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SERVICE DATE - AUGUST 21, 1998

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-468 (Sub-No. 3X)

PADUCAH & LOUISVILLE RAILWAY, INC.--ABANDONMENT EXEMPTION--IN
MUHLENBERG COUNTY, KY

Decided: August 14, 1998

By petition filed on May 5, 1998, Paducah & Louisville Railway, Inc. (P&L) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 9 U.S.C. 10903 to abandon: (1) 6.70 miles of rail line between milepost J-126.6 at Central City, KY (JK Jct.), and milepost J-133.3 at Greenville, KY; and (2) 6.14 miles of branch line trackage known as the Beech Creek Lead, between Greenville and Pond Creek, KY, in Muhlenberg County, KY.¹ A request for issuance of a notice of interim trail use (NITU) and imposition of a public use condition was filed by Kentucky Rails to Trails Council, Inc. (KRTC). The United Transportation Union seeks the imposition of employee protective conditions. We will grant the exemption, subject to trail use, public use, an historic preservation condition, and standard employee protective conditions.

BACKGROUND

P&L states that in recent years only one shipper, Reed Minerals (Reed), has used the subject lines to ship or receive freight. Reed operated a slag facility located near the end of the Beech Creek Lead track at Pond Creek, KY. According to P&L, the shipper utilized the lines proposed for abandonment to ship outbound granulated slag, but did not receive any inbound commodities by rail. P&L adds that, while Reed shipped an average of 720 carloads per year from its facility in 1996 and 1997, it has shipped no carloads since January 1998. P&L states that Reed has now closed its Pond Creek facility and has relocated to one of its other facilities, on CSX Transportation, Inc. (CSXT) some three miles away in Drakesboro, KY. Accordingly, petitioner avers that Reed no longer requires rail service over the lines to be abandoned.² Finally, P&L certifies that a copy of its petition was served on Reed.

¹ Notice of the filing was served and published in the Federal Register on May 22, 1998 (63 FR 28447-48).

² A copy of a letter from the shipper to that effect was attached to the petition.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without prior Board approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy 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.

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of the abandonment process, an exemption will reduce regulatory barriers to exit [40 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions and encourage efficient management by relieving P&L of the costs of owning and maintaining the lines [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation of the proposed transaction is not necessary to protect shippers from an abuse of market power. The sole shipper on the lines has not utilized rail service since January 1998 and, in fact, has now relocated to a facility three miles away served by CSXT. We also note that no one has appeared in this proceeding to oppose the proposed abandonment. Nevertheless, to ensure that the shipper is aware of our action, we will require P&L to serve a copy of this decision on Reed within 5 days of the service date of the decision and to certify to us that it has done so. Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

Under 49 U.S.C. 10502(g), we may not use our 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, we will impose the employee protective conditions set forth in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979).

P&L has submitted an environmental report with its petition and has notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the energy and environmental impacts of the proposed abandonment. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified the data it contains, analyzed the probable effects of the proposed action on the quality of the human environment, and served an environmental assessment (EA) on July 10, 1998. In the EA, SEA noted that The Kentucky Heritage Council and State Historic Preservation Officer have not completed their review of the potential eligibility of sites and structures that may be affected by the abandonment. Therefore, SEA recommends that a condition be imposed requiring that P&L shall retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

No comments to the EA were filed by the August 6, 1998 due date. We will impose the historic preservation condition recommended by SEA. Based on SEA's recommendation, we

conclude that the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

KRTC requests that interim trail use/rail banking be imposed under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). It has submitted a statement of willingness to assume financial responsibility for the right-of-way, and has acknowledged that use of the right-of-way is subject to possible future reconstruction and reactivation for rail service as required under 49 CFR 1152.29. By letter filed July 7, 1998,³ P&L states that it is willing to negotiate an agreement for interim trail use. KRTC's request complies with the requirements of 49 CFR 1152.29 and P&L is willing to enter into negotiations. Therefore, we will issue a NITU for the described lines. The parties may negotiate an agreement during the 180-day period prescribed below. If an agreement is executed, no further Board action is necessary. If no agreement is reached within 180 days, P&L may fully abandon the lines, subject to the conditions imposed below. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

SEA has indicated in its EA that the right-of-way may be suitable for other public use following abandonment. As noted above, KRTC has also requested that a 180-day public use condition be imposed. KRTC requests that P&L be precluded from: (1) disposing of the rail corridor, other than the tracks, ties and signal equipment, except for public use on reasonable terms; and (2) removing or destroying potential trail-related structures such as bridges, trestles, culverts, and tunnels. KRTC states that the corridor provides greenspace that ties two Kentucky communities together and it seeks to convert the corridor to a multiple use trail designed as a non-motorized, shared-use, recreational trail. It adds that the right-of-way needs to be managed to maintain a necessary habitat for area plants and animals. Finally, KRTC indicates that the 180-day time period is needed because it has not had ample time to assemble a committee or complete a trail plan and review title information.

