

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36822

OHIO RAIL DEVELOPMENT COMMISSION—PETITION FOR DECLARATORY ORDER

Digest:¹ The Board grants in part and denies in part the Ohio Rail Development Commission's petition for declaratory order.

Decided: March 30, 2026

On December 3, 2024, the Ohio Rail Development Commission (ORDC)² filed a petition for declaratory order asking the Board to find that (1) a rail line owned by ORDC known as the P.Y. & A. Secondary Track (the Line)³ was never abandoned and remains subject to the Board's jurisdiction; (2) the Line is railbanked pursuant to federal law; and (3) the state law claims asserted by Charles Supplee, a private citizen, seeking to obtain title to portions of the Line by adverse possession, are preempted.⁴ (ORDC Pet. 5-6.) For the reasons explained below, the Board will grant in part and deny in part ORDC's petition.

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 ORDC states that it is "an independent commission within the Ohio Department of Transportation that represents the state in non-regulatory interactions with the railroad industry" whose "mission is to plan, promote, and implement the improved movement of goods and people faster and safer on a rail transportation network connecting Ohio to the nation and the world." (ORDC Pet. 3 n.1.)

³ ORDC states that the Line extends 43.2 miles from North Warren, Ohio, at milepost 81.1 to Ashtabula, Ohio, at milepost 124.3. (ORDC Pet. 7.)

⁴ ORDC's petition did not include a certificate indicating service of the petition on Mr. Supplee, and Mr. Supplee did not file a reply to ORDC's petition within 20 days as permitted by 49 C.F.R. § 1104.13(a). In a decision served on March 21, 2025, the Board ordered ORDC to serve on Mr. Supplee a copy of its petition for declaratory order, and it set a procedural schedule allowing Mr. Supplee and any other interested persons to file a reply by April 15, 2025. Mr. Supplee did not file a reply, and the petition is unopposed. The Ashtabula County Park District, which leases a portion of the Line from ORDC for use as a trail, filed comments in support of the petition.

BACKGROUND

In the early 1970s, in response to the bankruptcies of Penn Central Transportation Company (Penn Central) and several other northeastern railroads, Congress enacted the Regional Rail Reorganization Act of 1973 (3R Act), Pub. L. No. 93-236, 87 Stat. 985 (codified at 45 U.S.C. §§ 701-719). The 3R Act created the Consolidated Rail Corporation (Conrail) and established the United States Railway Association (USRA) to examine the bankrupt railroads' properties and identify those lines that would be retained in active service and conveyed to Conrail. USRA's plan, known as the Final System Plan (FSP), was submitted to Congress on July 26, 1975, and implemented in the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act), Pub. L. No. 94-210, 90 Stat. 31 (1976).

ORDC states that the FSP identified the Line, which was owned by Penn Central at the time, as USRA Line 714. (ORDC Pet. 4.) According to ORDC, USRA Line No. 714 was not designated for transfer to Conrail. (*Id.* at 7.) Pursuant to the 3R Act, lines that were not designated for transfer to Conrail or a profitable railroad in the region were authorized to be abandoned, and this abandonment authority could be consummated by following certain notice procedures. 3R Act, Pub. L. No. 93-236, § 304(b); see also RailAmerica, Inc., Pet. to Set Subsidy Terms Under 45 U.S.C. 744(c) & 49 CFR Part 1155, FD 33285, slip op. at (STB served June 24, 1998) (stating that rail lines not designated for transfer to Conrail under the FSP could have been abandoned and service discontinued pursuant to section 304(b) of the 3R Act unless an offer to purchase the line was made under section 304(f) or a rail service continuation payment subsidy was offered under section 304(c)). ORDC states that it has been unable to find any evidence that Penn Central consummated its abandonment authority by providing the notice required by section 304(b) of the 3R Act. (ORDC Pet. 14.) It further states that no abandonment application has been filed with respect to the Line and neither the Board nor its predecessor, the Interstate Commerce Commission (ICC), ever granted abandonment authority for the Line. (*Id.* at 17.) In addition, ORDC states that, "post-FSP" the Line was operated under subsidy for "at least a year." (*Id.* at 4 & n.7.)

