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SERVICE DATE – DECEMBER 3, 2024

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1341X

MIDCOAST RAILSERVICE, INC.—DISCONTINUANCE OF SERVICE EXEMPTION—
IN CUMBERLAND, KNOX, LINCOLN, SAGADAHOC COUNTIES, ME.

Digest:¹ This decision allows Midcoast Railservice, Inc., to discontinue service over approximately 58.68 miles of rail line in Cumberland, Knox, Lincoln, and Sagadahoc Counties, Me.

Decided: December 2, 2024

On August 16, 2024, Midcoast Railservice, Inc. (Midcoast), a Class III rail carrier, 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 approximately 58.68 miles of rail line consisting of (1) the Brunswick Terminal Area between the east side of Church Road, milepost 14.97, and Rock Jct., milepost 16.40; (2) the Rockland Branch between milepost 29.40 in Brunswick, Cumberland County, Me., and milepost 85.55 in Rockland, Knox County, Me.; and (3) the Atlantic Branch Line between milepost 85.55 and milepost 86.65 in Rockland (collectively, the Line). Notice of the petition was served and published in the Federal Register on September 5, 2024 (89 Fed. Reg. 72,693). The Line constitutes Midcoast's entire rail system. No comments opposing the proposed discontinuance were filed. The Board will grant the petition for exemption.

BACKGROUND

Midcoast states that the Line is owned by the State of Maine Department of Transportation (Maine DOT) and that Midcoast has been operating the Line since 2022 pursuant to a Lease and Operating Agreement. (Pet. 1-2); see Midcoast Railservice, Inc.—Change of Operators Exemption—Cent. Me. & Que. Ry., FD 36531 (STB served Aug. 25, 2021). According to the petition, Maine DOT has been informed of Midcoast's plan to discontinue freight service and does not oppose the petition. (Pet. 2.)

Midcoast explains that it is seeking discontinuance authority because it currently operates at an average loss of approximately \$65,000 per month. (Id. at 3.) According to Midcoast, when it began operating the Line, nearly all of its freight revenue was generated by serving a cement

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).

plant, but the cement plant ceased production in late 2023 and Midcoast projects that the remaining active shippers on the Line will generate a total of less than five cars per month. (Id. at 2-3.) Midcoast states it “believes that alternate transportation service by truck or rail/truck transload is available” for the three remaining customers, (id. at 6), and that it has provided a copy of its petition for exemption to those shippers, (id. at 4).

Midcoast also states that, after the discontinuance is consummated, no operator with a common carrier obligation will remain on the Line. (Id. at 1.) However, as previously noted,² this assertion appears to be incorrect, as the agency’s records reflect that Springfield Terminal Railway Company (ST) and Maine Central Railroad Company (MEC) retained a common carrier obligation to provide service over a portion of the Line when it was acquired by Maine DOT,³ and there does not appear to have been any subsequent proceeding authorizing ST or MEC to extinguish their common carrier obligations. ST and MEC have since been acquired by CSX Transportation, Inc. (CSXT). See CSX Corp.—Control & Merger—Pan Am Sys., Inc., FD 36472 et al., slip op. at 2, 50 (STB served Apr. 14, 2022).

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 shall, to the maximum extent consistent with U.S. Code Title 49, subtitle IV, part A, 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.

In this case, detailed scrutiny of the proposed discontinuance under 49 U.S.C. § 10903 is not necessary to carry out the RTP. An exemption would expedite regulatory decisions by minimizing the need for regulatory control over operation of the Line, reduce regulatory barriers to exit for Midcoast, encourage the efficient management of railroads by permitting Midcoast to formally discontinue operations on a line that can only be operated at a loss, and expedite the

² See Midcoast Railservice, Inc.—Discontinuance of Serv. Exemption—in Cumberland, Knox, Lincoln, Sagadahoc Cntys., Me., AB 1341X, slip op. at 2 n.2 (STB served Sept. 5, 2024).

