

SERVICE DATE – AUGUST 5, 2019

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1269X

IOWA TRACTION RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN CERRO
GORDO COUNTY, IOWA

Decided: August 2, 2019

On February 25, 2019, Iowa Traction Railway Company (Iowa Railway), a Class III carrier, filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon a three-mile rail line between milepost 155.5, located approximately 100 yards south of Elm Drive, and milepost 152.5, located approximately 600 yards north of County Highway B-20, in Mason City, Cerro Gordo County, Iowa (the Line). Because it did not appear that Iowa Railway had obtained the Board's authority to acquire the Line, by decision served April 11, 2019, the effective date of the exemption was held in abeyance and Iowa Railway was directed to supplement its notice to explain how it acquired the Line and whether it obtained the Board's authority to do so. On April 22, 2019, Iowa Railway filed a supplement to its notice of exemption. For the reasons discussed below, Iowa Railway's notice will be rejected.

BACKGROUND

In its verified notice, Iowa Railway represents that no traffic has been transported over the Line for at least 30 years. (Verified Notice 2.) The Line was originally owned by the Chicago & North Western Transportation Company, which received authority to abandon in 1987. Chi. & N.W. Transp. Co.—Aban. Exemption—in Mason City, Iowa, AB 1 (Sub-No. 205X) (ICC served July 10, 1987). Following consummation of the abandonment, Hermitage Homes, Inc. (Hermitage), a noncarrier, acquired the Line. (Verified Notice 3.)¹ In 1988, Iowa Traction Railroad Company (Iowa Railroad) was authorized to operate over the Line pursuant to a lease with Hermitage. Iowa Traction R.R., FD 31353.

¹ The verified notice in the instant proceeding states that Hermitage acquired the Line from Iowa Railroad Finance Authority, which had acquired it from Chicago & North Western Railway Company. However, the verified notice in Iowa Traction R.R.—Operation Exemption—Hermitage Homes, Inc., FD 31353 (ICC served Nov. 23, 1988) states that Hermitage purchased the Line from Chicago & North Western Transportation Company. This apparent discrepancy does not affect the decision to reject Iowa Railway's notice.

In 2012, Iowa Railway was authorized to replace Iowa Railroad as the operator of the Line through a change in operators exemption under 49 C.F.R. § 1150.31(a)(3). Iowa Traction Ry.—Change in Operators Exemption—Rail Line of Backtrack, Inc., FD 35677 (STB served Oct. 5, 2012). By that time, Backtrack, Inc. (Backtrack), had succeeded Hermitage as the noncarrier owner of the Line. (Verified Notice 3.) See also Iowa Traction Ry., FD 35677, slip op. at 1 n.2. According to Iowa Railway, neither it nor Iowa Railroad has ever performed any operations over the Line. (Verified Notice 3.)

Iowa Railway states that it acquired the Line from Backtrack shortly before filing the verified notice to abandon in this proceeding and that Iowa Railway is now both the owner and operator of the Line. (Id.; Supplement 3.) Iowa Railway states that, once the Line is abandoned, it will reuse the track and materials elsewhere in its rail system and sell the land in the railroad right-of-way to the City of Mason City for railbanking and interim trail use. (Verified Notice 3.)²

In its Supplement, Iowa Railway states that the City of Mason City had expressed interest to Backtrack in acquiring the Line’s right-of-way for railbanking and interim trail use under the National Trails System Act (Trails Act) but that, in order to railbank the Line under the Trails Act, the Line needed to be authorized for abandonment. (Supplement 3.) Iowa Railway states that the conveyance of the Line from Backtrack to Iowa Railway “was motivated by the resulting ability of Iowa Railway, as an authorized rail carrier, to obtain approval of abandonment of the [Line]” and by the fact that conveyance “unified ownership and operation of the [Line] in Iowa Railway.” (Id. at 4.)

Iowa Railway further states that the conveyance of the Line from Backtrack required the Board’s approval and suggests that the Board continue to hold its abandonment notice in abeyance while Iowa Railway seeks approval for the acquisition. (Id. at 5.) Even though it has not owned the Line for at least two years, Iowa Railway requests that the Board permit it to utilize the class exemption under 49 C.F.R. § 1152.50(b) to abandon the Line, rather than having to file a petition for exemption. (Id.) Alternatively, Iowa Railway requests that the Board grant an exemption from the petition for exemption procedure on its own motion. (Id.)

DISCUSSION AND CONCLUSIONS

The informal, streamlined class exemption process is typically reserved for routine transactions that are uncomplicated and noncontroversial. See, e.g., V&S Ry.—Aban.

