

THE
SURFACE TRANSPORTATION BOARD

STB EX PARTE No. 647

CLASS EXEMPTION FOR EXPEDITED ABANDONMENT PROCEDURE
FOR CLASS II AND CLASS III RAILROADS

COMMENTS OF THE
ASSOCIATION OF AMERICAN RAILROADS

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This is the written testimony of the Association of American Railroads (“AAR”) submitted in response to the Surface Transportation Board’s (STB) “Advance Notice of Proposed Rulemaking” served January 19, 2006, in the above captioned proceeding. Since 1934, AAR, a non-profit trade association, has represented the interest of major freight railroads in North America, as well as Amtrak. AAR membership includes both Class I railroads and smaller railroads, some of whom are petitioners in this proceeding. AAR members have a vital interest in maintaining rationalized rail lines, and in streamlining the STB’s regulatory processes related thereto. Over the years, AAR members have participated in hundreds of abandonment and discontinuance proceedings. As such, the AAR has a keen interest in the nature of this proceeding and provides the comments that follow.

Statement by the Association of American Railroads in STB Ex Parte 647

The AAR submitted comments in response to the STB's "Notice of Public Hearing" served January 19, 2004, and presented oral testimony at the subsequent hearing held on August 31, 2004. The AAR appreciates the opportunity again to present its views in Ex Parte 647. The STB initiated this rulemaking to examine a proposal made by 65 Class II and Class III railroads to create a class exemption under 49 U.S.C. 10502 for this class of railroad from the prior approval from abandonment requirements of 49 U.S.C. 10903. The AAR continues to fully support this smaller railroad initiative, and notes in this connection that two of the 65 smaller railroads supporting the proposal, the Genesee & Wyoming Railroad Company and the Wheeling & Lake Erie Railway Company, are members of the AAR.

Overall Support for the Proposal

This class exemption proposal is intended to remove unnecessary and burdensome regulation, a focus that the AAR strongly supports. In the past, the STB has sought appropriate opportunities to use its exemption authority, and we again commend the agency for initiating this proceeding to address another such proposal for streamlining its regulatory process.

Another key focus of the proposal is to ensure a regulatory process that promotes the most efficient allocation of capital resources for railroad capacity, a focus that again the AAR strongly supports. The proposal would allow a smaller railroad to redirect its resources more effectively and to entertain an offer of financial assistance

more expeditiously. In this way, the proposal also promotes the continuation of important rail service.

Specific Comments About the Proposal

The agency has asked for comments on several questions. The AAR is pleased to offer its perspective on those questions as appropriate.

As it indicated in its previous submission, the AAR believes that the small railroad proposal makes good sense. A class exemption is a tried and true method for reducing regulation by the STB and relieving administrative burdens on the agency. Here the exemption would seem appropriate based on the fact that regulation is not necessary to carry out the rail transportation policy, and the transaction is of limited scope and continued regulation is unnecessary to protect shippers from an abuse of market power.

More specifically, in the view of the AAR, the proposal would ensure that the exemption is appropriately applied where regulation is not necessary based on the carrier's determination of economic viability justified by evidence submitted to the STB concerning traffic and revenues and the condition of the line. In addition, where a new carrier would assume the operations of the existing carrier, the proposal would require continued access to third-party carriers through trackage or haulage rights so long as the new carrier would have no more rights than the existing carrier had for the preceding 24-month period. This should mean that, where a smaller railroad has trackage or haulage rights over a Class I railroad, the new carrier's rights would not extend on the Class I carrier beyond those of the abandoning small carrier. And the proposal would facilitate the continuation of rail service through a more streamlined offer of financial assistance

(OFA) process that would ensure the dissemination of needed information, consider only the net liquidation value of the line, and delay any environmental review until after the OFA process has run its course. In the AAR's view, this entire exemption process should allow for a sounder deployment of resources and continued rail service where justified and makes good transportation policy sense.

Suggested Clarifications of the Proposal

As indicated in its previous comments, the AAR believes that the proposal would be strengthened if it were to reflect common relationships between Class I railroads and smaller railroads. More specifically, in the common situation where a Class II or Class III is leasing a line from a Class I and seeks discontinuance under the proposed class exemption, the Class I should be able to seek abandonment authority under the same process at the same time. Where a Class II or III is seeking a partial abandonment or discontinuance in connection with a Class I line, the Class I involved should likewise be able to use the procedures simultaneously. And, as stated earlier, it should be made clear that any trackage rights over a Class I railroad acquired through an OFA process would not extend any further on the Class I line than the abandoning smaller carrier rights would have provided, and that in this situation an OFA purchaser would be required to accept the same terms as those by which the abandoning small carrier had to abide, including insurance and indemnification requirements.

