

SERVICE DATE – AUGUST 20, 2021

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1093 (Sub-No. 2X)

C&NC RAILROAD, LLC—DISCONTINUANCE EXEMPTION—
IN WAYNE AND HENRY COUNTIES, IND.

Digest:¹ This decision allows C&NC Railroad, LLC, to discontinue service over approximately 21 miles of rail line in Wayne and Henry Counties, Ind.

Decided: August 19, 2021

On July 9, 2021, C&NC Railroad, LLC (C&NC), 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 21 miles of rail line extending from milepost CB 5.4 at Beesons, Ind., to milepost 25.30 at New Castle, Ind., and from milepost R 0.1 to milepost R 1.16 at New Castle (the Line). Notice of the petition was served and published in the Federal Register on July 29, 2021 (86 Fed. Reg. 40,896). No comments opposing the proposed discontinuance were filed. The Board will grant the petition for exemption.

BACKGROUND

In October 1997, C&NC obtained Board authority to lease and operate 22.42 miles of rail line owned by Norfolk and Western Railway Company (N&W), extending from milepost 4.80 at Beesons to milepost 25.30 at New Castle, and from milepost 0.0 to milepost 1.92 at New Castle. See C&NC R.R.—Lease & Operation Exemption—Lines of the Norfolk & W. Ry., FD 33475 (STB served Oct. 31, 1997).

In March 2011, C&NC and Norfolk Southern Railway (NSR), N&W's successor,² executed a new lease with slightly modified endpoints (milepost CB 5.4 at Beesons to milepost 25.30 at New Castle, and from milepost R 0.1 to milepost R 1.16 at New Castle), which reflect the current termini of the Line. See C&NC R.R.—Lease Renewal Exemption—Norfolk S. Ry., FD 35529, slip op. at 1-2 (STB served July 1, 2011). Accordingly, C&NC filed a verified notice of exemption to amend its agreement with NSR to lease and operate the Line. Id. at 1.

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 N&W merged into NSR after execution of the initial lease. See Norfolk S. Ry.—Merger Exemption—Norfolk & W. Ry., FD 33648 (STB served Aug. 31, 1998).

C&NC later filed a verified notice of exemption to amend the March 2011 lease to add a second interchange commitment and provisions reducing C&NC's lease payments. C&NC R.R.—Lease Exemption Containing Interchange Commitment—Norfolk S. Ry., FD 35858 (STB served Nov. 5, 2014).

According to C&NC, NSR has notified C&NC that the lease is being terminated and that NSR will resume rail operations over the Line as a common carrier upon the discontinuance of service by C&NC. (Pet. 1.) C&NC states that there currently is one shipper on the Line and that no interruption in rail service will result from the proposed discontinuance. (*Id.* at 4.) C&NC also submits that the Board should decline to impose employee protective conditions because the discontinuance authority it seeks covers the “entire system” operated by C&NC. (*Id.* at 6.)

On July 27, 2021, NSR filed a request for expedited consideration of C&NC's petition that would allow C&NC's operations over the Line to terminate at 12:00 a.m. on September 20, 2021. NSR states that granting the discontinuance effective on that date will prevent an interruption of service to shippers and benefit both NSR and C&NC. (Request 1-2.)

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.

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 of C&NC's operation of the Line, reduce regulatory barriers to exit for C&NC, and provide for the expeditious handling and resolution of the proceeding by facilitating a transition of operations from C&NC to NSR. *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.³ NSR, the Line's owner, retains a common carrier obligation to provide service to the shipper on the Line, and, indeed, NSR is actively preparing to assume operation of the Line, replacing C&NC, as soon as possible.

Labor Protection. C&NC also requests that the Board decline to impose labor protection conditions because the Line over which it seeks discontinuance authority represents the entire scope of its rail operations. (Pet. 6.) Under 49 U.S.C. § 10502(g), the Board may not use its

³ 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).

exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. However, it has been the longstanding policy of the agency that a railroad that is abandoning its entire system generally is not required to provide labor protection. Northampton & Bath R.R.—Aban. near Northampton & Bath Junction in Northampton Cnty., Pa., 354 I.C.C. 784, 785-86 (1978). The policy has also been applied to entire-system discontinuances involving lines not owned by the discontinuing carrier. See, e.g., Mo. & Valley Park R.R.—Discontinuance of Serv. Exemption—in St. Louis Cnty., Mo., AB 1057X, slip op. at 2 (STB served June 15, 2010). Here, the Board finds that the Line over which C&NC seeks discontinuance authority represents the entire scope of its operations. Therefore, the Board will not impose employee protective conditions.

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 August 6, 2021 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.

Request for Expedited Consideration. As indicated, NSR has requested expedited consideration of C&NC's petition. According to NSR, after it provided notice to C&NC that the lease was being terminated, "it took C&NC almost two months to file for discontinuance authority." (Request 1 n.1.) NSR states that it has begun necessary preparations for a smooth transition and that granting the discontinuance effective on September 20, 2021, will ensure that there is no interruption of service to shippers. (Id. at 1-2.) NSR also states that expedited consideration will benefit both NSR and C&NC, as well as shippers and the public interest. (Id. at 1.)

NSR's request for expedited consideration is reasonable, and thus the exemption granted in this decision will be made effective on September 20, 2021. However, given the claims raised in A.F. Gelhar Co. v. C&NC R.R., Docket No. NOR 42172, regarding C&NC's service over the Line, the Board finds it is in the public interest to facilitate the resumption of service by NSR as soon as possible. Therefore, NSR will be directed to advise the Board as soon as possible, but no later than August 25, 2021, of the earliest date that NSR will be prepared to provide service over the Line. Depending on NSR's response, the Board may issue a subsequent decision adjusting the effective date of this discontinuance exemption accordingly.

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 C&NC, as described above.
2. NSR's request for expedited consideration is granted, and NSR is directed to file the submission discussed above as soon as possible but no later than August 25, 2021.

3. This exemption will be effective on September 20, 2021.

4. Petitions to reopen and petitions to stay the effectiveness of the exemption must be filed by September 6, 2021.

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