

BEFORE THE SURFACE TRANSPORTATION BOARD

EX PARTE NO. 647

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

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
STATE RAIL AUTHORITY

REPLY

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The West Virginia Department of Transportation, State Rail Authority, ("WVSRA") is the designated State agency for matters dealing with the abandonment of railroad lines in West Virginia. It is WVSRA 's responsibility to insure that the shippers, state agencies, and the general public are aware of an abandonment, and that alternatives to abandonment are found, if possible.

The rail system in West Virginia is comprised of two Class I carriers and 10 Class II and Class III carriers. West Virginia's rail system contains 2,401 route miles of track. The Class I carriers operate 1,914 route miles of track, with the Class II and III carriers making up the remaining 487 miles of line. Of the 487 route miles operated by Class II and Class III carriers, 158 miles are leased from a Class I carrier. It is the area of Class II and Class III carriers leasing property from the Class I carriers, which the WVSRA would like to address.

The Association of American Railroads has suggested that:

... 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.** (emphasis added)

This suggestion could allow Class I railroads to use this exemption to rid themselves of unwanted property without being subject to the rigors of the full abandonment process.

A Class I could establish a non-carrier, sell the line in question to that non-carrier, and then the non-carrier could file for abandonment under the small carrier exemption. The Class I and non-carrier would be free and clear of the common carrier obligation in as little as 131 days from the time that the first notice was given to the shippers that the non-carrier planned to abandon the property, to the effective date. This would not allow adequate time to evaluate the situation and look for alternative solutions.

This view is supported by the International Brotherhood of Teamsters as observed in their comments:

...a scenario could develop where a Class I carrier disposes of a line of railroad to a "non-carrier" that acquires the line under the class exemption contained at 49 C.F.R. §1150. That "non-carrier" would become a rail carrier on the date of acquisition and nothing in the APNR prohibits that new carrier from turning around immediately and using the proposed class exemption to abandon the recently acquired line.

The Brotherhood of Teamsters' concerns focus on protecting the employees. They believe the class exemption could be used to avoid employee protection by allowing the Class I to transfer any responsibility to a non-carrier and then that non-carrier abandoning the railroad, having few if any employees for protective conditions to become attached.

The WVSRA does not believe that loosening the rules for Class II and Class III carriers is in the best interests of the State of West Virginia or the industries located within the state. Therefore, the WVSRA does not support the changes proposed under Ex Parte No. 647 and concurs with comments and conclusions filed in this proceeding on behalf of the State of Washington as well as the conclusions and comments filed on behalf of the State of Oregon.

Respectfully submitted,
The West Virginia State Rail Authority

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