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SERVICE DATE – JANUARY 7, 2008

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-88 (Sub-No. 12X)

BESSEMER AND LAKE ERIE RAILROAD COMPANY — ABANDONMENT EXEMPTION
— IN BUTLER COUNTY, PA

Decided: January 3, 2008

By petition filed on September 19, 2007, Bessemer and Lake Erie Railroad Company (B&LE) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a 3.67-mile line of railroad between milepost 0.00 and milepost 3.67, in Branchton, Butler County, PA (the line).¹ Notice of the filing was served and published in the Federal Register on October 10, 2007 (72 FR 57631-32). The Board will grant the exemption, subject to environmental and standard employee protective conditions.

BACKGROUND

According to B&LE, the line is a stub-ended branch line with no overhead traffic. B&LE states that for at least the last two years, it has served only one shipper, The J.S. McCormick Co. (JSM). B&LE claims that it has already worked with JSM to provide continued service through use of a transloading facility and that JSM does not oppose the abandonment of the line. In its petition, B&LE included a letter from JSM stating that it does not object to the proposed abandonment. B&LE states that salvageable track and materials will be used to upgrade and maintain other active lines.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without our prior 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 of this transaction under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of an abandonment

¹ Originally, B&LE also sought exemption from the Offer of Financial Assistance (OFA) provisions of section 10904 and the Public Use provisions of section 10905. However, by facsimile filed on October 3, 2007, B&LE modified its filing to seek exemption only from section 10903.

application, an exemption will expedite regulatory decisions and reduce regulatory barriers to exit [49 U.S.C. 10101(2) and (7)]. An exemption will foster sound economic conditions and encourage efficient rail management by relieving B&LE from the expense of retaining and maintaining a line that generates very little traffic and by allowing B&LE to apply its assets more productively elsewhere on its rail system [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy would not be affected adversely.

Regulation of the proposed transaction is not necessary to protect shippers from an abuse of market power. Because it is a stub-ended branch line, the line appears to have little or no potential for future traffic. Also, apparently JSM, the sole shipper on the line, has made arrangements with B&LE to continue to receive service at a transloading facility and has not filed in opposition of the proposed abandonment. Nevertheless, to ensure that JSM is informed of our action, we will require B&LE to serve a copy of the decision on JSM within 5 days of the service date and to certify to us that it has done so. Given our market power finding, we need not determine whether the proposed abandonment 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 in Oregon Short Line R. Co.–Abandonment–Goshen, 360 I.C.C. 91 (1979).

B&LE has submitted a combined environmental and historic 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 action. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified the data it contains, and analyzed the probable effects of the proposed action on the quality of the human environment.

SEA served an environmental assessment (EA) on November 16, 2007, and requested comments by December 17, 2007. In the EA, SEA states that the National Geodetic Survey (NGS) has identified one geodetic station marker that may be affected by the proposed abandonment. Accordingly, SEA recommends that a condition be imposed requiring B&LE to consult with NGS and notify NGS at least 90 days prior to beginning salvage activities that would disturb or destroy the geodetic station marker.

SEA also states in the EA that the Pennsylvania Department of Environmental Protection (PADEP) recommended that B&LE: (1) contact the Butler County Conservation District (BCCD) to determine the need for an erosion and sedimentation control plan for salvaging activities; (2) avoid work in waterways; and (3) obtain the prior approval of PADEP or BCCD before conducting any salvaging activities in waterways, wetlands or floodplains. PADEP also noted that bridges and culverts are considered water obstructions or encroachments (WOEs), and that the maintenance, modification, and abandonment of WOEs are subject to PADEP's regulations. Accordingly, SEA recommends that two conditions be imposed requiring B&LE

to: (1) consult with BCCD to determine the applicability of and need for an erosion and sedimentation control plan for salvaging activities; and (2) consult with PADEP on the need for prior approval for any work in waterways, floodplains or wetlands and to determine the applicability of WOE requirements as they pertain to bridges and culverts.

No comments to the EA were filed. Accordingly, we will impose the conditions recommended by SEA in the EA. 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.

Although SEA has indicated in the EA that the right-of-way may be suitable for other public use under 49 U.S.C. 10905, no one has sought a public use condition, and none will be imposed.²

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 B&LE of the above-described line, 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 B&LE shall: (1) consult with NGS and notify NGS at least 90 days prior to beginning salvage activities that would disturb or destroy the geodetic station marker; (2) consult with BCCD to determine the applicability of and need for an erosion and sedimentation control plan for salvaging activities; and (3) consult with PADEP on the need for prior approval for any work in waterways, floodplains or wetlands and to determine the applicability of WOE requirements as they pertain to bridges and culverts.

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

3. An OFA under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by January 17, 2008, 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 49 CFR 1152.27(c)(1). Each OFA must be accompanied by the filing fee, which currently is set at \$1,300. See 49 CFR 1002.2(f)(25).

4. 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.”**

² Public use requests were due no later than 20 days after publication of the notice in the Federal Register, or by October 30, 2007.

5. Provided no OFA has been received, this exemption will be effective on February 6, 2008. Petitions to stay must be filed by January 22, 2008, and petitions to reopen must be filed by February 1, 2008.

6. Pursuant to the provisions of 49 CFR 1152.29(e)(2), B&LE 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 B&LE's filing of a notice of consummation by January 7, 2009, 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 no later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Anne K. Quinlan
Acting Secretary