² On February 28, 2019, the City of Mason City, Cerro Gordo County, and the Iowa Natural Heritage Foundation jointly requested a notice of interim trail use or abandonment under 49 C.F.R. § 1152.29 and a public use condition under 49 C.F.R. § 1152.28. On March 1, 2019, Iowa Railway indicated that it was willing to negotiate for railbanking and interim trail use of the right-of-way.

Exemption—in Kiowa Cty., Colo., AB 603 (Sub-No. 3X), slip op. at 2 (STB served June 17, 2014). A notice that raises unresolved issues or questions that require considerable scrutiny may be rejected. Tri-City R.R.—Lease & Operation Exemption—N. Pac. Dev., LLC, FD 36170, slip op. at 1 (STB served Mar. 21, 2018).

Iowa Railway’s notice of exemption raises such concerns and will be rejected. Although Iowa Railway has had authority to operate on the Line since 2012 and states that no traffic has been transported on the Line for at least 30 years, Iowa Railway has not had Board-authorized ownership of the Line for at least two years prior to filing its notice of exemption. This disqualifies Iowa Railway from using the two-year out-of-service class exemption under 49 C.F.R. § 1152.50(b). See V&S Ry.—Aban. Exemption—in Kiowa Cty., Colo., AB 603 (Sub-No. 3X), slip op. at 3-4 (STB served Oct. 23, 2014) (holding that Board-authorized ownership by the carrier for at least two years is a prerequisite to invoking the two-year out-of-service class exemption); Tulare Valley R.R.—Aban. Exemption—in Kings & Tulare Ctys., Cal., 9 I.C.C.2d 1205 (1993) (railroad that acquired a line fewer than two years ago may not use the two-year out-of-service exemption to abandon the line by using or tacking on a previous owner’s certification of no local traffic).

Acknowledging these general principles, Iowa Railway nonetheless argues that this case is distinguishable because the Line has been out of service for more than 30 years, citing BNSF Railway—Abandonment Exemption—in Oklahoma County, Okla., AB 6 (Sub-No. 430X) et al. (STB served Jan. 26, 2007). (Supplement 5.) There, the owning carrier and leasing carrier jointly sought abandonment and discontinuance authority, respectively. The owning carrier had owned the line for at least two years before the joint notice of exemption was filed, but the leasing carrier had acquired its operating rights less than two years prior to that filing date. The Board stated that there was no basis to reject the owning carrier’s notice but that the leasing carrier did not qualify for the class exemption. Nonetheless, the Board, on its own motion, granted the leasing carrier an individual exemption to allow it to discontinue service because the record allowed the Board to find that conducting a further proceeding under 49 U.S.C. § 10903 was not necessary to carry out the rail transportation policy. Contrary to Iowa Railway’s argument, however, the Board did not make this finding based on the length of inactivity on the rail line. Rather, the Board noted that the leasing carrier sought to discontinue service over two “tiny, isolated rail segments” that served no rail shippers and were two miles apart, such that the leasing carrier would be unable to operate over the overall line which the owning carrier sought to abandon. BNSF Railway, AB 6 (Sub-No. 430X) et al., slip op. at 5-6.

In addition to Iowa Railway’s ability to invoke the two-year out-of-service class exemption, Iowa Railway’s proposal for the Board to hold this proceeding in abeyance while it seeks Board approval for its prior acquisition is also inappropriate. Iowa Railway’s acquisition of the Line “was motivated by the resulting ability of Iowa Railway, as an authorized rail carrier, to obtain approval of abandonment of the [Line].” (Supplement 4.) The Board has found that acquiring a line of railroad for the purpose of abandoning rather than operating over it constitutes

a misuse of these procedures. Land Conservancy of Seattle & King Cty.—Acquis. & Operation Exemption—Burlington N. & Santa Fe Ry., FD 33389 (STB served Sept. 26, 1997), recons. denied FD 33389 et al. (STB served May 13, 1998), pet. for judicial review dismissed sub nom. Land Conservancy of Seattle & King Cty. v. STB, 238 F.3d 429 (9th Cir. 2000).³

For these reasons, Iowa Railway's notice of exemption will be rejected.

It is ordered:

1. The notice of exemption is rejected.
2. The decision is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

³ The situation in the instant proceeding differs from those in which, for example, the Board has granted acquisition authority to remedy a prior failure to obtain authority and then allowed that entity to proceed with abandonment pursuant to petition. See, e.g., Ga. Dep't of Transp.—Acquis. Exemption—CSX Transp., Inc., FD 35591 (STB served Feb. 27, 2012) and Ga. Dep't of Transp.—Aban. Exemption—in Fulton Cty., Ga., AB 1096X (STB served May 30, 2012). There, the entity seeking acquisition authority had acquired, 10 years previously, a non-abandoned rail line for the purpose of preserving transportation. Here, Iowa Railway states that its acquisition of the previously abandoned Line was “recent” and for the purpose of pursuing abandonment. (Supplement 4.)