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SERVICE DATE – JANUARY 22, 2016

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1236X

NEW YORK & ATLANTIC RAILWAY COMPANY—DISCONTINUANCE OF SERVICE  
EXEMPTION—IN QUEENS COUNTY, N.Y.

Digest:<sup>1</sup> This decision permits New York & Atlantic Railway Company to discontinue rail service over two segments of railroad in Queens County, N.Y., subject to standard employee protective conditions.

Decided: January 21, 2016

By petition filed on October 7, 2015, New York & Atlantic Railway Company (NYA) seeks an exemption under 49 U.S.C. § 10502 from the provisions of 49 U.S.C. § 10903 to discontinue service over the following two rail line segments in Queens County, NY: (1) approximately 0.69 miles of rail line between milepost 0.0 and milepost 0.69 in Long Island City, N.Y. (Segment 1), running through United States Postal Zip Code 11101; and (2) approximately 0.38 miles of rail line between milepost 0.82 and milepost 1.2 also in Long Island City (Segment 2), running through United States Postal Zip Code 11101. Both of the segments are owned by the Long Island Rail Road Company (LIRR).<sup>2</sup> Notice of the exemption proceeding was served and published in the Federal Register on October 27, 2015 (80 Fed. Reg. 65,850). No comments concerning the proposed discontinuance were filed. We are granting the exemption from 49 U.S.C. § 10903, subject to standard employee protective conditions.

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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. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

<sup>2</sup> On October 13, 2015, LIRR filed a petition for exemption in Docket No. AB 837 (Sub-No. 1X) to abandon the same two rail line segments. The Board is granting LIRR's petition in a separate decision that will be concurrently issued. Segment 1 is described as a portion of the Montauk Cutoff and Segment 2 is described as the Main Line Cutoff in the concurrent decision issued in Docket No. AB 837 (Sub-No. 1X).

## BACKGROUND

In 1997, NYA acquired authority from the Board to perform freight operations over approximately 268.6 route miles in the state of the New York. See N.Y. & Atl. Ry.—Operation Exemption—Long Island Rail Road, FD 33300 (STB served Jan. 10, 1997). According to NYA, there are no active shippers on Segment 1, and NYA has not provided freight service over Segment 2 at least since August 2006.<sup>3</sup> NYA states that the active freight customers that most recently used Segment 1 have relocated their facilities to a different yard and therefore continue to have access to freight service from NYA. Thus, according to NYA, the proposed discontinuance would not result in any active rail customers losing access to freight service. According to NYA, there is no overhead freight traffic on either of the segments.

## DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 10903, a rail carrier may not discontinue operations without the prior approval of the Board. 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 (RTP) 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 NYA's proposed discontinuance under 49 U.S.C. § 10903 is not necessary to carry out the RTP in this case. NYA states that there are no active shippers on either of the two segments. NYA further states that the customers that most recently used Segment 1 continue to have access to NYA freight service, and Segment 2 has not had any freight traffic since at least 2006. Thus, no active rail customers would lose access to freight service as a result of the discontinuance. An exemption would minimize the administrative expense of the application process, reduce regulatory barriers to exit, and provide for the expeditious handling and resolution of proceedings by more quickly permitting NYA to discontinue operations on a line with no active shippers. 49 U.S.C. §§ 10101(2), (7), & (15). Other aspects of the RTP would not be adversely affected by the use of the exemption.

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<sup>3</sup> NYA certifies only as far back as August 2006 because that is when Paul Victor (NYA's President), who signed NYA's verification submitted with the petition, joined NYA. We note that, in the related proceeding in Docket No. AB 837 (Sub-No. 1X), LIRR states that neither NYA nor any other freight carrier has used Segment 2. (LIRR Pet. 1, Oct. 13, 2015, Long Island Rail Road—Aban. Exemption—in Queens Cty., N.Y., AB 837 (Sub-No. 1X)).

We find that regulation under 49 U.S.C. § 10903 is not necessary to protect shippers from the abuse of market power. As discussed earlier, there are currently no shippers on either of the two segments where NYA would discontinue freight service.<sup>4</sup>

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

Because this is a discontinuance of service and not an abandonment, the Board need not consider offers of financial assistance (OFAs) under 49 U.S.C. § 10904 to acquire the line segments for continued rail service, trail use requests under 16 U.S.C. § 1247(d), or requests to negotiate for public use of the Line under 49 U.S.C. § 10905. However, the OFA provisions under 49 U.S.C. § 10904 for a subsidy to provide continued rail service do apply to discontinuances.

Because there will be environmental review during an abandonment, this discontinuance does not require an environmental review. A final Environmental Assessment was issued for the abandonment of these two rail line segments in Docket No. AB 837 (Sub-No. 1X) on January 14, 2016.

It is ordered:

1. Under 49 U.S.C. § 10502, we exempt from the prior approval requirements of 49 U.S.C. § 10903 the discontinuance of operations by NYA over the above-described segments of rail line, subject to the employee protective conditions set forth in Oregon Short Line.

2. An OFA under 49 C.F.R. § 1152.27(b)(2) to subsidize continued rail service must be received by NYA and the Board by February 1, 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, which currently is set at \$1,600. See 49 C.F.R. § 1002.2(f)(25).<sup>5</sup>

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<sup>4</sup> Because we find that regulation of the proposed discontinuance is not necessary to protect shippers from the abuse of market power, we need not determine whether the proposed discontinuance is limited in scope.

<sup>5</sup> Consistent with our precedent, and given the apparent lack of need for the line 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

(Continued . . .)

3. OFAs for subsidy 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.**”

4. Petitions to stay must be filed by February 1, 2016. Petitions to reopen must be filed February 11, 2016.

5. Provided no OFA to subsidize the continued rail service has been received, this exemption will be effective on February 21, 2016.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.

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( . . . Continued)

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).