

SERVICE DATE — JANUARY 12, 2018

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1249X

BUCKEYE HAMMOND RAILROAD LLC—ABANDONMENT EXEMPTION—IN LAKE
COUNTY, IND.

Digest:¹ This decision allows Buckeye Hammond Railroad LLC to abandon approximately 1.29 miles of rail line in Lake County, Ind., subject to standard employee protective conditions.

Decided: January 11, 2018

On September 27, 2017, Buckeye Hammond Railroad LLC (BHRR) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. § 10502 for exemption from the prior approval requirements of 49 U.S.C. § 10903 to abandon approximately 1.29 miles of rail line located within the Hammond Transload Facility (Facility) in Hammond, Lake County, Ind., traversing United States Postal Service ZIP Codes 46320 and 46312 (the Line). (Pet. 1.) Notice of the exemption was served and published in the Federal Register on October 17, 2017 (82 Fed. Reg. 48,310-11).

No comments concerning the proposed abandonment were filed. The Board will grant the exemption from 49 U.S.C. § 10903, subject to standard employee protective conditions.

BACKGROUND

BHRR states that in January 2013, it obtained authority from the Board to acquire the Line and bulk transloading facilities in Hammond, Ind., from Buckeye Terminals, LLC (Buckeye Terminals), and to operate over the Line. See Pet. 2, citing Buckeye Hammond R.R.—Acquis. & Operation Exemption—Buckeye Partners, L.P., FD 35697 (STB served Jan. 3, 2013).² BHRR

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

² The petition here notes that BHRR previously obtained authority from the Board to acquire the Line from Buckeye Partners instead of Buckeye Terminals. (Pet. 2 n.1.) However, the Board will not require the parties to correct this error under the unique circumstances here, where Buckeye Partners is the parent company of both BHRR and Buckeye Terminals, BHRR served only a single shipper (Buckeye Terminals) whose cars it simply moved around the terminal, and Buckeye Terminals (the original owner) is reacquiring the Line to convert it back to private track.

states that Buckeye Terminals, the operator of the Facility, is the only shipper on the Line, which is used exclusively for transloading and interchange with the Indiana Harbor Belt Railroad Company (IHB). (Pet. 2.) According to BHRR, upon consummation of the proposed transaction IHB would continue to pick up and deliver traffic to the Facility as a common carrier. (Id. at 1.) BHRR states that Buckeye Terminals would continue to receive and deliver traffic to IHB at the property, but would do so over private track that would no longer be subject to the Board's jurisdiction. (Id. at 3.) According to BHRR, Buckeye Partners, L.P., as the parent of both BHRR and Buckeye Terminals, has consented to and supports the proposed abandonment. (Id. at 5.) BHRR states that, although it anticipated adding additional customers to the Facility when it acquired the Line, Buckeye Terminals remains the only shipper and no other customers have requested common carrier service from BHRR.

According BHRR, the Line is stub-ended and therefore may not accommodate overhead traffic. (Id.) BHRR states that, based on information in BHRR's and Buckeye Terminals' possession, the Line does not contain federally granted rights-of-way. (Id. at 2-3.)

DISCUSSION AND CONCLUSIONS

Exemption from 49 U.S.C. § 10903. Under 49 U.S.C. § 10903, a rail line may not be abandoned without the Board's prior approval. 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 necessary to protect shippers from the abuse of market power.

Here, detailed scrutiny of the proposed abandonment under 49 U.S.C. § 10903 is not necessary to carry out the RTP. Buckeye Terminals, the only shipper on the Line, will continue receiving common carrier rail service from IHB as necessary after consummation of the proposed transaction.

Because Buckeye Terminals is the only shipper on the stub-ended Line, no shippers will be deprived of service. By minimizing the administrative expense of the application process, an exemption would expedite regulatory decisions and reduce regulatory barriers to exit. 49 U.S.C. §§ 10101(2) and (7). Granting BHRR's petition would also foster sound economic conditions and would encourage efficient management. 49 U.S.C. §§ 10101(5) & (9). Other aspects of the RTP would not be adversely affected by the use of the exemption process.

The Board also finds that regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power.³ As discussed above, Buckeye Terminals is

³ Because the Board finds that regulation of the proposed abandonment is not necessary to protect shippers from the abuse of market power, the Board need not determine whether the proposed abandonment is limited in scope.

the only shipper on the Line, and following consummation of the proposed transaction, it will continue receiving common carrier rail service from IHB as necessary.

Employee 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 on BHRR the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho (Oregon Short Line), 360 I.C.C. 91 (1979).

Environmental and Historic Review. BHRR has submitted a combined environmental and historic report with its petition and has notified the appropriate federal, state, and local agencies of the opportunity to submit information concerning the environmental impacts of the proposed abandonment. See 49 C.F.R. §§ 1105.7, 1105.8 & 1105.11. The Board's Office of Environmental Analysis (OEA) has reviewed the report, investigated the environmental record, and analyzed the probable effects of the proposed action on the quality of the human environment.

In an Environmental Assessment (EA) issued on November 24, 2017, OEA concluded that, as proposed, the abandonment of the Line would not significantly affect the quality of the human environment. Comments on the EA were due by December 22, 2017, and no comments were received. In the Final EA, issued December 29, 2017, OEA did not recommend any environmental or historic preservation conditions. Based upon OEA's recommendation, we conclude that the proposed abandonment would not significantly affect either the quality of the human environment or the conservation of energy resources.

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 abandonment by BHRR of the above-described line, subject to the employee protective conditions set forth in Oregon Short Line.
2. BHRR is directed to serve a copy of this decision on Buckeye Terminals so that it is received within five (5) days of its service date and to contemporaneously certify to the Board that it has done so.
3. This exemption will be effective February 11, 2018.

4. Petitions to reopen and petitions to stay must be filed by February 1, 2018.⁴

5. Pursuant to 49 C.F.R. § 1152.29(e)(2), BHRR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by BHRR's filing of a notice of consummation by January 12, 2019, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory barrier to consummation exists at the end of the one-year period, the notice of consummation must be filed no later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Board Members Begeman and Miller.

⁴ Effective July 29, 2017, notices of intent (NOIs) are required before a party may file an Offer of Financial Assistance (OFA) in an abandonment proceeding. 49 C.F.R. § 1152.27(c)(1)(i). Because no NOIs were filed by the October 27, 2017 deadline, OFAs will not be permitted here.