According to ORDC, in 1978, ORDC's predecessor, the Ohio Rail Transportation Authority (ORTA), published a state rail plan referred to as "RailOhio" pursuant to Section 803 of the 4R Act.⁵ (*Id.* at 8 & n.13.) The plan, which is provided as Exhibit B of ORDC's petition, designated the Line as a priority for acquisition. (ORDC Pet. Ex. B at 64.) ORDC states that ORTA and Penn Central began negotiations in 1980 for ORTA to acquire the Line. (*Id.* at 4.) ORDC explains that the Federal Railroad Administration (FRA) approved funding to cover ORTA's proposed offer to acquire the Line from Penn Central and retain the corridor for future

⁵ Section 803 of the 4R Act established the Local Rail Service Assistance Program (LRSAP). Under that program, states that established a rail service plan were eligible to receive funds that could be used for providing subsidies for existing rail services, purchasing rail lines to maintain existing rail services or provide rail service in the future, or improving existing rail lines. See 4R Act, Pub. L. No. 94-210, § 803.

rail service.⁶ (*Id.* at 10.) ORDC states that on October 31, 1981, a payment of \$150,000 was made to Penn Central to be credited towards the eventual purchase price and ORTA “took actual possession of [the Line]” at that time. (*Id.*) ORDC states that on November 17, 1983, the parties agreed on a final purchase price of \$725,000. (*Id.* at 11.) According to ORDC, upon enactment of the National Trails System Act Amendments of 1983 in March 1983, ORTA “had actual possession of the line, with the expressed purpose of providing for interim trail use while preserving the right-of-way for potential restoration or reconstruction for railroad purposes.”⁷ (*Id.* at 16-17.) Therefore, ORDC argues, the Line became railbanked. (*Id.* at 17.)

On December 6, 2023, Charles Supplee filed a complaint in the Court of Common Pleas of Franklin County, Ohio, alleging a cause of action for adverse possession with respect to portions of the Line.⁸ He claims entitlement to the exclusive use and possession of these properties. (ORDC Pet. Ex. E at 3-4.) According to ORDC, on October 4, 2024, the court granted a motion by ORDC to issue judgment on the pleadings for failure to state a claim upon which relief can be granted, and thereafter, Mr. Supplee appealed that decision to the Court of Appeals of Ohio, Tenth Appellate District (Court of Appeals). (*Id.* at 3 n.3.) ORDC further states that on December 17, 2024, the Court of Appeals, at ORDC’s request, stayed all further proceedings in the case before it until the Board rules on ORDC’s petition for declaratory order. (ORDC Letter 1-2, Dec. 19, 2025.)

ORDC argues that Mr. Supplee’s state law adverse possession claims are preempted by 49 U.S.C. § 10501(b). (ORDC Pet. 17-18.) ORDC claims that an adverse possession decision in favor of Mr. Supplee would foreclose ORDC’s ability to restore rail service over the Line in the future. (*Id.* at 24.) According to ORDC, the Board has previously found that state law adverse possession claims seeking to take railroad property were preempted by § 10501(b) because such claims have the effect of interfering with or preventing future railroad operations. (*Id.* at 20-24.)

⁶ Exhibit D of ORDC’s petition consists of a letter from FRA stating that the state of Ohio purchased the Line using funds from the LRSAP and that a condition of receiving that funding was a “continuing requirement to maintain the corridor’s availability for future rail service.” (ORDC Pet. Ex. D at 1.) Because the state was planning to lease the Line for trail use, FRA required the state to submit a copy of the draft lease so that it could review whether it was consistent with the obligation to maintain the corridor’s availability for future rail use. (*Id.*)

⁷ Section 208 of the National Trails System Act Amendments of 1983, codified at 16 U.S.C. § 1247(d), amended the National Trails System Act by adding a provision regarding the interim use of railroad rights-of-way as trails, subject to restoration or reconstruction for railroad purposes (i.e., railbanking). As ORDC notes, the ICC promulgated interim trail use/railbanking regulations on April 16, 1986. Rail Abans.—Use of Rts. of Way as Trails, EP 274 (Sub-No. 13) (ICC served Apr. 16, 1986). ORDC states that ORTA/ORDC has not fully complied with these regulations with respect to the railbanking of the Line and “seeks the Board’s guidance on how to resolve this ministerial oversight.” (ORDC Pet. 17.)

⁸ A copy of the complaint is attached as Exhibit E of ORDC’s petition.

DISCUSSION AND CONCLUSIONS

The Board has discretionary authority under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321 to issue a declaratory order to eliminate a controversy or remove uncertainty. Mr. Supplee's state court appeal and ORDC's petition here demonstrate that a controversy exists as to the jurisdictional status of the Line and whether certain state law adverse possession claims to portions of the Line are preempted under 49 U.S.C. § 10501(b). In addition, by staying Mr. Supplee's appeal pending resolution of ORDC's petition before the Board, the Court of Appeals has indicated that it would like the Board to address this issue. Accordingly, the Board will issue a declaratory order in this proceeding.

