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SERVICE DATE – LATE RELEASE JULY 15, 2011

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1043 (Sub-No. 2X)

MONTREAL, MAINE & ATLANTIC RAILWAY, LTD.—ABANDONMENT
EXEMPTION—IN AROOSTOOK COUNTY, ME.

Decided: July 15, 2011

Digest:¹ This decision permits Montreal, Maine & Atlantic Railway, Ltd. to stop providing service over a 0.4-mile line of railroad located in Van Buren, Aroostook County, Me. The abandonment will facilitate construction by the United States General Services Administration of a new land port of entry facility for the U.S. Customs and Border Protection Agency. There will be no loss of rail service because of the abandonment.

In a petition filed on March 28, 2011, Montreal, Maine & Atlantic Railway, Ltd. (MMA) seeks an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10903 to abandon a 0.4-mile line of railroad in Van Buren, Aroostook County, Me. MMA also seeks exemption from the offer of financial assistance (OFA) provisions of 49 U.S.C. § 10904 and the public use condition provisions of 49 U.S.C. § 10905, and MMA seeks relief from the trail use provisions of 49 C.F.R. § 1152.29. Pursuant to 49 U.S.C. § 10502(b), the Board served and published a notice in the Federal Register on April 15, 2011 (76 Fed. Reg. 21,425), instituting an exemption proceeding. No comments were filed in response to the notice. We will grant the petition for an exemption to abandon the above-described line, subject to standard employee protective conditions, and for an exemption from the OFA process. We are denying, as moot, MMA's request for an exemption from the public use condition process and relief from the trail use provisions of 49 C.F.R. § 1152.29. Finally, we are granting MMA's request for expedited handling and making these exemptions effective on the service date of this decision.

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).

BACKGROUND

In its petition, MMA states that the 0.4-mile line of railroad (the Line) that it seeks to abandon is the stub-end of MMA's Van Buren Subdivision extending between milepost V 23.69² at Bridge Street and milepost V 24.12 at Main Street (the termination point of the Van Buren Subdivision) in Van Buren, Me. Petitioner points out that the Van Buren Subdivision originally extended between Madawaska and Caribou, Me., but that the portion of the Subdivision that extended between milepost V 24.12 and Caribou was abandoned previously.

MMA explains that, upon receipt of abandonment authority, it plans to sell the Line, including the rail, ties, and other track material located on the property, and its transloading yard located adjacent to the Line just southeast of Bridge Street near milepost V 23.69, to the United States General Services Administration (GSA). In turn, GSA plans to use the property, together with other property that GSA has acquired, to construct a new land port of entry facility, on an accelerated schedule, for the U.S. Customs and Border Protection Agency. Specifically, the Line will be used to build a roadway exit from the facility, which will be located at Bridge Street at the end of the international highway bridge between Van Buren and St. Leonard, New Brunswick, at the center of the site of the new land port facility. As part of the proposed transaction, GSA has agreed to fund the construction of a new transloading yard for MMA, which will be located approximately 0.7 miles northwest of the current location on MMA's Van Buren Subdivision. MMA states that it will not be engaged in any salvage activities after the abandonment.

Although some shippers use the Line, none are located on it. Their shipments consist of lumber that originates in Canada and arrives at MMA's transloading facility by truck. The lumber is then transloaded and moved by rail over MMA's rail system to connections with other rail lines. MMA indicates that, in 2010, approximately 2,000 trucks of lumber arrived at the transloading facility and approximately 675 rail cars of lumber left the facility. MMA states that there will be no loss in rail service and anticipates that it will handle the same type and volume of business at the new location that it handles at the existing facility. The Town of Van Buren supports the relocation of MMA's transloading facility.

DISCUSSION AND CONCLUSIONS

Exemption from Section 10903. Under 49 U.S.C. § 10903, a rail line may not be abandoned without our 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.

² By letter filed July 13, 2011, MMA has clarified that the current milepost on the northerly end of the line for which it is seeking abandonment authority is milepost V 23.69 rather than milepost V 23.72, which MMA mistakenly cited in its petition. According to MMA, milepost V 23.69 is approximately 170 feet north of milepost V 23.72.

Detailed scrutiny of MMA's abandonment proposal under 49 U.S.C. § 10903 is not necessary to carry out the rail transportation policy. Competition and the continuation of a sound rail transportation system will not be adversely affected, because an exemption will facilitate MMA's relocating its transloading operations to a new facility that is a short distance from its existing facility. Thus, customers currently using the Line for transloading will continue to be served by MMA at the new transloading facility, and the objective of § 10101(5) (foster sound economic conditions) will be advanced. By minimizing the administrative expense of the application process, an exemption will expedite regulatory action and reduce regulatory barriers to exit, in accordance with 49 U.S.C. §§ 10101(2) and (7). Other aspects of the rail transportation policy will not be adversely affected by the use of the exemption process.