In making these suggestions, however, the AAR reiterates that it does not want to delay in any way final disposition of the smaller railroad proposal. If our suggestions could be incorporated into the final rule without delaying the process, we ask

for that consideration. Otherwise, we request that STB consider our suggestions separately.

Comments on the Abandonment Process in General

The STB also has asked for comments on the abandonment process in general. The AAR is pleased to offer some additional thoughts in this regard.

In particular, the AAR urges the STB, as we have in the past, to continue to explore ways to streamline the environmental review process as it pertains to all abandonments. The smaller railroad proposal, for example, includes a mandate that environmental review would not commence until after an OFA is considered and rejected. The AAR believes that applicants should have the option of delaying the environmental review process in this way in all abandonment proceedings.

Also, the STB has asked for a comment on two suggested changes in the abandonment process: a 1-year instead of a 2-year out-of-service exemption; and the automatic grant of an abandonment if no protest has been received within 30 days. The AAR endorses both proposals as additional ways to further streamline the abandonment process, and in particular believes that a line should not need to be out of service for 2 years before it can be a candidate for a class exemption.

In addition, the AAR suggests a change with respect to petitions for exemption in abandonment cases. In the past, the agency has sometimes suggested that the petition for exemption process is available only when abandonments are not controversial. The absence of "controversy" should not be a criteria for petitions for

exemption in abandonment cases. There is no such criteria in 49 U.S.C. 10502, and the agency has previously adopted exemptions that were very controversial when proposed. These include, for example, the 2-year "out-of service" abandonment exemption of 49 CFR 1152.50, the "trackage rights" class exemption of 49 CFR 1180.2(d), the "acquisition and operation" class exemption of 49 CFR 1150.31 and the "boxcar exemption" of 49 CFR 1039.14. In addition, the AAR proposes that petitioners be required to answer any comments that are filed in connection with such a petition for exemption within 15 days. In this way, a record can be built expeditiously in connection with any opposition to the abandonment, and the more streamlined process can still be used without compromising the need for interested parties to be heard.

Also, we urge the STB to continue to look for ways to streamline the historic preservation review process, which has tended to slow down the abandonment process considerably. As a follow-up to the earlier comments submitted in this proceeding by the AAR on this issue, the agency convened several meetings with the railroads and the historic preservation community to explore ways to improve this process. We commend the agency for taking this initiative and urge it to continue the process that it has begun, with a view toward making specific improvements in the historic preservation review process. The AAR looks forward to continuing to work with the STB in this regard.

In its earlier comments, the AAR suggested some improvements in this area that the agency should consider. For example, the STB should look at adopting reasonable categorical exclusions from the historic preservation review process. More specifically, there are situations where an original bridge or track structure has been

repaired or replaced. The fact that the original bridge or track structure was historic should not mean that the new bridge or track structure is historic. Categorical exclusions in the STB process to cover situations such as these would ensure that the process is not unnecessarily delayed. In addition, the STB should consider ways to strengthen existing time deadlines on SHPO activity in general with a view toward ensuring that the process can continue expeditiously from one phase to another. These issues go to the heart of the historic preservation process and AAR's concern that this process move expeditiously to conclusion. The AAR remains concerned about the historic preservation process, and while it understands that these proposed changes will not be addressed in this proceeding, the AAR continues to urge the agency to consider them in its efforts to improve the process.

Conclusion

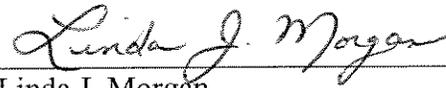
In closing, we support the proposal by the smaller railroads and suggest some changes to include the Class I railroads that are reflective of existing relationships between the Class I and the Class II and III railroads. We also support proposals to further streamline the abandonment review proposal separate from the smaller railroad proposal, particularly in the troublesome area of historic preservation.

We applaud the STB's willingness to continue to search for ways to further streamline the regulatory process and remove unnecessary and burdensome regulation. The AAR looks forward to continuing to work with the agency to this end.

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Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Linda J. Morgan, certify that, on this 6th day of March, 2006, I caused a copy of the foregoing document to be served by first-class mail, post prepaid on all parties of record in Ex Parte No. 647.


Linda J. Morgan