For the reasons explained below, the Board will grant ORDC's petition in part and deny it in part. Specifically, the Board finds that (1) the Line has not been abandoned and remains subject to the Board's jurisdiction, (2) Mr. Supplee's adverse possession claims are preempted, and (3) the Line is not currently railbanked under the Trails Act. In addition, the Board will require ORDC to seek after-the-fact authority for the prior acquisition of the Line or to explain why such authority is not necessary.

ORTA's acquisition of the Line. Before addressing the merits of ORDC's petition, the Board considers whether ORDC had the required authorization from the ICC to acquire the Line from Penn Central. Although not raised as an issue in the filings, the Board does so on its own motion to ensure that regulatory requirements are met.

ORDC does not claim that ORTA sought ICC authority for its acquisition of the Line. Rather, ORDC states that "[n]either ORDC nor its predecessors were subject to the ICC's jurisdiction because the USRA Line No. 714 was authorized for abandonment and open for subsidy from public entities as discussed in the FSP." (ORDC Pet. 4 n.5.) No authority or further explanation is given for this assertion, but elsewhere in its petition ORDC notes that, under regulations promulgated by the ICC in Common Carrier Status of States, State Agencies & Instrumentalities, & Pol. Subdivisions (Common Carrier Status of States), 363 I.C.C. 132 (1980) and codified at 49 C.F.R. §§ 1150.21-1150.24, the acquisition by a state entity of a line approved for abandonment and not yet fully abandoned was exempted from the ICC's jurisdiction. (*Id.* at 11.) Thus, it appears that ORDC is arguing that at the time ORTA acquired the Line, it was authorized for abandonment under the 3R Act and its acquisition was therefore exempted from ICC regulation pursuant to Common Carrier Status of States. ORDC fails to note, however, that abandonment authorization under the 3R Act was time-limited: no such abandonment could occur "after 2 years from the effective date of the final system plan or more than 2 years after the final payment of any rail service continuation subsidy is received, whichever is later." 3R Act, Pub. L. No. 93-236, § 304(c). ORDC states that the Line was operated under a subsidy for "at least a year" "post-FSP." (ORDC Pet. 4 & n.7.) The FSP went into effect on November 9, 1975, Consol. Rail Corp. v. Illinois, 423 F. Supp. 941, 951 (Reg'l Rail Reorg. Ct. 1976), and ORTA's acquisition of the Line was finalized on November 17, 1983. (ORDC Pet. 11.) Assuming the subsidized service that ORDC claims lasted "at least a year" ended prior to November 17, 1981 (i.e., more than two years before ORTA acquired the Line), the abandonment authorization for the Line provided by the 3R Act would have expired by the time ORTA acquired the Line. If the Line was no longer approved for abandonment at the time of ORTA's acquisition, the exemption

under Common Carrier Status of States would have been inapplicable and ORTA's acquisition would have required ICC approval.⁹ Accordingly, ORDC will be directed to seek after-the-fact authority for the acquisition of the Line or explain to the Board why it believes such authority is not required, by April 29, 2026.

Jurisdictional status of the Line. As explained by ORDC, rail lines, such as the Line, owned by railroads subject to the FSP that were not designated for conveyance to Conrail were authorized for abandonment under section 304 of the 3R Act. Rail Serv. Continuation Subsidy Standards, 3 S.T.B. 131, 133-32 (1998). Pursuant to section 304(b) of the 3R Act, rail carriers could consummate abandonment of these lines by providing notice to certain parties including state transportation agencies. Id. at 133. ORDC states that it searched its files and can find no record of Penn Central providing an abandonment notice with respect to the Line.¹⁰ In addition, according to ORDC, abandonment authority has not been sought by any party or granted by the ICC or Board with respect to the Line. (ORDC Pet. 16-17.) And the Board has found no record of abandonment authority being granted for the Line by it or the ICC. Based on this record, the Board finds no basis to conclude that the Line was abandoned pursuant to section 304 of the 3R Act or pursuant to a grant of abandonment authority by the Board or the ICC.

