

SERVICE DATE – MAY 30, 2012

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1096X

GEORGIA DEPARTMENT OF TRANSPORTATION—ABANDONMENT EXEMPTION—
IN FULTON COUNTY, GA.

Digest:¹ The Georgia Department of Transportation is permitted to terminate permanently its service obligation over a 3.12-mile line of railroad in Fulton County, Ga.

Decided: May 25, 2012

By petition filed on March 20, 2012, the Georgia Department of Transportation (GDOT) seeks an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10903 to abandon a 3.12-mile line of railroad between milepost 469.15 and milepost 472.27, which comprises a portion of a line known as the L&N Belt, in Fulton County, Ga. (West End Property or the Line).² The Line traverses United States Postal Zip Codes 30310 and 30314. GDOT also seeks exemption from 49 U.S.C. § 10904 (offer of financial assistance (OFA) procedures) and 49 U.S.C. § 10905 (public use provisions). Notice of the exemption was served and published in the Federal Register on April 9, 2012 (77 Fed. Reg. 21,153-54).

For the reasons discussed below, the Board will grant the exemption from 49 U.S.C. § 10903, thereby authorizing the abandonment, subject to environmental and standard employee protective conditions. GDOT's request for exemption from the OFA process will be

¹ 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).

² GDOT submitted its petition for exemption on March 15, 2012. However, GDOT acquired the Line in December 2001 but did not seek the requisite regulatory authority for this acquisition until February 2012. See Ga. Dep't of Transp.—Acquis. Exemption—CSX Transp., Inc., FD 35591 (STB served Feb. 27, 2012). The acquisition exemption sought by GDOT in Docket No. FD 35591 became effective on March 18, 2012, three days after GDOT submitted its petition for abandonment in this proceeding. Thus, on March 28, 2012, GDOT requested that the Board deem GDOT's petition for abandonment exemption as having been filed on March 20, 2012, which the Board did in the notice served on April 9, 2012.

granted, and its request for exemption from the public use provisions of § 10905 will be denied as moot.

BACKGROUND

GDOT acquired the West End Property from CSXT Transportation, Inc. (CSXT) in 2001. The West End Property is located within the City of Atlanta and is among several rail lines acquired by GDOT to create a Southeast/Southwest freight rail bypass around downtown Atlanta. GDOT asserts that tracks along the corridor were removed many years ago, before GDOT acquired the Line, and that extensive overgrowth and illegal dumping have occurred on the segment. According to GDOT, it originally anticipated that the West End Property would be preserved to accommodate the possible future reactivation of freight rail service. However, GDOT submits that the freight rail project is no longer feasible and the corridor is now proposed for incorporation into a comprehensive redevelopment effort, as discussed further below.

According to GDOT, abandonment is warranted because there are no active shippers on the West End Property, no local or overhead rail traffic has moved over the Line in over 10 years, and there has been no demand for service since GDOT acquired it. GDOT further asserts that any overhead traffic that previously moved over the West End Property, when it was last used over 10 years ago, can be and has been rerouted over other lines.

According to GDOT, it seeks authority to abandon the West End Property in order, in part, to facilitate the development of the Atlanta BeltLine, an economic development effort that combines transit, green space, trails and new commercial, residential, and public facility development along a 22-mile ring of historic rail segments encircling Atlanta. Specifically, according to GDOT, the West End Property would be used to develop a transit corridor to accommodate light rail or buses in a fixed guideway, along with a trail and adjacent uses designed to support and be supported by the variety of available transportation modes.

According to GDOT, the only alternative is not to abandon rail freight operations, which GDOT finds neither satisfactory nor realistic as demand for freight rail service has long ceased. Further, GDOT asserts that the cost of any upgrades or maintenance required to return the West End Property to active freight use would be prohibitive, particularly since there has been no demand for service for many years and therefore no prospect of generating freight business to offset the cost of improvements. GDOT states that the rail facilities along the corridor are in a deteriorated condition and that it has no plans to salvage any rail or other equipment in connection with the proposed abandonment. According to GDOT, once the West End Property is fully abandoned, it will be redeveloped for transit and recreational uses as part of the Atlanta BeltLine project.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 10903, a rail line may not be abandoned without prior approval from the Board. 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.

Detailed scrutiny of GDOT's proposal under 49 U.S.C. § 10903 is not necessary to carry out the rail transportation policy in this case. It is undisputed that the West End Property is not needed for continued rail service, as there has been no demand for service over the West End Property, nor has any local or overhead traffic moved over it, since GDOT acquired the Line in 2001. Moreover, keeping the West End Property in place as a line of railroad would either prohibit or add unnecessary delay to the proposed economic redevelopment project. By minimizing the administrative expense of the application process, an exemption will expedite regulatory action and will reduce regulatory barriers to exit, in accordance with 49 U.S.C. §§ 10101(2) and (7). An exemption, therefore, will also foster sound economic conditions and encourage efficient management by permitting the rationalization of an unnecessary common carrier rail line, consistent with 49 U.S.C. §§ 10101(5) and (9). Other aspects of the rail transportation policy will not be adversely affected by the use of the exemption process.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power because there are no active shippers on the West End Property and no local or overhead traffic has moved over the Line since prior to 2001.³ Further, no party has filed in opposition to the proposed abandonment.