³ In Maine Department of Transportation—Acquisition & Operation Exemption—Maine Central Railroad, 8 I.C.C.2d 835, 837, 838 n.8 (1991), the Board’s predecessor, the Interstate Commerce Commission (ICC), explained that ST would be conducting common carrier operations on three lines and MEC would retain a residual common carrier obligation over those lines. A subsequent ICC decision confirms that two of those lines were between milepost 29.40 and milepost 33.79 (a segment of the Rockland Branch) and between milepost 28.03 (Church Road) and milepost 29.40 (Rock Jct.) (the Brunswick Terminal Area). See Me. Coast R.R.—Operation Exemption—Me. Cent. R.R. & Springfield Term. Ry., FD 32272, slip op. at 1 (ICC served June 21, 1993); see also Safe Handling Rail, Inc.—Operation Exemption—Me. Coast R.R., FD 33968, slip op. at 1-2 (STB served Dec. 4, 2000) (“MEC and ST[] have residual common carrier obligations on the subject line[s].”). It appears the milepost numbers on the Brunswick Terminal Area line were changed at some point.

process of relieving Midcoast of its common carrier obligations over the Line. See 49 U.S.C. § 10101(2), (7), (9), (15). Other aspects of the RTP would not be adversely affected by the use of the exemption process.

Regulation of the proposed transaction under 49 U.S.C. § 10903 also is not necessary to protect shippers from the abuse of market power.⁴ Midcoast projects that the remaining shippers on the Line will generate a total of 60 carloads from July 1, 2024, through June 30, 2025, resulting in less than \$65,000 in gross revenue for the year. (Pet. 3 & n.2.) As a result, Midcoast expects to incur losses of at least \$65,000 per month during the same period. (Id., V.S. Petry 3.) Midcoast's evidence on traffic and revenues is not detailed;⁵ however, no evidence has been presented to suggest that the figures supplied by Midcoast are inaccurate. Even using an optimistic traffic forecast, the record indicates that the cost of maintaining and operating the Line would far exceed the revenues from that traffic. (Id. at 3 & V.S. Petry 2-3.) The Board therefore finds that, even though the information provided by Midcoast is limited, it is sufficient to demonstrate in this case that continued operation of the Line would cause it to incur substantial financial losses.

Additionally, Midcoast asserts that it believes truck or rail/truck transload service is available to the remaining shippers on the Line. (Pet. 6.) Although the petition lacks specific supporting information about alternative transportation options, a copy of Midcoast's petition was served on the remaining shippers, (Pet. 4, 10), and none have expressed concern about losing rail service or otherwise refuted Midcoast's assertion about alternative options. Cf. Tulare Valley R.R.—Aban. & Discontinuance Exemption—in Tulare & Kern Cntys., Cal., AB 397 (Sub-No. 5X), slip op. at 10 (STB served Feb. 21, 1997) (granting a petition for exemption to abandon and discontinue where there was no opposition, but denying the petition where there was opposition and evidence of unprofitability was lacking).

Moreover, as noted, the Board's records reflect that ST and MEC retained a common carrier obligation over the Brunswick Terminal Area and western end of the Rockland Branch (between mileposts 28.03 and 33.79), and CSXT acquired ST and MEC in 2022. See CSX

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).

⁵ Midcoast does not provide much evidence of how it arrived at its projected revenue and expense calculations, discuss if there is any possibility that production will resume at the cement plant, or discuss the prospects for increased traffic by the remaining shippers. Although 49 U.S.C. § 10502 and 49 C.F.R. § 1152.60 include few specific requirements regarding the financial and other information to be submitted with a petition for exemption, the information provided must be sufficient to allow the Board to reach an informed decision that the § 10502 exemption requirements have been met. San Joaquin Valley R.R.—Aban. Exemption—in Kings & Fresno Cntys., Cal., AB 398 (Sub-No. 4X), slip op. at 2 (STB served Mar. 5, 1999); Union Pac. R.R.—Aban. Exemption—in Pottawattamie Cnty., Iowa, AB 33 (Sub-No. 274X) et al., slip op. at 3 (STB served Dec. 12, 2008). While the limited information provided by Midcoast is sufficient here given the significant financial loss it projects and absence of opposition, the Board cautions parties that such limited evidence may not be sufficient in other cases.

Corp.—Control & Merger—Pan Am Sys., Inc., FD 36472 et al. (STB served Apr. 14, 2022); CSX Letter 1, June 1, 2022, CSX Corp.—Control & Merger—Pan Am Sys., Inc., FD 36472 et al. (notifying Board of consummation). Therefore, CSXT should be available to provide alternative rail service on those portions of the Line, if needed. To ensure that CSXT is aware of this decision, Midcoast will be directed to serve a copy of this decision on CSXT and certify to the Board that it has done so by December 9, 2024.

