

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 590 (Sub-No. 1X)

MARYLAND TRANSIT ADMINISTRATION—ABANDONMENT EXEMPTION—IN
SOMERSET COUNTY, MD

Decided: February 11, 2015

On November 26, 2014, Maryland Transit Administration (MTA), a noncarrier, filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon approximately 14.57 miles of rail line in Somerset County, Md. (County), between valuation station 90+50, as shown on valuation map V19-38, near Final System Plan (FSP) MP 1.2 near Kings Creek, Md., and valuation station 850+35 +/-, as shown on valuation map V19-53, near FSP MP 16.3 near Crisfield, Md. (the Line). MTA concurrently filed a petition seeking an exemption from the offer of financial assistance (OFA) and the public use provisions at 49 U.S.C. § 10904 and 49 U.S.C. § 10905, respectively. On December 30, 2014, the Board imposed a housekeeping stay to provide additional time for the Board to fully consider the arguments presented.

In its notice, MTA indicated that the Line was excluded from transfer to Consolidated Rail Corporation (Conrail) or another profitable railroad under the FSP¹ and was approved for abandonment and made available for public subsidy or acquisition. According to MTA, although the FSP identified the Line as being the subject of an interim application for abandonment under section 304(d) of the Regional Railroad Reorganization Act of 1973, Pub. L. No. 93-236, 87 Stat. 985 (1974) (3R Act), it has not found any records indicating that abandonment was consummated through notice to State and local governments, as required under the 3R Act.

MTA, citing to Common Carrier Status of States, State Agencies & Instrumentalities, & Political Subdivisions, FD 28990F (ICC served July 16, 1981) and 49 C.F.R. pt. 1150 subpart C—Modified Certificate of Public Convenience & Necessity, asserts that it acquired the

¹ The United States Railway Association formulated the FSP in the 1970s. It designated which lines were to be retained in active service through transfer to Conrail, a government-created successor railroad to the various northeastern railroads in reorganization, and which lines would be allowed to be abandoned. The FSP was submitted to Congress on July 26, 1975, and was specifically approved in section 601(e) of the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94-210, 90 Stat 31 (1976).

Line after it had been approved for abandonment and, thus, was exempt from the requirement to seek Interstate Commerce Commission authority to acquire the Line. For the same reasons, MTA also states that it is exempt from the Board's requirements for seeking abandonment authority but nonetheless submitted the notice in this proceeding to make clear its intent to abandon and provide an opportunity to preserve the right-of-way for the potential reactivation of freight service by rail banking the Line. According to MTA, it and the County also are negotiating with Delmarva Power, a subsidiary of Pepco Holdings, Inc., regarding use of the Line's right-of-way for a new electric transmission line.

To assist the Board in its evaluation, MTA is directed to file, by March 13, 2015, supplemental information describing in more detail the status and history of the Line. Specifically MTA should address whether the Line previously was abandoned, either at the time it acquired the Line from Penn Central Corporation or at some point thereafter. See Walkersville So. R.R.—Operation Exemption—Line Owned by the State of Md., FD 32329, slip op. at 1 n.1 (ICC served Sept. 30, 1993). If MTA does not believe the Line is abandoned, but instead that the Line is subject to the exemption provided by Common Carrier Status of States, State Agencies & Instrumentalities, & Political Subdivisions, 363 I.C.C. 132 (1980), aff'd sub nom. Simmons v. ICC, 697 F.2d 326 (D.C. Cir. 1982),² it should support its determination with detailed facts and legal analysis and also should address if revocation of such exemption would be necessary prior to the Board determining whether to publish the requested notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments. See Caldwell R.R. Comm'n—Exemption from 49 U.S.C. Subtitle IV, FD 32659 (Sub-No. 1) (STB served Nov. 26, 2014). Finally, MTA should discuss the benefit to the public of its proposal to use the right-of-way to provide additional electrical access and capacity and how that proposal would be consistent with the Board's precedent for granting an exemption from OFA and public use conditions.

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

It is ordered:

1. MTA is directed to file a supplemental pleading by March 13, 2015.
2. This decision is effective on its date of service.

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

² See MTA Verified Notice of Exemption 2 n.1 (citing Common Carrier Status of States, State Agencies & Instrumentalities, & Political Subdivisions, FD 28990F (ICC served July 16, 1981); 49 C.F.R. pt. 1150 subpart C).