There is one other potential avenue by which the Line could have been abandoned. In Common Carrier Status of States, in addition to exempting state entities from the requirement to obtain ICC approval for the acquisition of a line approved for abandonment and not yet fully

⁹ The acquisition of an active rail line by a state entity generally requires Board approval unless the selling carrier retains an exclusive, perpetual easement to permit it to continue to provide common carrier freight service. Reg'l Transp. Dist.—Acquis. Exemption—Union Pac. R.R. in Adams, Boulder, Broomfield, & Weld, Colo., FD 35252, slip op. at 2-3 (STB served June 29, 2010). There is no claim or evidence that Penn Central retained any such easement when it sold the Line to ORDC.

¹⁰ RailOhio, which was developed pursuant to section 803 of the 3R Act, classifies the Line as an “Abandoned Line[] With No Definite Local Interest In Restoring Rail Service” but provides no further discussion of the Line. (ORDC Pet. Ex. B at 237-38.) As ORDC explains, it is clear that ORTA often used the term “abandoned” colloquially to refer rail lines on which service had ceased and not in the technical legal sense to refer to rail lines for which abandonment authority had been consummated. (ORDC Pet. 4.) For example, RailOhio also classifies USRA Line No. 527/528 as an “Abandoned Line[] With No Definite Local Interest In Restoring Rail Service,” (id. at Ex. B at 327), but the report makes clear that it was still operating under a subsidy and was therefore not abandoned in the legal sense. (Id. at Ex. B at 181.) RailOhio also discusses an acquisition program that it states was established by the 3R Act to provide funding to purchase “track and rail rights-of-way that have been abandoned.” (Id. at Ex. B at vii.) However, the acquisition program under the 3R Act provided loans to acquire lines that were approved for abandonment under the FSP but had not yet been abandoned. See 3R Act, Pub. L. No. 93-236, §§ 304(c)(2)(C), 403. In fact, if an offer to purchase a rail line was made pursuant to the acquisition program of the 3R Act, that line could not be abandoned pursuant to the abandonment procedures of the 3R Act. Id. at § 304(c)(2). Accordingly, the fact that RailOhio at times refers to the Line as abandoned is not sufficient to conclude that abandonment authority provided by the 3R Act was consummated.

abandoned, the ICC also exempted state entities from the requirement to obtain abandonment authorization of such lines. 49 C.F.R. § 1150.22. Thus, if the Line was still approved for abandonment when ORTA acquired it, the Line would be deemed abandoned if ORTA or ORDC later demonstrated an intent to abandon the Line. The Board conducts a case-by-case evaluation of all the facts and circumstances to determine the line owner's intent. Beaufort R.R.—Modified Rail Certificate, FD 34943, slip op. at 6 (STB served Mar. 19, 2008). Generally, “the Board looks for a physical act which shows a clear intention on the part of the rail line owner to remove the line from the national rail system and relinquish the property interest.” Id. at 6-7.

Here, the record does not support the conclusion that ORTA/ORDC demonstrated an intent to abandon the Line. In RailOhio, the Line was listed as an “acquisition priority.” (ORDC Pet. Ex. B at 64.) Under RailOhio, acquired lines were to be put to one of three uses: (1) railbanked to preserve it for future rail service, (2) used to continue existing service, or (3) used to initiate a new service. (Id. at Ex B. at 42, 59.) This indicates that when ORTA acquired the Line it did so with the intention of keeping it within the rail network for current or future rail use. In addition, ORDC states that over the more than 40 years since ORTA acquired the Line, it has been maintained by ORTA/ORDC such that it remains available for the restoration of rail service. (Id. at 4.) In fact, ORTA/ORDC has been required to do so as a condition of the FRA funds ORTA received to purchase the Line. (ORDC Pet. Ex. D at 1 (explaining that the state of Ohio must either ensure that the right-of-way continues to be maintained such that it remains available for future rail service or repay the funds it received from FRA to purchase the Line).) ORDC further claims that its leases to Ashtabula County Park District and Trumbull County Metropolitan Park Board allowing trail use, see supra note 4, are expressly subject to termination if and when rail service becomes necessary in the future. (ORDC Pet. 16.) In short, there is no evidence that ORTA/ORDC at any point intended to abandon the Line and foreclose the potential for rail service to be reactivated. Accordingly, the Board finds that, even if ORTA acquired the Line pursuant to Common Carrier Status of States, it has not abandoned the Line since then.

Preemption. The Board's jurisdiction over “transportation by rail carriers” is “exclusive,” and “the remedies provided under [49 U.S.C. §§ 10101-11908] with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.” 49 U.S.C. § 10501(b). Under 49 U.S.C. § 10501(b), two broad categories of state or local actions are categorically preempted with respect to transportation by rail carriers: (1) permitting or preclearance requirements that, by their nature, could be used to deny a railroad the right to conduct some part of rail operations or proceed with activities the Board has authorized, and (2) attempts to intrude into matters that are directly regulated by the Board such as railroad rates, services, or rail line construction or abandonment. CSX Transp., Inc.—Pet. For Declaratory Ord., FD 35832, slip op. at 4 (STB served July 31, 2015).