Furthermore, regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power, because MMA will continue to serve its customers at the new transloading facility. No shipper has opposed the proposed abandonment. Nevertheless, to ensure that the shippers are informed of our action, we will require MMA to serve a copy of this decision on all shippers currently using the Line so that they receive it within 5 days of the service date of this decision and to certify contemporaneously to us that it has done so. Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

Exemption from Section 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. The Board on occasion has granted exemptions from the OFA provisions of 49 U.S.C. § 10904 when the record shows that the right-of-way is needed for a valid public purpose and there is no overriding public need for continued rail service.³ Here, MMA has established that the property underlying the Line and MMA's transloading facility is needed for a valid public purpose, because the property is located at the center of the site of the new land port facility proposed by GSA. MMA also has shown that there is no overriding public need for continued rail service over the Line and the existing transloading facility, because MMA will continue to provide rail service to its customers from a new transloading facility located nearby. In addition, no shipper has opposed the transaction.

The record here establishes that the proposed exemption from 49 U.S.C. § 10904 meets the criteria of 49 U.S.C. § 10502. Applying OFA provisions in this instance is not necessary to carry out the rail transportation policy. Allowing the abandonment exemption to become effective expeditiously, without first being subject to these provisions, will minimize the need for Federal regulatory control over the rail transportation system, expedite regulatory action, and reduce regulatory barriers to exit, consistent with 49 U.S.C. §§ 10101(2) and (7). Regulation is not necessary to protect shippers from an abuse of market power, because there will be continued rail service on the Line and no potential shippers have objected to the exemption from the OFA process.

³ See, e.g., Norfolk S. Ry.—Aban. Exemption—In Norfolk and Virginia Beach, Va., AB 290 (Sub-No. 293X) (STB served Nov. 6, 2007), petition for review dismissed sub nom. Riffin v. STB, No. 07-1483 (D.C. Cir. Apr. 22, 2009).

Exemption from Section 10905 and 49 C.F.R. § 1152.29. MMA has also requested an exemption from the public use condition provisions of 49 U.S.C. § 10905 and similar relief from the trail use provisions at 49 C.F.R. § 1152.29. Requests for a public use condition and for trail use/rail banking were due by May 5, 2011, and none has been filed. Therefore, these requests 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, we will impose 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. MMA has submitted a combined environmental and historic report with its petition 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 action. See 49 C.F.R. § 1105.11. The Board's Office of Environmental Analysis (OEA) has examined the report, verified the data it contains, and analyzed the probable effects of the proposed action on the quality of the human environment.

OEA issued an Environmental Assessment (EA) for public review and comment on May 27, 2011. Comments to the EA were due by June 27, 2011. In the final EA, OEA stated that, in an e-mail dated May 27, 2011, the Town Manager of Van Buren responded to the EA and noted that: (1) only the Maine Department of Transportation (MDOT) could determine if vehicles used in the transload operation would meet the existing roadway weight limits; and (2) the Town of Van Buren, while supportive of the project, would prefer that MMA's new transload facility be located within its new Industrial Park. MDOT commented, after the closing date of the comment period for the Final EA, that it is supportive of the proposed project, and traffic studies by MDOT indicate that the proposed relocation of the transload facility would not adversely impact area roadways. Accordingly, OEA recommends that no environmental conditions should be imposed on MMA in any decision granting abandonment authority.

Based on OEA's recommendation, we conclude that the proposed abandonment will not significantly affect either the quality of the human environment or the conservation of energy resources.

Expedited action. MMA requests expeditious handling for its petition to meet the construction scheduling and funding needs of GSA for this important public project. MMA has shown good cause for expedited handling. To accommodate MMA's request, we will make these exemptions effective on the service date of this decision.

It is ordered:

1. Under 49 U.S.C. § 10502, we exempt from the requirements of 49 U.S.C. § 10903 the abandonment of the above-described line by MMA, subject to 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).
2. MMA's request for an exemption from the provisions of 49 U.S.C. § 10904 is granted.
3. MMA's requests for an exemption from the provisions of 49 U.S.C. § 10905 and for relief from the trail use provisions at 49 C.F.R. § 1152.29 are denied as moot.
4. MMA is directed to serve a copy of this decision on all shippers currently using the Line so that they receive a copy within 5 days of the service date of this decision and to certify to the Board contemporaneously that it has done so.
5. The exemptions are effective on July 15, 2011. Petitions to reopen must be filed by August 9, 2011.
6. Pursuant to the provisions of 49 C.F.R. § 1152.29(e)(2), MMA 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 MMA's filing of a notice of consummation by July 15, 2012, 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 Begeman, and Commissioner Mulvey.