

SERVICE DATE – JULY 28, 2022

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 853 (Sub-No. 4X)

KANSAS & OKLAHOMA RAILROAD, L.L.C.—DISCONTINUANCE OF SERVICE
EXEMPTION—IN CROWLEY, PUEBLO, OTERO, AND KIOWA COUNTIES, COLO.

Digest:¹ This decision allows Kansas & Oklahoma Railroad, L.L.C., to discontinue service over approximately 121.9 miles of rail line in in Crowley, Pueblo, Otero, and Kiowa Counties, Colo., subject to standard employee protective conditions.

Decided: July 28, 2022

On April 21, 2022, Kansas & Oklahoma Railroad, L.L.C. (K&O), 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 a 121.9-mile railroad line (the Towner Line) between milepost 747.5 at Towner and milepost 869.4 near NA Junction, in Crowley, Pueblo, Otero, and Kiowa Counties, Colo.² Notice of the petition was served and published in the Federal Register on May 20, 2022 (87 Fed. Reg. 31,055). No comments opposing the proposed discontinuance were filed. The Board will grant the petition for exemption, subject to standard employee protective conditions.

BACKGROUND

K&O obtained Board authority to operate the Towner Line pursuant to an operating agreement with the line's owner, Colorado Pacific Railroad, LLC (CXR), in 2019. See Kan. & Okla. R.R.—Operation Exemption—Colo. Pac. R.R., FD 36310 (STB served June 14, 2019). According to K&O, the proposed discontinuance is part of a mutually-agreed transition in operation of the Towner Line from K&O, the current lessee, to CXR, the Towner Line's owner. K&O states that the discontinuance exemption will allow it to end its common carrier rail service obligation over the Towner Line, consistent with CXR's plans to commence operations. (Pet. 1.) K&O states that the proposed discontinuance would therefore leave no Towner Line customer without access to railroad common carrier service, as any such customers would have service via

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 K&O originally submitted its petition for exemption on April 8, 2022, but filed a supplement on April 21, 2022. Accordingly, April 21, 2022, will be considered the official filing date.

CXR, which, as the line's owner, has a preexisting common carrier obligation to provide service. (Id. at 1-2.)³

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 K&O's operation of the Towner Line, reduce regulatory barriers to exit for K&O, and provide for the expeditious handling and resolution of the proceeding by facilitating a transition of operations from K&O to CXR, the owner of the Towner 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 discontinuance is also not needed to protect shippers from the abuse of market power.⁴ As described above, any customers on the Towner Line could request service directly from CXR, which owns, and has a common carrier obligation over, the line and intends to commence operations.

Employee Protection. Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a rail 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 K&O 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).

Offers of Financial Assistance, Interim Trail Use/Rail Banking, Public Use, and Environmental Review. Because no formal expressions of intent to file an OFA to subsidize continued rail service were filed by the May 31, 2022 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 Towner Line, interim trail use/rail banking requests under 16 U.S.C. § 1247(d), or requests to negotiate for public use of the Town Line under 49 U.S.C. § 10905. Lastly, because there will

³ K&O states that there are currently no active railroad service customers on the Towner Line. (Pet. 4.)

⁴ 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).

be an environmental review if abandonment is sought in the future, environmental review is unnecessary here.

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 over the Towner Line by K&O, as described above, subject to 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).

2. This exemption will be effective August 27, 2022.

3. Petitions to reopen and petitions to stay the effectiveness of the exemption must be filed by August 12, 2022.

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