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SERVICE DATE — JANUARY 12, 2018

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1247X

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

Docket No. AB 1248X

LANDISVILLE RAILROAD, LLC—DISCONTINUANCE EXEMPTION—IN LAKE
COUNTY, IND.

Digest:¹ This decision allows Buckeye East Chicago Railroad LLC and Landisville Railroad, LLC to abandon and discontinue, respectively, approximately 1.34 miles of rail line in Lake County, Ind., subject to standard employee protective conditions.

Decided: January 11, 2018

On September 27, 2017, Buckeye East Chicago Railroad (BECR) and Landisville Railroad, LLC (Landisville) (collectively, Petitioners) jointly 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 and discontinue operations over, respectively, approximately 1.34 miles of rail line located within the East Chicago Transload Facility (Facility) at or near 400 East Columbus Drive in East Chicago, Lake County, Ind. (the Line). The Line traverses United States Postal Service ZIP Code 46312. (Pet. 1.) Notice of the exemptions was served and published in the Federal Register on October 17, 2017 (82 Fed. Reg. 48,310).

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

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).

BACKGROUND

In the petition, BECR states that it obtained authority to acquire and operate the Line from Buckeye Terminals, LLC (Buckeye Terminals) in December 2012. See Pet. 2, citing Buckeye East Chicago R.R.—Acquis. & Operation Exemption—Buckeye Partners, FD 35698 (STB served Nov. 30, 2012).² Landisville, a Class III rail carrier, obtained authority to operate over the Line in January 2013. See Landisville R.R.—Operation Exemption—Buckeye East Chicago R.R., FD 35702 (STB served Dec. 21, 2012).

Landisville exclusively provides transloading and interchange services on behalf of BECR to a connection with the Indiana Harbor Belt Railroad Company (IHB). (Pet. 1.) Petitioners state that Buckeye Terminals, the operator of the Facility, is the only shipper on the Line. (Id. at 3.) Upon consummation of the proposed transaction, Petitioners state that IHB will continue to pick up and deliver traffic to the Facility as a common carrier. (Id. at 1.) Petitioners also state that Buckeye Terminals, “which will be BECR’s successor as owner of the Line, or Landisville, as a private contract operator to Buckeye Terminals, will move cars around the [] Facility and provide the transload services” for Buckeye Terminals, but would do so over private track that would no longer be subject to the Board’s jurisdiction. (Id. at 1-2.) Petitioners state that, although BECR 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 either BECR or Landisville.

The parties state that Buckeye Partners, as the parent of both BECR and Buckeye Terminals, has consented to and supports the proposed abandonment and discontinuance. (Id. at 5.) Petitioners state that Landisville is also willing to accommodate the abandonment of the Line by seeking discontinuance of its common carrier operating right over the Line. (Id. at 3.)

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

² The petition here notes that BECR 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 BECR and Buckeye Terminals, BECR 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.

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 and discontinuance under 49 U.S.C. § 10903 is not necessary to carry out the RTP. Buckeye Terminals, the only shipper on the Line, will continue transload and interchange operations at the Facility after consummation of the proposed transaction, with Landisville acting as a private contract operator.

The Facility will also continue to receive common carrier service from IHB. 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 the joint 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 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 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. BECR states that it has no employees. (Pet. 5.) Landisville states that because it will continue to provide services at the Facility as a private contact operator if the proposed transaction is approved, it does not expect any adverse effects on employees. (Pet. 5.) However, Landisville also states that it recognizes that any of its employees who may be adversely affected by the proposed transaction will be protected under 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). (*Id.*) 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 Petitioners 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).

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.

Environmental and Historic Review. The Petitioners submitted a combined environmental and historic report with their joint petition and have 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 and discontinuance of service over 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, the Board concludes that the proposed abandonment and discontinuance 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 BECR's abandonment of, and Landisville's discontinuance of service over, the above-described line, subject to the employee protective conditions set forth in Oregon Short Line.

2. BECR 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), BECR 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 BECR'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

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.

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.