

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1333X

CLEVELAND & CUYAHOGA RAILWAY, LLC
—DISCONTINUANCE OF SERVICE EXEMPTION—
IN CUYAHOGA COUNTY, OHIO

Digest:¹ This decision allows Cleveland & Cuyahoga Railway, LLC, to discontinue service over approximately 10.4 miles of rail line in Cuyahoga County, Ohio.

Decided: August 24, 2023

On June 1, 2023, Cleveland & Cuyahoga Railway, LLC (CCR),² a Class III rail carrier, filed a petition under 49 U.S.C. § 10502 for exemption from the prior approval requirements of 49 U.S.C. § 10903 to discontinue service over approximately 10.4 miles of rail line extending from milepost 15.5 at Falls Junction in Glenwillow, Ohio, to milepost 5.1 in Cleveland, Ohio (the Line). Notice of the petition was served and published in the Federal Register on June 21, 2023 (88 Fed. Reg. 40,367). No comments opposing the proposed discontinuance were filed. The Board will grant the petition for exemption, subject to standard employee protective conditions.

BACKGROUND

In August 2019, the Board authorized CCR to lease and operate the Line, which is owned by Wheeling & Lake Erie Railway Company (WLER). Cleveland & Cuyahoga Ry.—Change in Operator Exemption Containing Interchange Commitment—Cleveland Com. R.R., FD 36287 (STB served Aug. 15, 2019). According to CCR, its lease with WLER was terminated by mutual agreement effective May 31, 2023. (Pet. 4.) CCR states that WLER has resumed rail operations over the Line, and that WLER will continue to serve the sole shipper on the Line.³ (Id. at 4, 8.)

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. See Pol’y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

² CCR is a wholly owned subsidiary of OmniTRAX Holdings Combined, Inc., and HGS Railway Holdings, Inc. See OmniTRAX Holdings Combined, Inc.—Continuance in Control Exemption—Cleveland & Cuyahoga Ry., FD 36288 (STB served Aug. 15, 2019).

³ The sole shipper was served a copy of the petition, (see Pet. 4), and has not filed an objection.

DISCUSSION AND CONCLUSIONS

Exemption from 49 U.S.C. § 10903. 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, the Board must exempt a transaction or service from regulation when it finds 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 needed to protect shippers from the abuse of market power. The Board finds the proposed discontinuance meets the applicable exemption standards.

Detailed scrutiny of the proposed discontinuance under 49 U.S.C. § 10903 is not necessary to carry out the RTP in this case. An exemption would expedite regulatory decisions by minimizing the need for regulatory control over operation of the Line, reduce regulatory barriers to exit for CCR, and expedite the process of allowing CCR to be relieved of its common carrier obligations over the Line. See 49 U.S.C. § 10101(2), (7), (15). Other aspects of the RTP would not be adversely affected by the use of the exemption process.

Regulation of the proposed transaction under 49 U.S.C. § 10903 also is not necessary to protect shippers from the abuse of market power.⁴ WLER, the Line's owner, retains a common carrier obligation to provide service over the Line, and WLER has already assumed operation of the Line.

Labor 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, the Board will impose upon CCR 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).

Offers of Financial Assistance, Interim Trail Use/Rail Banking, Public Use, and Environmental Review. Because no formal expressions of intent to file an offer of financial assistance (OFA) to subsidize continued rail service were filed by the June 30, 2023 deadline, the Board will not consider subsidy OFAs in this case. See 49 C.F.R. § 1152.27(c)(1)(i). And, because this is a discontinuance and not an abandonment, the Board need not consider OFAs to acquire the Line, interim trail use/rail banking requests under 16 U.S.C. § 1247(d), or requests to negotiate for public use of the Line under 49 U.S.C. § 10905. Lastly, because there will be an environmental review if abandonment is sought in the future, environmental review is unnecessary here.

⁴ Because regulation is not necessary to protect shippers from the abuse of market power, the Board need not determine whether the transaction is limited in scope. See 49 U.S.C. § 10502(a)(2).

It is ordered:

1. Under 49 U.S.C. § 10502, the Board exempts from the prior approval requirements of 49 U.S.C. § 10903 the discontinuance of service on the Line by CCR, as described above, 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. This exemption will be effective September 24, 2023.

3. Petitions to reopen and petitions to stay the effectiveness of the exemption must be filed by September 11, 2023.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.