Exemption from § 10904. Under 49 U.S.C. § 10904, a financially responsible person may offer to purchase, or subsidize continued rail operations over, a rail line sought to be abandoned. Here, however, GDOT seeks exemption from the OFA process at § 10904. Exemptions from the OFA process have been granted from time to time when the right-of-way is needed for a valid public purpose and there is no overriding public need for continued rail service. See Norfolk S. Ry.—Aban. Exemption—In Norfolk & Va. Beach, Va., AB 290 (Sub-No. 293X) (STB served Nov. 6, 2007). In support of its request, GDOT contends that an exemption is needed so that the right-of-way can be used for the valid public purpose of developing a public transit corridor as part of the larger Atlanta BeltLine project. No one has filed in opposition to GDOT's requested exemption from § 10904.

GDOT has justified an exemption from the OFA process. It has demonstrated that the right-of-way is needed for a valid public purpose—development of public transit, trails, and commercial, residential, and public facility improvement as part of the Atlanta BeltLine project. See id. (exemption from OFA requirements granted for public transit plans; no active shippers). Likewise, there is no overriding public need for continued rail service as there have been no shippers on the West End Property for at least 10 years. Accordingly, the Board finds that a valid public purpose is present and there is no overriding public need for continued rail service.

³ Given our market power finding, we need not determine whether the proposed abandonment is limited in scope.

We therefore conclude that applying the OFA provisions in this situation is not necessary to carry out the rail transportation policy. Expediting the abandonment will minimize federal regulatory control over the rail system, expedite regulatory decisions, and reduce regulatory barriers to exit. 49 U.S.C. § 10101(2) and (7). Other aspects of the rail transportation policy will not be affected. Because there has been no traffic over the Line for at least 10 years, nor has there been any demand for service, application of § 10904 is not necessary to protect shippers from an abuse of market power. Exempting the transaction from § 10904 therefore is warranted.

Exemption from § 10905. GDOT also seeks exemption from the public use provisions of 49 U.S.C. § 10905. Because requests for a public use condition were due by April 30, 2012, and no requests were received, GDOT's request for exemption from § 10905 will be denied as moot.

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, the Board will impose the employee protective conditions set forth in Oregon Short Line—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

Environmental Review. GDOT has submitted a combined environmental and historic report and has notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the energy and environmental impacts of the proposed abandonment. See 49 C.F.R. § 1105.11. GDOT has included with its environmental and historic report relevant sections of the Atlanta BeltLine Tier 1 Draft Environmental Impact Statement (DEIS), completed in June 2011. This DEIS, prepared by the Metropolitan Atlanta Rapid Transit Authority (MARTA) and the Federal Transit Administration, assessed the anticipated impacts of the Atlanta BeltLine project. The Board's Office of Environmental Analysis (OEA) has examined the environmental and historic report, verified GDOT's data, and analyzed the probable effects of the proposed action on the quality of the human environment.

OEA served an Environmental Assessment (EA) in this proceeding on April 20, 2012, recommending that two conditions be imposed on any decision granting abandonment authority. According to OEA, the DEIS disclosed 17 sites of concern for hazardous materials within a 300-foot study area around the Atlanta BeltLine project area. Specifically, the DEIS notes that the southwest quadrant, which includes the West End Property, has a high occurrence of reported spills, underground storage tanks, and sites that have generated hazardous waste. Therefore, OEA recommends a condition requiring GDOT to consult with the Georgia Environmental Protection Division prior to consummating abandonment of the West End Property. Also in the EA, OEA states that the National Geodetic Survey (NGS) identified approximately 17 geodetic station markers located in the area of the proposed abandonment. Therefore, OEA recommends that GDOT be required to consult with NGS at least 90 days before beginning any salvage activities that would disturb or destroy any geodetic station markers.

Pursuant to 36 C.F.R. § 800.2, OEA conducted a search of the Native American Consultation Database (<http://home.nps.gov/nacd/>) to identify Federally recognized tribes that may have ancestral connections to the project area. According to OEA, the Database indicated

that there is one tribe, the Eastern Band of Cherokee Indians of North Carolina, which may have knowledge regarding properties of traditional religious and cultural significance within the right-of-way for the proposed abandonment. OEA sent a copy of the EA to this tribe for review and comment.

Comments to the EA were due by May 7, 2012. No comments to the EA were received. Accordingly, we will impose the conditions recommended by OEA in the EA. Based on OEA's recommendation, we conclude that the proposed abandonment, if implemented as conditioned, 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, we exempt from the prior approval requirements of 49 U.S.C. § 10903 the abandonment by GDOT of the above-described Line, subject to the employee protective conditions set forth in Oregon Short Line—Abandonment—Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979), and subject to the conditions that GDOT shall: (1) consult with the Georgia Environmental Protection Division regarding hazardous material spills, contamination sites and underground storage tanks prior to consummation of the abandonment; and (2) consult with NGS at least 90 days before beginning any salvage activities that would disturb or destroy any geodetic station markers.

2. GDOT's request for exemption from the provisions of 49 U.S.C. § 10904 is granted.

3. GDOT's request for exemption from the provisions of 49 U.S.C. § 10905 is denied as moot.

4. The exemption will be effective on June 29, 2012. Petitions to stay must be filed by June 14, 2012, and petitions to reopen must be filed by June 25, 2012.

5. Pursuant to the provisions of 49 C.F.R. § 1152.29(e)(2), GDOT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by GDOT's filing of a notice of consummation by May 30, 2013, 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 1-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 Mulvey, and Commissioner Begeman.