

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1340X

CG RAILWAY, LLC
—DISCONTINUANCE OF SERVICE EXEMPTION—
IN NEW ORLEANS, LA.

Digest:¹ This decision allows CG Railway, LLC, to discontinue service over approximately 3.4 miles of rail line in New Orleans, La.

Decided: October 17, 2024

On July 1, 2024, CG Railway, LLC (CGR), a Class III rail carrier, filed a petition under 49 U.S.C. § 10502 for an exemption from the prior approval requirements of 49 U.S.C. § 10903 to discontinue service over approximately 3.4 miles of rail line in New Orleans, La. The line at issue consists of the North Yard of the Port of New Orleans (Port), including track numbers 1, 2, 3, 4, 5, 6, and 7, and the Elaine Street Lead between milepost G1.2 and milepost G2.4 (the Line), and enabled direct interchange with CSX Transportation, Inc., in New Orleans. Notice of the petition was served and published in the Federal Register on July 19, 2024 (89 Fed. Reg. 58,871). No comments opposing the proposed discontinuance were filed. The Board will grant the petition for exemption, subject to standard employee protective conditions.

BACKGROUND

In 2005, CGR was authorized to operate the Line pursuant to a lease with the Port. CG Ry.—Lease & Operation Exemption—Port of New Orleans, La., FD 34710 (STB served July 1, 2005). According to CGR, rail service on the Line was commercially dependent on the Mississippi River Gulf Outlet being navigable for deep draft vessels. (Pet. 1-2.) The petition states that damage to the Mississippi River Gulf Outlet caused by Hurricane Katrina rendered the Line unsuitable and uneconomic for CGR’s transportation purposes, and the Port and CGR terminated the lease by mutual agreement in August 2007. (Id. at 2.) CGR states that it has not used the Line to provide common carrier service since then, (id.), and in that time there has been no indication of any harm to shippers, (id. at 5). CGR explains that it is seeking discontinuance authority to clear the record and confirm that it does not have a residual common carrier obligation over the Line. (Id. at 2.)

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).

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 CGR, and expedite the process of allowing CGR 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.² CGR has not provided common carrier service over the Line in more than 17 years, and no shippers or any other entities have filed comments expressing any concerns—market power or otherwise—about the proposed discontinuance.

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 CGR 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 July 29, 2024 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.

² 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 CGR, 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 November 17, 2024.

3. Petitions to reopen and petitions to stay the effectiveness of the exemption must be filed by November 4, 2024.

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