

SERVICE DATE – DECEMBER 17, 2021

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 310 (Sub-No. 3X)

UTAH RAILWAY COMPANY—DISCONTINUANCE OF SERVICE EXEMPTION—IN
CARBON AND EMERY COUNTIES, UTAH

Digest:¹ This decision allows Utah Railway Company to discontinue service over approximately 25.05 miles of rail line in Carbon and Emery Counties, Utah, subject to standard employee protective conditions.

Decided: December 17, 2021

On August 30, 2021, Utah Railway Company (UTAH), a Class III rail carrier, filed a petition under 49 U.S.C. § 10502 for an exemption from the prior approval requirements of 49 U.S.C. § 10903 to discontinue service over a railroad line between approximately milepost 0.25 near Helper, Utah, in Carbon County and approximately milepost 25.3 near Mohrland, Utah, in Emery County, a distance of approximately 25.05 miles (the Line). Notice of the petition was served and published in the Federal Register on September 17, 2021 (86 Fed. Reg. 51,952). No comments opposing the proposed discontinuance were filed. The Board will grant the petition for exemption, subject to standard employee protective conditions.

BACKGROUND

UTAH states that its freight operations began around 1912 and the Line served mines near Mohrland and Hiawatha, Utah. (Pet. 3.) In 1979, UTAH's original owner sold UTAH to Sharon Steel Company (which later reorganized as Mueller Industries, Inc.), and in 2002, Genesee & Wyoming Inc. acquired UTAH from a subsidiary of Mueller Industries.² (Id.)

According to UTAH, the Line is stub-ended and serves a single freight customer, Wildcat Midstream Limited Partnership (Wildcat Midstream).³ (Pet. 5.) UTAH states that it has agreed

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 See Genesee & Wyo. Inc.—Control Exemption—Utah Ry., FD 34235 (served Sept. 16, 2002).

³ UTAH refers to the shipper as Wildcat Midstream Partners, LLC, but in a support letter attached to the petition the shipper calls itself Wildcat Midstream Limited Partnership. (See Pet. 3, Ex. E.)

to lease the segment between milepost 0.2 and milepost 9.0 to Wildcat Midstream for use as what UTAH describes as “private industrial side track.”⁴ (*Id.* at 3, 5.) Pursuant to the plan, UTAH will continue to move rail cars over the leased track and provide common carrier switching service to Wildcat Midstream over the connecting track. (*Id.* at 3.) UTAH states that connecting track between milepost 0.2 and milepost 0.0 will remain as a line of railroad and that the Line beyond milepost 9.0 has not been used since August 2008 when a fire destroyed the Gordon Creek Bridge. (*Id.*)

UTAH states that the proposed transaction will not cause any interruption in service on the Line because UTAH will continue to provide common carrier rail service over the connecting line of railroad and to move rail cars over the leased track for Wildcat Midstream. (*Id.* at 5.) In the letter of support filed with the petition, Wildcat Midstream states that the discontinuance will facilitate its use of the Line and will not negatively impact rail service. (Pet., Ex. E.)

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. The record indicates that Wildcat Midstream, the sole freight customer on the Line, supports the transaction and will not lose rail service because it plans to enter into a lease for a portion of track and UTAH will continue to move cars over the leased portion and provide common carrier rail service over the connecting track.⁵ (*See* Pet. 3, 5.) An exemption would expedite regulatory decisions by minimizing the need for regulatory control of UTAH’s operation of the Line, reduce regulatory barriers to exit, and provide for the expeditious handling and resolution of the proceeding by facilitating the planned changes to UTAH’s service for Wildcat Midstream. *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.

⁴ To the extent Wildcat Midstream will be leasing track between milepost 0.2 and milepost 0.25, it will need to seek Board authority for the lease, as UTAH is not seeking authority to discontinue service over that segment.

⁵ Although UTAH maintains that it will continue to provide common carrier service over the connecting track between milepost 0.0 and milepost 0.2, the discontinuance authority granted in today’s decision extends only from milepost 0.25 to milepost 25.3. Accordingly, UTAH will continue to have a common carrier obligation from milepost 0.2 to milepost 0.25.

Regulation of the proposed discontinuance is also not needed to protect shippers from the abuse of market power.⁶ As discussed above, the sole shipper on the Line, Wildcat Midstream, supports the petition, and the discontinuance will facilitate Wildcat Midstream's use of a segment of the Line for private operations.⁷

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 UTAH 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 offer of financial assistance (OFA) to subsidize continued rail service were filed by the September 27, 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 an abandonment is sought in the future, 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 over the Line by UTAH, 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 January 16, 2022.

⁶ 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).

⁷ The leased track would not be private track; Wildcat Midstream would receive service from UTAH on that track, but the track would continue to be within the Board's jurisdiction. See V&S Ry.—Pet. for Declaratory Ord.—Rail Operations in Hutchinson, Kan., FD 35459, slip op. at 10 (STB served July 12, 2012). The Board has previously said that private track, in contrast, is non-jurisdictional track typically owned and maintained by a shipper, or for the shipper at the shipper's expense to serve its own facility. Id. at 8. Private track is generally used by the track's owner for movement of its own goods, either by utilizing its own equipment or by contracting for service. See Tri-City R.R.—Pet. for Declaratory Ord., FD 36037, slip op. at 5-6 (STB served June 1, 2017).

3. Petitions to reopen and petitions to stay must be filed by January 3, 2022.

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