR 1152.27(b)(2) to subsidize continued rail service must be received by the railroad and the Board by June 11, 2009, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by a \$1,500 filing fee. See 49 CFR 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 16, 2009. Petitions to reopen must be filed by June 26, 2009.

6. Provided no OFA to subsidize continued rail service has been received, this exemption will be effective on July 1, 2009.

By the Board, Acting Chairman Mulvey, and Vice Chairman Nottingham.

Anne K. Quinlan
Acting Secretary

⁶ MMRR states that it has consulted with the Board’s Section of Environmental Analysis (SEA) on its discontinuance of service proposal and that SEA has advised that MMRR is not required to file either an environmental or historical report where C&M is required to continue to provide common carrier service over the line.