For state or local actions that are not categorically preempted, § 10501(b) as-applied preemption analysis requires a factual assessment of whether that action would have the effect of preventing or unreasonably interfering with rail transportation. See Franks Inv. Co. v. Union Pac. R.R., 593 F.3d 404, 414 (5th Cir. 2010) (en banc). Routine, non-conflicting uses of rail property by third parties, such as non-exclusive easements for at-grade crossings, are not preempted, as long as they would not impede rail operations or pose undue safety risks. E. Ala. Ry.—Pet. for

Declaratory Ord., FD 35583, slip op. at 4-7 (STB served Mar. 9, 2012); Maumee & W. R.R.—Pet. for Declaratory Ord., FD 34354, slip op. at 2 (STB served Mar. 3, 2004).

ORDC contends that, should Mr. Supplee succeed on his state court complaint to acquire exclusive title by adverse possession, that would “foreclose ORDC’s ability to restore rail service over the [Line] in the future.” (ORDC Pet. 24.) This argument is uncontested. *See supra* note 4. The Board has consistently held that § 10501(b) preempts state law eminent domain and adverse possession claims for exclusive possession of part of a railroad right-of-way or other railroad property that could affect present or future rail transportation.¹¹ *E.g.*, Jie Ao—Pet. for Declaratory Ord., FD 35539, slip op. at 6-7 (STB served June 6, 2012) (adverse possession claim for rail-banked property preempted because such action would reduce the amount of right-of-way needed to support future railroad operations and reduce the capacity of the right-of-way for future growth); 14500 Ltd.—Pet. for Declaratory Ord., FD 35788, slip op. at 4-5 (STB served June 5, 2014) (adverse possession claim preempted where railroad needed the property at issue to accommodate future rail transportation needs); Norfolk S. Ry.—Pet. for Decl. Order, FD 35196, slip op. at 5-6 (STB served Feb. 26, 2010) (using state eminent domain law to take railroad property for another use that would conflict with potential future rail use is preempted); City of Lincoln v. STB, 414 F.3d 858, 860-61 (8th Cir. 2005) (city’s proposed use of eminent domain to acquire 20-foot strip of railroad right-of-way preempted because it would interfere with the rail carrier’s transportation activities). Because it is uncontested that taking portions of the Line could affect, foreclose, or unreasonably interfere with the future reactivation of rail service over the Line, Mr. Supplee’s adverse possession claims are preempted.

Railbanking of the Line. The National Trails System Act Amendments of 1983, Pub. L. No. 98-11, 97 Stat. 42, amended the National Trails System Act by adding the provision now codified at 16 U.S.C. § 1247(d). The ICC promulgated regulations implementing § 1247(d) in 1986, which are codified at 49 C.F.R. § 1152.29.

ORDC claims that ORTA railbanked the Line under § 1247(d) before agency regulations implementing that provision were promulgated. (ORDC Pet. 3 n.1, 6.) Although not entirely clear,¹² ORDC’s argument appears to be that the second sentence of § 1247(d) provides in “unequivocal terms” that the use of an established railroad right-of-way shall not be treated, for purposes of any law or rule of law, as an abandonment of the use of the right-of-way for railroad purpose, and that the Line became railbanked when § 1247(d) was passed because ORTA already possessed the Line with the “expressed purpose of providing for interim trail use while preserving the right-of-way for potential restoration or reconstruction for railroad purposes.” (*Id.* at 16-17.) Putting aside the fact that the third sentence of § 1247(d) requires that the trail sponsor take full responsibility for management of the trail and any tax and legal liability

¹¹ The Board recognized that even if “the application of state adverse possession law . . . might have little actual, practical effect on current plans for active railroad operations, circumstances can change” and that “federal policy favors retaining rail property in the national rail network, when possible.” Jie Ao—Pet. for Declaratory Ord., FD 35539, slip op. at 7.

