

THE
SURFACE TRANSPORTATION BOARD

STB EX PARTE No. 647

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

REPLY COMMENTS OF THE
ASSOCIATION OF AMERICAN RAILROADS

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April 4, 2006

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The Association of American Railroads (“AAR”) hereby submits reply comments in connection with 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. The 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 reply comments that follow.

Reply Comments 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 July 22, 2004, and presented oral testimony at the subsequent hearing held on August 31, 2004. It also submitted comments in connection with the STB's "Advance Notice of Proposed Rulemaking," served January 19, 2006, and submits these reply comments to address certain specific issues that were addressed in other comments.

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.

Continued Overall Support for the Smaller Railroad Proposal

This class exemption proposal is intended to remove unnecessary and burdensome regulation, a focus that the AAR continues to strongly support. In the past, the STB has sought appropriate opportunities to use its exemption authority, and as we have indicated previously, we 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 and Certain Suggestions of Other Parties

Process Streamlining. The AAR reiterates its strong support for two suggested changes in the abandonment process on which the STB had asked for comments: 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. A line that has been out-of-service for 1 year or a proposed abandonment for which no protest is received are clearly no longer needed for rail service. The AAR endorses both proposals as additional ways to further streamline the abandonment process and ensure the most efficient allocation of resources for capacity, 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.

Discovery and System Diagram Maps. The State of Washington addresses two issues in its filing -- the extent of discovery in abandonment proceedings and the application of the system diagram map requirement. The AAR is concerned about the positions taken by the State of Washington on both of these issues.

On the matter of discovery, the State of Washington is concerned that the smaller railroad proposal appears to “limit the information available to participants in the proceeding to that specifically required for the original notice filing.” (Statement at p.15). The statement at that page goes on to say: “This truncation of the Board’s existing discovery rules under 49 C.F.R. § 1114 is unwarranted and will unfairly prevent potential

challengers or persons considering an OFA from gaining information from the source best able to provide it.”

The concerns raised here by the State of Washington assume that something approaching full discovery is required in abandonment proceedings and that the proposed rules would reduce what is normally required. However, it has long been agency policy to generally refuse discovery even in fully regulated abandonments. In *SWKR Operating Co. -- Abandonment Exemption -- in Cochise County, AZ*, STB Docket No. AB-441 (Sub-No. 2X) (STB served Feb. 14, 1997), the agency denied a motion to compel sought by Chemical Line Company related to an abandonment exemption petition filed by SWKR. At page 2 of that decision, the STB held:

“Congress has directed the Board to expedite its decisionmaking process in general and its decisions in abandonment cases in particular. Discovery, which can hold up the Board’s processes, may be necessary in some cases In abandonment cases, however, it is not typically productive, and hence not typically pursued. Contested discovery may be granted under appropriate circumstances in particular abandonment proceedings, but only when the party seeking discovery shows that the information sought is relevant and might affect the result of the case, and that it ought to be obtained through discovery rather than some other means.”

In a subsequent case, *Central Railroad of Indiana -- Abandonment Exemption -- in Deaborn, Decatur, Franklin, Ripley & Shelby Counties, IN*, STB Docket No. AB-459 (Sub-No 2X) (STB served April 1, 1998), the agency again denied a motion to compel filed by protestants. In reaching this decision, the agency found at page 4 that:

“Protestants have failed to cite a single precedent where the Board or its predecessor agency has granted a motion to compel discovery in an abandonment case. Protestants have failed to cite any specific need for discovery here. . . . The nature of abandonment

cases and the need to decide them promptly has led us to require that discovery requests be sharply focused and clearly justified.”

Discovery in abandonment cases is limited and only available under certain circumstances. The proposed rules under consideration in this proceeding would not alter that approach.

On the issue of system diagram maps, the State of Washington suggests that the current system diagram map requirements be expanded. Specifically, it states at pages 17 and 18 of its statement:

“The goal of accelerating the transition of potentially viable railroads to new ownership through sale . . . may best be achieved by enforcing the requirement that all carriers maintain updated system diagram maps as required by 49 U.S.C. § 10903 and 49 C.F.R. § 1152.13. Although the board will reject a formal abandonment application for a line not identified for abandonment in a system diagram map at least 60 days before filing, this requirement is circumvented when companies seek exemptions from the formal abandonment rules. Making railroads declare their intention by enforcing the system diagram map requirement in all abandonment proceedings, including individual exemption petitions and out-of-service notices, will encourage the sale of viable lines to new operators. This requirement would be further enhanced if railroads were required to file their system diagrams maps annually with state transportation agencies and other interested parties in the states in which they operate.”

The regulations making system diagram map publication a requirement only for abandonment applications have been in place since before the Staggers Rail Act of 1980, and mirror the directives of the statute. The rules applicable to abandonment exemptions provide for alternative notification -- e.g. environmental notification to state agencies and others at least 70 days before abandonment effectiveness, a prenotification of abandonment filing 60 days before effectiveness, and of course the filing of the actual notice of exemption at least 50 days before effectiveness. Given these other notification

requirements, an expansion in the current application of the system diagram map requirement as the State of Washington suggests would be unnecessary and ill-advised.

Property Surveying. The American Congress on Surveying and Mapping filed comments making various suggestions concerning the surveying and recording of track locations in abandonment cases. These suggestions closely resemble those proposed by the same organization and rejected by the Interstate Commerce Commission (ICC) in ICC Ex Parte No. 511, *Petition for Rulemaking, Protection of Surveying Benchmarks in Railroad Abandonments* (ICC served June 20, 1995). In that decision, the ICC denied the petition of this group to institute a rulemaking on its proposals. The reasons for not adopting the proposals remain valid today.

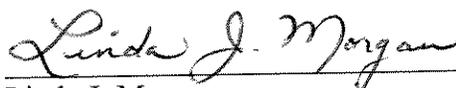
Exemptions and Labor Protection. Various parties representing rail labor have raised a concern in their comments about the proposed Class II and III exemption being manipulated to deny the labor protection to which Class I employees are entitled in a Class I railroad abandonment. The scenario they describe presumes that the smaller railroad at issue acquires a line from a Class I carrier with a prearranged scheme to abandon it. The AAR wishes to point out that, if there were such a prearrangement, it would be an abuse of the STB's line acquisition procedures. If such abuse were brought to the STB's attention, the agency could act to undo the transaction by voiding the exemption.

Conclusion

In closing, the AAR continues to support the proposal made by the smaller railroads. We also support proposals to further streamline the abandonment review process separate from the smaller railroad proposal.

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

Respectfully submitted,



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April 4, 2006

CERTIFICATE OF SERVICE

I, Linda J. Morgan, certify that, on this 4th day of April, 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

Linda J. Morgan