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SERVICE DATE - LATE RELEASE FEBRUARY 24, 1998

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-493 (Sub-No. 4X)

TRACK TECH, INC.--ABANDONMENT EXEMPTION--IN WARD COUNTY, ND

Decided: February 23, 1998

By petition filed on November 6, 1997, Track Tech, Inc. (Track Tech) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a line of railroad between Minot, ND (milepost 4.00), and Tatman, ND (milepost 16.70), a distance of 12.70 miles in Ward County, ND.¹ A request for issuance of a notice of interim trail use (NITU) and imposition of a public use condition was filed by Minot Park District (MPD). We will grant the exemption, subject to trail use, public use, an environmental condition, and standard employee protective conditions.

BACKGROUND

The line proposed for abandonment was formerly owned by Burlington Northern Railroad Company (BN).² According to petitioner, BN took the line out of service in 1993 due to unsafe track conditions. Petitioner has operated no trains over the line since it acquired the line from BN on November 27, 1996. Petitioner reports that there are no shippers located on the line, and that no local or overhead traffic has moved over the line for at least 3 years. Track Tech asserts that there is no possibility that operations over this line could be viable for local service needs because no traffic could reasonably be expected to be generated on the line in the future. Petitioner states that alternative transportation service is available through other rail carriers and trucking companies that operate in the area, including a Burlington Northern and Santa Fe Railway Company east-west line that traverses and serves the Minot area, and a Canadian Pacific/Soo Line Railroad Company line, which is a north-south mainline through Minot.

DISCUSSION AND CONCLUSIONS

¹ Notice of the filing was served and published in the Federal Register on November 26, 1997 (62 FR 63215-16).

² Petitioner also acquired 5 other lines from BN in November 1996. Petitioner filed petitions for exemption to abandon the other lines in STB Docket No. AB-493 (Sub-Nos. 1X, 2X, 3X, 5X, and 6X). The petitions in Sub-Nos. 1X, 2X, and 5X were granted by decisions served on January 12, 1998.

Under 49 U.S.C. 10903, a rail line may not be abandoned without 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 under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of an abandonment application, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions and encourage efficient management by relieving Track Tech of the costs of owning and maintaining the line. [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 because there are no shippers on the line. 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).

Track Tech 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 January 12, 1998. In the EA, SEA indicated that the North Dakota Department of Health (NDDH) states that the environmental impacts from the proposed construction will be minor and can be controlled by proper construction methods. SEA further indicated that, in order to avoid any adverse impacts, NDDH recommends that care be taken during construction activity near any water of the state to minimize adverse effects on state waters, and has listed several requirements for minimizing or preventing any environmental degradation to a waterway as a result of construction activities at a site. Accordingly, SEA recommends that a condition be imposed on any grant of abandonment authority requiring Track Tech to consult with NDDH, Environmental Health Section, prior to salvaging the right-of-way.

No comments to the EA were filed by the February 6, 1998 due date. We will impose the 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.

MPD 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 January 26, 1998,³ Track Tech states that it has no objection to MPD's request. MPD's request complies with the requirements of 49 CFR 1152.29 and Track Tech is willing to enter into negotiations. Therefore, we will issue a NITU for the described line. 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, Track Tech may fully abandon the line, 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.

The parties should note that operation of the trail 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 line is sold under the OFA procedures, the petition for abandonment exemption will be dismissed and trail use precluded. Alternatively, if a sale under the OFA procedures does not occur, trail use may proceed.

SEA has indicated in its EA that the right-of-way may be suitable for other public use following abandonment. As noted above, MPD has also requested that a 180-day public use condition be imposed. MPD requests that Track Tech 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 trail-related structures such as bridges, trestles, culverts, and tunnels. MPD states that the corridor would make an excellent recreational trail and conversion of the property to trail use is in accordance with the transportation master plan of the City of Minot. MPD indicates that the 180-day time period is needed to review title information or commence negotiations with Track Tech.

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. MPD 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

³ A fax transmittal of this filing was received at the Board on January 21, 1998.

the condition would be effective; and (4) justification for the period of time requested. Accordingly, an 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, Track Tech 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. Therefore, with respect to the public use condition, Track Tech is not required to deal exclusively with MPD, but may engage in negotiations with other interested persons.

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 Track Tech 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 Track Tech 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 and notice to enable any state or local governmental agency or any other interested person to negotiate the acquisition of the line for public use; (2) comply with the interim trail use/rail banking procedures set forth below; and (3) consult with NDDH, Environmental Health Section, prior to salvaging the right-of-way.
2. 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.
3. 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.
4. 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.
5. 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, Track Tech may fully abandon the line, provided the conditions imposed above are met.

6. 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 March 6, 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 49 CFR 1152.27(c)(1). Each OFA must be accompanied by a \$900 filing fee. See 49 CFR 1002.2(f)(25).

7. 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.”**

8. Provided no OFA has been received, this exemption will be effective March 26, 1998. Petitions to stay must be filed by March 6, 1998, and petitions to reopen must be filed by March 16, 1998.

9. Pursuant to the provisions of 49 CFR 1152.29(e)(2), Track Tech 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 Track Tech’s filing of a notice of consummation by February 24, 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).