¹² ORDC also suggests that the Line was railbanked “pursuant to federal law” *prior to* the passage of § 1247(d). (ORDC Pet. 12.)

associated with its use,¹³ and that the Board impose such terms and conditions as a requirement of any transfer or conveyance of a rail line for interim trail use, the Board need not decide whether interim trail use/railbanking under § 1247(d) was possible prior to enactment of the agency's implementing regulations.¹⁴ Once those regulations were enacted, ORDC should have initiated proceedings before the agency if it wished to continue interim trail use/railbanking under § 1247(d), including by making the statutorily required financial commitments. *See* 49 C.F.R. § 1152.29(a) (providing that "[i]f any state or political subdivision . . . is interested in . . . using a right-of-way . . . for interim trail use and rail banking pursuant to 16 U.S.C. §1247(d), it *must* file a comment . . . indicating that it would like to do so," and include the information required in § 1152.29(a)(1)-(3)) (emphasis added).¹⁵ That was not done in this case.

As explained above, it appears that ORTA did not acquire the Line pursuant to the exemption under Common Carrier Status of States. If that is the case, implementing interim trail use/railbanking under § 1247(d) would require ORDC, after obtaining after-the-fact authority for ORTA's acquisition of the Line, to initiate an abandonment proceeding and, after obtaining abandonment authority,¹⁶ follow the procedures under 49 C.F.R. § 1152.29. S. Pac. Transp. Co.—Discontinuance of Serv. Exemption—in Ventura Cnty., Cal., AB 12 (Sub-No. 143X), slip op. at 2 (ICC served Nov. 30, 1992) (stating that railbanking is only available when an abandonment has been approved or exempted). However, if ORDC can show that the Line was

¹³ If the trail sponsor is immune from liability, it does not have to state that it will be responsible for legal liability. Instead, it must indemnify the railroad against any potential liability. 49 C.F.R. § 1152.29(a)(2)(ii).

¹⁴ Under the regulations implementing § 1247(d), the Board issues a notice of interim trail use or abandonment (NITU) in the case of an abandonment exemption proceeding, or a certificate of interim trail use or abandonment (CITU) in the case of an abandonment application proceeding, which postpones the effectiveness of the abandonment exemption and permits the railroad and a potential trail sponsor to negotiate an agreement for interim trail use/railbanking of the line. 49 C.F.R. § 1152.29(c)-(d). If the railroad and potential trail sponsor reach an agreement, the line can be converted to a trail. 49 C.F.R. § 1152.29(c)(2), (d)(2). If the negotiating period expires and no trail use agreement is reached, the abandonment exemption becomes effective and abandonment may be consummated. *See* 49 C.F.R. § 1152.29 (c)(1) & (d)(1).

¹⁵ ORD acknowledges that it is "fully willing" to seek a CITU or NITU from the Board "if the Board believes it necessary to do so." (ORDC Pet. 17 n.32.)

¹⁶ There is a class exemption for the abandonment of rail lines that have been out of service for at least two years. 49 C.F.R. § 1152.50(b). While this class exemption requires a carrier to have had authorized ownership of a line for the two-year out-of-service period, that requirement can be waived in appropriate circumstances. Mohawk, Adirondack & N. R.R.—Aban. Exemption—in Lewis & Jefferson Cntys., AB 180X, slip op. at 4 (STB served Jan. 14, 2025). Thus, if ORDC cannot show that ORTA's acquisition was exempted from ICC regulation under Common Carrier Status of States, and it wishes to use the class exemption under 49 C.F.R. § 1152.50(b) to obtain abandonment authority, it should seek a waiver of the requirement for its ownership to have been authorized during the two-year out-of-service period.

still approved for abandonment at the time ORTA acquired it, then, under Common Carrier Status of States, the acquisition was exempt from ICC authority and no after-the-fact acquisition authority would be needed. In addition, there would be no need to initiate an abandonment proceeding; rather, ORDC could simply follow the procedures under 49 C.F.R. § 1152.29 to railbank the line. See City of Fishers—Pet. for Partial Revocation of Exemption, FD 36137, slip op. at 6 (STB served May 31, 2018) (entity that acquired a line pursuant to Common Carrier Status of States could railbank a line without the need to revoke its exempt status or commence a new abandonment proceeding); see also S.D. Ry—Notice of Interim Trail Use & Termination of Modified Certificate, FD 31874 (STB served June 29, 2022) (considering interim trail use request for a line authorized to be abandoned by federal court under the Milwaukee Railroad Restructuring Act and acquired through a modified certificate).

It is ordered:

1. ORDC's petition is granted in part and denied in part as explained above.
2. ORDC is directed to seek after-the-fact authority for the acquisition of the Line or explain why it believes such authority is not required by April 29, 2026.
3. This decision is effective on its service date.

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