Labor Protection. Where a rail carrier is abandoning, or, as here, discontinuing service over its entire system, the Board generally does not impose labor protection under 49 U.S.C. § 10502(g), unless the evidence indicates the existence of (1) a corporate affiliate that will continue substantially similar rail operations, or (2) a corporate parent that will realize substantial financial benefits over and above relief from the burden of deficit operations by its subsidiary railroad. Cent. Tex. & Colo. River Ry.—Discontinuance Exemption—in McCulloch, San Saba, Mills, & Lampasas Cntys., Tex., AB 1272X, slip op. at 9 (STB served Apr. 27, 2022); Wolf Creek R.R.—Aban. Exemption—in Gibson Cnty., Tenn., AB 1322X, slip op. at 2 (STB served Oct. 3, 2022) (citing Miss. & Skuna Valley R.R.—Aban. Exemption—in Yalobusha & Calhoun Cntys., Miss., AB 1089X, slip op. at 3 (STB served Jan. 20, 2012); Northampton & Bath R.R.—Aban. near Northampton & Bath Junction in Northampton Cnty., Pa., 354 I.C.C. 784, 785-86 (1978); Wellsville, Addison & Galetton R.R.—Aban. of Entire Line in Potter & Tioga Cntys., Pa., 354 I.C.C. 744 (1978)). Midcoast states that its corporate affiliate, the Ontario Central Railroad Corp., and its corporate parent, Finger Lakes Railway Corp. (FLGK), are Class III rail carriers that operate in New York state and will not assume any of Midcoast’s operations. (Pet. 9.) According to Midcoast, FLGK will not benefit from the proposed discontinuance beyond the relief it receives from the burden of deficit operations. (Id.) As the record contains no indication that a corporate affiliate will continue substantially similar rail operations on the Line, or that Midcoast’s parent company would realize substantial financial benefits over and above relief from the burden of any deficit operations by Midcoast, the Board will not impose employee protective conditions here.

Offers of Financial Assistance, Interim Trail Use/Railbanking, and Public Use. Because no formal expressions of intent to file an offer of financial assistance (OFA) to subsidize continued rail service were filed by the September 16, 2024 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/railbanking requests under 16 U.S.C. § 1247(d), or requests to negotiate for public use of the Line under 49 U.S.C. § 10905.

Environmental Review. Most of the Line, from milepost 33.79 to milepost 85.91, was abandoned before Maine DOT acquired the Line in 1991. See Me. Cent. R.R.—Pet. for Rev. of Arb. Award, FD 31434 et al., slip op. at 1 (ICC served Apr. 19, 1990) (noting that “MEC abandoned the Rockland Branch,” as authorized for abandonment in AB 83 (Sub-No. 8), “in November 1985”); Me. Cent. R.R.—Aban.—in Cumberland, Sagadahoc, Lincoln, & Knox Cntys., Me., AB 83 (Sub-No. 8) (ICC served Oct. 23, 1985) (approving abandonment of rail line between milepost 33.79 at Brunswick and milepost 85.91 at Rockland); see also Me. Coast R.R.—Modified Rail Certificate, FD 31727, slip op. at 1 (ICC served Oct. 5, 1990) (authorizing operations over rail line between milepost 33.79 at Brunswick and milepost 85.91 at Rockland

pursuant to a modified certificate). Accordingly, no environmental review would be required for those portions of the Line. Because there will be an environmental review if abandonment is sought in the future for the remainder of the Line—milepost 33.79 to milepost 28.03⁶—environmental review is unnecessary for this discontinuance.

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 on the Line by Midcoast, as described above.
2. Midcoast is directed to serve a copy of this decision on CSXT and certify to the Board that it has done so by December 9, 2024.
3. This exemption will be effective January 2, 2025.
4. Petitions to reopen and petitions to stay the effectiveness of the exemption must be filed by December 23, 2024.

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

⁶ Me. Dep't of Transp.—Acquis. & Operation Exemption, 8 I.C.C.2d at 837, 838 n.8 (stating that MEC will need abandonment authority if it wishes to be relieved of its residual common carrier obligation).