

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-570 (Sub-No. 2X)

PALOUSE RIVER & COULEE CITY RAILROAD, INC.–
ABANDONMENT EXEMPTION–IN LATAH COUNTY, ID

Decided: August 16, 2007

By petition filed on April 30, 2007, Palouse River & Coulee City Railroad, Inc. (PRCC) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a 0.20-mile line of railroad extending between milepost 85.91 and milepost 86.11 in Moscow, in Latah County, ID. Notice of the filing was served and published in the Federal Register on May 18, 2007 (72 FR 28095).¹ We will grant the petition for exemption, subject to environmental and standard employee protective conditions.

BACKGROUND

Since PRCC acquired the 0.20-mile line proposed for abandonment, PRCC has served only one shipper, the Moscow Idaho Seed Company (Idaho Seed). In early 2006, Idaho Seed closed its seed processing facility located adjacent to the line. Prior to closing its facility, Idaho Seed shipped 44 carloads of traffic for the year 2005, and one final carload in early 2006.

PRCC states that the area surrounding the line is undergoing commercial redevelopment and that once Idaho Seed's facility has been redeveloped, there will be no possible need for future rail service on the line. PRCC points out that no local traffic has moved on the line for over a year and that the stub-ended line is incapable of handling any overhead traffic. PRCC adds that, if rail operations were to resume, the line would require substantial rehabilitation.

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.

¹ Paul Didelius, president of Frontier Rail Corporation, has filed a comment regarding rail service in the area but has not protested the proposed abandonment.

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 application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will foster sound economic conditions and encourage efficient management by relieving PRCC of the costs of maintaining and operating a line that is no longer used [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be adversely affected.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power. Idaho Seed, the only shipper on the line, has closed its facility and has or is in the process of selling its facility for redevelopment. Nevertheless, to ensure that the shipper is informed of our action, we will require PRCC to serve a copy of the decision on Idaho Seed 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 set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

PRCC has submitted environmental and historic reports 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 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 June 29, 2007, requesting comments by July 30, 2007. In the EA, SEA recommended that three conditions be imposed on any decision granting abandonment authority.

SEA reported that Mr. Hudson Mann, Acting Regional Administrator, Idaho Department of Environmental Quality (DEQ), submitted the following comments: (1) water quality will need to be fully addressed since the line crosses and is adjacent to Paradise Creek, which has been identified by the State as an impaired waterway; (2) the line is adjacent to a known site that has been mitigated for hazardous materials; and (3) a section 402 Storm Water National Pollution Discharge Elimination Permit and accompanying Storm Water Pollution Prevention Plan may be needed prior to any salvage activities. Therefore, SEA recommended that PRCC be required to consult with DEQ to ensure that DEQ's concerns regarding PRCC's existing right-of-way and salvage activities are addressed. SEA also recommended that PRCC be required to submit the results of these consultations in writing to SEA prior to the onset of salvage operations.

SEA noted that the National Geodetic Survey (NGS) has identified two geodetic station markers that may be located in the proposed abandonment area. Therefore, SEA recommended that PRCC be required to notify NGS at least 90 days prior to beginning salvage activities in order to plan for the possible relocation of the geodetic station markers by NGS.

SEA also noted that, in a letter dated December 1, 2006, the Idaho State Historical Society, State Historic Preservation Officer (SHPO), stated that the line itself and the single bridge may be eligible for inclusion in the National Register of Historic Places. SEA noted that, at the time the historical report was provided to the SHPO, it was not known that the bridge and right-of-way underlying it were owned by Gritman Medical Center. Therefore, SEA recommended that PRCC be required to retain its interest in and take no steps to alter the historic integrity of the right-of-way (with the exception of the bridge owned by Gritman Medical Center) until the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA), has been completed.

No comments on the EA were received by the July 30, 2007 due date. Therefore, we will impose the conditions recommended by SEA. Accordingly, 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.

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 PRCC 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 subject to the conditions that PRCC shall: (1) consult with DEQ to ensure that DEQ's concerns regarding PRCC's existing right-of-way and salvage activities are addressed and submit the results of these consultations in writing to SEA prior to the onset of salvage operations; (2) notify NGS at least 90 days prior to beginning salvage activities in order to plan for the possible relocation of the geodetic station markers by NGS; and (3) retain its interest in and take no steps to alter the historic integrity of the right-of-way (with the exception of the bridge owned by Gritman Medical Center) until the section 106 process of the NHPA has been completed.

2. PRCC is directed to serve a copy of this decision on Idaho Seed 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 August 27, 2007, 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.”**

5. Provided no OFA has been received, this exemption will be effective on September 16, 2007. Petitions to stay must be filed by September 4, 2007, and petitions to reopen must be filed by September 11, 2007.

6. Pursuant to the provisions of 49 CFR 1152.29(e)(2), PRCC 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 PRCC's filing of a notice of consummation by August 18, 2007, 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 Buttrey, and Commissioner Mulvey.

Vernon A. Williams
Secretary