

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1182X

BRANDON RAILROAD, L.L.C.—ABANDONMENT EXEMPTION—  
IN DOUGLAS COUNTY, NEB.

Digest:<sup>1</sup> This decision allows Brandon Railroad, L.L.C., to end its common carrier obligation to provide freight rail service over approximately 17.3 miles of rail lines in Douglas County, Neb.

Decided: May 23, 2016

By petition filed on February 16, 2016, Brandon Railroad, L.L.C. (BRR), seeks an exemption from the prior approval requirements of 49 U.S.C. § 10903 to abandon 17.3 miles of rail lines in Douglas County, Neb. (the Lines). The Lines traverse United States Postal Service Zip Code 68107. Notice of the exemption was served and published in the Federal Register on March 4, 2016 (81 Fed. Reg. 11,637). The Board will grant the exemption subject to standard employee protective conditions.

BACKGROUND

BRR states that it is seeking to abandon the Lines due to a lack of demand for common carrier rail service. (Pet. 4.) According to BRR, only United States Cold Storage, Inc. (Cold Storage) could potentially use common carrier rail service on the Lines. BRR states that Cold Storage has not shipped any traffic by rail in months. (Environmental Report 1.) In August 2015, BRR entered into a long-term Confidential Private Transportation Services Agreement with Cold Storage in the event Cold Storage decides to once again utilize rail service. Additionally, an affiliate of BRR, GBW Railcar Services, LLC (GBW), utilizes the Lines to provide private carriage for the rail cars moving to and from its repair facilities on the Lines. BRR states that upon a grant of abandonment authority and consummation, GBW will continue to provide private carriage and by BRR to provide contract (not common carrier) service for Cold Storage.

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<sup>1</sup> 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).

## DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 10903, a rail line may not be abandoned without the Board's prior approval. Under 49 U.S.C. § 10502, however, the Board must exempt a transaction or service from regulation when it finds 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.

In this case, detailed scrutiny of the proposed abandonment 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 would reduce regulatory barriers to exit. 49 U.S.C. § 10101(2), (7), (15). An exemption would also foster sound economic conditions and encourage efficient management by permitting the rationalization of an unnecessary rail line, consistent with 49 U.S.C. § 10101(5), (9). Other aspects of the rail transportation policy would not be adversely affected by the use of the exemption process.

Additionally, regulation under 49 U.S.C. § 10903 is not necessary to protect shippers from the abuse of market power.<sup>2</sup> Cold Storage is the only potential shipper on the Lines, and it is not currently utilizing rail service. Nevertheless, to ensure that Cold Storage is informed of our action, we will require BRR to serve a copy of this decision on Cold Storage within five days of the service date of this decision and to certify contemporaneously to the Board that it has done so.

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, we will impose on BRR 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).

Environmental review. BRR submitted environmental and historic reports with its petition and 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. § 1105.7, 8, 11. The Board's Office of Environmental Analysis (OEA) has examined the reports, verified the data they contain, and analyzed the probable effects of the proposed action on the quality of the human environment.

OEA issued an Environmental Assessment (EA) on April 15, 2016. OEA concluded in its EA that the proposed abandonment of the Line would not significantly affect the quality of

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<sup>2</sup> Because regulation of the proposed abandonment is not necessary to protect shippers from the abuse of market power, we need not determine whether the proposed abandonment is limited in scope.

the human environment. OEA also recommended that no environmental conditions be imposed on any decision granting abandonment authority.

Comments on the EA were due by May 15, 2016, and two comments were filed. By email dated April 19, 2016, the Ponca Tribe of Nebraska remarked that it had no comments to offer at this time. By letter dated April 22, 2016, the U.S. Army Corps of Engineers remarked that it had no comments to offer as no ground disturbance would occur and no known historical or archaeological resources would be affected as a result of the proposed abandonment. OEA issued a Final EA on May 17, 2016, that does not recommend any environmental conditions. We agree with OEA's analysis and recommendations and will not impose environmental conditions.

This action will not significantly impact 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 abandonment by BRR of the above-described lines, subject to the employee protective conditions set forth in Oregon Short Line.

2. BRR is directed to serve a copy of this decision on Cold Storage within five days of the service date of this decision and to certify contemporaneously to the Board that it has done so.

3. An Offer of Financial Assistance (OFA) 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 June 3, 2016, 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).<sup>3</sup>

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. Provided no OFA has been received, this exemption will be effective on June 24, 2016.

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<sup>3</sup> Consistent with our precedent, and given the apparent lack of need for the Lines by any shipper, any person seeking to file an OFA must provide evidence that there is some shipper that would make use of common carrier service. See, e.g., CSX Transp., Inc.—Aban. Exemption—in Wash. Cty., Md., AB 55 (Sub-No.727X) (STB served Oct. 24, 2013); Union Pac. R.R.—Aban. Exemption—in Pottawattamie Cty., Iowa, AB 33 (Sub-No. 300X) (STB served Jan. 20, 2012); CSX Transp., Inc.—Aban. Exemption—in Chesterfield & Darlington Ctys., S.C., AB 55 (Sub-No. 703X) (STB served Jan. 19, 2011).

6. Petitions to stay must be filed by June 9, 2016. Petitions to reopen must be filed by June 9, 2016.

7. Pursuant to the provisions of 49 C.F.R. § 1152.29(e)(2), BRR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Lines. If consummation has not been effected by BRR's filing of a notice of consummation by May 25, 2017, 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 Miller, and Commissioner Begeman.