

SERVICE DATE – JULY 13, 2020

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1009 (Sub-No. 2X)

MISSION MOUNTAIN RAILROAD, L.L.C.—DISCONTINUANCE OF SERVICE
EXEMPTION—IN FLATHEAD COUNTY, MONT.

Digest:¹ This decision allows Mission Mountain Railroad, L.L.C., to discontinue service over approximately 13.33 miles of rail line in Flathead County, Mont., subject to standard employee protective conditions.

Decided: July 11, 2020

On April 1, 2020, Mission Mountain Railroad, L.L.C. (MMT), a Class III rail carrier, filed with the Board a petition under 49 U.S.C. § 10502 for an exemption from the prior approval requirements of 49 U.S.C. § 10903 to discontinue its operations over approximately 13.33 miles of rail line owned by BNSF Railway Company (BNSF), extending from milepost 1211.86 at the interchange with BNSF at Columbia Falls to milepost 1225.19 at Kalispell, all in Flathead County, Mont. (the Line).

On April 21, 2020, notice of the exemption proceeding was served and published in the Federal Register (85 Fed. Reg. 22,234). No comments were filed in response to MMT's petition. The Board will grant the petition for exemption, subject to standard employee protective conditions.

BACKGROUND

In January 2005, MMT (then known as Mission Mountain Railroad, Inc.) acquired Board authority to lease the Line from The Burlington Northern and Santa Fe Railway Company (now known as BNSF). See Mission Mountain R.R.—Acquis. Exemption—Burlington N. & Santa Fe Ry., FD 34634 (STB served Jan. 19, 2005).² According to MMT, its lease of the Line terminated

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 Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² MMT was authorized to lease the Line as part of a longer rail line, extending from milepost 1211.86 at Columbia Falls to milepost 1227.58 at Kalispell. MMT subsequently discontinued common carrier service over the portions of the line from milepost 1225.19 to milepost 1227.58 and from milepost 1226.91 to Engineering Station 189+36 (milepost 1227.10)

on March 31, 2020. (Pet. 1.) MMT states that it and BNSF agreed that BNSF would assume direct operation of the Line in place of MMT as of April 1, 2020. (*Id.*) MMT states that the proposed discontinuance would allow MMT to formally end its common carrier obligation over the Line. (*Id.* at 1-2.) In addition, MMT states that no customer on the Line would be left without common carrier service as a consequence of the proposed discontinuance because it would merely facilitate an agreed-upon change in rail service providers. (*Id.* at 2.)

DISCUSSION AND CONCLUSIONS

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.

Detailed scrutiny 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 of MMT's operation of the Line, reduce regulatory barriers to exit for MMT, and provide for the expeditious handling and resolution of the proceeding by facilitating an agreed-upon transition of operations from MMT to BNSF, the owner of 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 is also not necessary to protect shippers from the abuse of market power.³ As described above, customers on the Line would receive service directly from BNSF, which retains a common carrier obligation.

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 MMT 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).

Because no formal expressions of intent to file an offer of financial assistance (OFA) to subsidize continued rail service were filed by the May 1, 2020 deadline, the Board will not

in Kalispell, and BNSF secured authority to abandon it. *See* Mission Mountain R.R.—Discontinuance of Serv. Exemption—in Flathead Cty., Mont., AB 1009 (Sub-No. 1X) (STB served Aug. 23, 2017); BNSF Ry.—Aban. Exemption—in Flathead Cty., Mont., AB 6 (Sub-No. 495X) (STB served Aug. 14, 2017); Mission Mountain R.R.—Discontinuance of Serv. Exemption—in Flathead Cty., Mont., AB 1009X (STB served May 21, 2007); BNSF Ry.—Aban. Exemption—in Flathead Cty., Mont., AB 6 (Sub-No. 444X) (STB served Sep. 28, 2006).

³ Because this decision finds that 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).

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.

Because there will be an environmental review during an abandonment, this discontinuance does not require an environmental review.

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 MMT, as described above, subject to the employee protective conditions 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 on August 12, 2020.

3. Petitions to reopen and petitions to stay the effectiveness of the exemption must be filed by July 28, 2020.

By the Board, Board Members Begeman, Fuchs, and Oberman.