We have determined that persons who file under the Trails Act may also file for public use under 49 U.S.C. 10905. See Trails, 2 I.C.C.2d at 609. When the need for both conditions is established, it is our policy to impose them concurrently, subject to the execution of a trail use agreement. KRTC has met the public use criteria prescribed at 49 CFR 1152.28(a)(2) by specifying: (1) the condition sought; (2) the public importance of the condition; (3) the period of time for which the condition would be effective; and (4) justification for the period of time requested. Accordingly, a 180-day public use condition also will be imposed, commencing with the effective date of this decision and notice. If a trail use agreement is reached on a portion of the right-of-way, P&L must keep the remaining right-of-way intact for the remainder of the 180-day period to permit public use negotiations. Also, we note that a public use condition is not imposed for the benefit of any one potential purchaser. Rather, it provides an opportunity for any interested person to acquire a right-of-way that has been found suitable for public purposes, including trail use.

³ A fax transmittal of this filing was received at the Board on July 2, 1998.

Therefore, with respect to the public use condition, P&L is not required to deal exclusively with KRTC, but may engage in negotiations with other interested persons.

The parties should note that operation of the trail use and public use procedures could be delayed, or even foreclosed, by the financial assistance process under 49 U.S.C. 10904. As stated in Rail Abandonments--Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 608 (1986) (Trails), offers of financial assistance (OFA) to acquire rail lines for continued rail service or to subsidize rail operations take priority over interim trail use/rail banking and public use. Accordingly, if an OFA is timely filed under 49 U.S.C. 1152.27(c)(1), the effective date of this decision and notice will be postponed beyond the effective date indicated here. See 49 CFR 1152.27(e)(2). In addition, the effective date may be further postponed at later stages in the OFA process. See 49 CFR 1152.27(f). Finally, if the lines are sold under the OFA procedures, the petition for abandonment exemption will be dismissed and trail use and public use precluded. Alternatively, if a sale under the OFA procedures does not occur, the trail use and public use processes may proceed.

This decision will 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, we exempt from the prior approval requirements of 49 U.S.C. 10903 the abandonment by P&L of the above-described lines, subject to the employee protective conditions set forth in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979), and the conditions that P&L shall: (1) leave intact all of the right-of-way, including bridges trestles, culverts and tunnels (but not track and track materials) for a period of 180 days from the effective date of this decision to enable any state or local governmental agency or any other interested person to negotiate the acquisition of the lines for public use; (2) comply with the interim trail use/rail banking procedures set forth below; and (3) retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

2. P&L is directed to serve a copy of this decision on Reed Minerals within 5 days after the service date of this decision and to certify to the Board that it has done so.

3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.

4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.

5. If interim trail use is implemented and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

6. If an agreement for interim trail use/rail banking is reached by the 180th day after service of this decision and notice, interim trail use may be implemented. If no agreement is reached by that time, P&L may fully abandon the line, provided the conditions imposed above are met.

7. An offer of financial assistance (OFA) under 49 CFR 1152.27(c)(1)⁴ to allow rail service to continue must be received by the railroad and the Board by August 31, 1998, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and CFR 1152.27(c)(1). Each OFA must be accompanied by a \$1,000 filing fee. See 49 CFR 1002.2(f)(25).

8. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **“Office of Proceedings, AB-OFA.”**

9. Provided no OFA has been received, this exemption will be effective September 20, 1998. Petitions to stay must be filed by September 7, 1998, and petitions to reopen must be filed by September 15, 1998.

10. Pursuant to the provisions of 49 CFR 1152.29(e)(2), P&L 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 P&L's filing of a notice of consummation by August 21, 1999, 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 1-year period, the notice of consummation must be filed not later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

⁴ See Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903, STB Ex Parte No. 537 (STB served Dec. 24, 1996 and June 27, 1997).