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SERVICE DATE - OCTOBER 19, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-227 (Sub-No. 9X)

WHEELING AND LAKE ERIE RAILWAY COMPANY--ABANDONMENT EXEMPTION--
IN HARRISON AND JEFFERSON COUNTIES, OH

Decided: October 14, 1999

By petition filed July 1, 1999,¹ Wheeling & Lake Erie Railway Company (W&LE) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon its line of railroad known as the Valley Line, extending from milepost 188.5 near Unionvale to milepost 205.54 near Warrenton, a distance of approximately 18 miles in Jefferson and Harrison Counties, OH. The United Transportation Union (UTU) requests imposition of employee protective conditions. We will grant the exemption, subject to environmental and standard employee protective conditions.

BACKGROUND

W&LE, a Class II rail carrier, operates approximately 850 miles of rail lines in Ohio, Pennsylvania, West Virginia, and Maryland. W&LE began operations in May 1990 after acquiring its core rail lines from the Norfolk & Western Railway Company.² W&LE's principal routes extend from Connellsville and Pittsburgh, PA, to Bellevue, OH; from Brewster and Canton, OH, to Cleveland, OH; and from Mogadore and Akron, OH, to Carey, OH. W&LE also operates over CSX Transportation, Inc.'s line between Connellsville, PA, and Hagerstown, MD, pursuant to trackage rights.

The Valley Line is a single-track, unsignaled branch line that connects with a W&LE line which extends westward to a connection with W&LE's main line at Pittsburgh Junction. At Warrenton, the Valley Line connects with W&LE's north-south River Branch between Steubenville, OH, and Benwood, WV. According to W&LE, approximately half of the Valley Line is laid with 110-pound and half with 132-pound rail, which is in fair condition. The bridges and tunnels on the line are also in fair condition.

¹ Notice of the filing was served and published in the Federal Register on July 21, 1999 (64 FR 39186-87).

² See Wheeling Acquisition Corporation--Acquisition and Operation Exemption--Lines of Norfolk & Western Railway Company, Finance Docket No. 31591 (ICC served Feb. 6, May 7, and Dec. 28, 1990).

In March 1995, a W&LE train derailed on the Valley Line at milepost 196.9 near Dillonvale, resulting in substantial damage and preventing the line from being used as a through route. All overhead traffic was relocated to alternative routes. The sole shipper on the line, located west of the damaged segment, was Camco Recycling (Camco). After the derailment, Camco was served on an as-needed basis from the west until it ceased using rail service to ship scrap metal in July 1997.³ Camco generated revenues of \$7,380 in 1997. No other local traffic has been handled on the Valley Line since at least 1993, and W&LE maintains that there are no reasonable prospects for industrial development or other sources of traffic in the area.⁴

W&LE estimates that the cost to repair the track at the derailment location and rehabilitate the Valley Line to minimum Federal Railroad Administration Class 1 safety standards is approximately \$150,000. W&LE submits that the net liquidation value of the track materials alone (excluding land) is approximately \$832,000. According to W&LE, abandonment and salvage of the track will provide it with much-needed cash flow and will eliminate the need to expend substantial resources to reopen and rehabilitate a line with no traffic.

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 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 also foster sound economic conditions and encourage efficient management by relieving W&LE of the cost of owning and maintaining a line which generates no traffic or revenue and which requires substantial

³ The current status of Camco is unclear from the record. W&LE states that, in 1997, Camco's property was purchased by another company which has elected to rely exclusively on trucks, and that a copy of the petition has been served on that company (petition at 2). In addition, W&LE states that Camco has relocated (petition at 4). The "Certificate of Notification and Service" indicates that W&LE served its petition on "Camco Recycling, Fair and Watson" at a P.O. Box in Dillonvale, but it is unclear whether this is the new company or Camco.

⁴ W&LE states that one potential shipper, Waste Management of Ohio (WMO), which earlier expressed interest in preserving the line, has recently concluded that it has no need for rail service in the future and does not object to the abandonment. W&LE served a copy of the petition on WMO.

rehabilitation, and by allowing W&LE to apply its assets more productively elsewhere on its system [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 the abuse of market power because all overhead traffic has been rerouted, and there is no actual or potential local traffic. Camco, the only previously active shipper on the line, stopped using rail service almost 2 years ago, and WMO, a potential shipper that expressed interest in preserving the line in the past, reportedly does not object to the proposed abandonment.⁵ Nevertheless, to ensure that Camco (and its successor) and WMO are informed of our decision, we will require W&LE to serve a copy of this decision on them within 5 days of the service date and certify to us that it has done so.

UTU requests the imposition of labor protective conditions. 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).

W&LE 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, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on August 30, 1999. In the EA, SEA indicated that the U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS) has indicated that the line is adjacent to several prime farmland soil units as well as a flood control project. Therefore, SEA recommends that a condition be imposed requiring W&LE to consult with NRCS (Hopedale, OH) to provide information required by that agency. SEA has also indicated that both the United States and Ohio Environmental Protection Agencies note that no debris from salvage operations may be left in the right-of-way or along waterways and that appropriate measures must be taken to preclude spills of pollutants into water courses. Therefore, SEA recommends that a condition be imposed requiring W&LE to remove all salvage operation debris from the right-of-way, streams or wetlands, or the banks of such waterways, and to take appropriate measures to prevent or control spills from fuels, lubricants, or any other pollutants from entering water courses. Finally, SEA states that the Ohio Historic Preservation Office has not completed its review of the proposed abandonment. Accordingly, SEA recommends that a condition be imposed requiring W&LE to retain its interest in and take no steps to alter the historic integrity of all sites and structures on the

⁵ Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

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.

On September 3, 1999, the National ESA and Wetlands Coalition (NEWC) filed a comment to the EA, alleging that three class one wetlands and two class two wetlands are on the right-of-way and that six endangered species are in the immediate vicinity. NEWC requests that W&LE be required to consult with the Ohio Department of Natural Resources, the U.S. Fish and Wildlife Service, and the U.S. Army Corps of Engineers before commencing salvage operations. The record shows, however, that W&LE contacted and requested comments from each of these agencies, which have jurisdiction over these matters, that all three responded, and that none of these agencies raised the concerns expressed by NEWC. Under the circumstances, SEA does not recommend this condition. No other comments to the EA were filed by the September 29, 1999 due date. We will impose the recommended conditions and 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.

SEA has indicated in its EA that the right-of-way may be suitable for other public use under 49 U.S.C. 10905. We note that no one has sought a public use condition, and none will be imposed at this time.⁶

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 of the above-described line, subject to the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979), and the conditions that W&LE shall: (1) consult with NRCS (Hopedale, OH) to provide information required by that agency; (2) remove all salvage operation debris from the right-of-way, streams or wetlands, or the banks of such waterways, and take appropriate measures to prevent or control spills from fuels, lubricants, or any other pollutants from entering water courses; 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

⁶ Public use requests were due no later than 20 days after publication of the notice of the petition in the Federal Register, or by August 10, 1999. We note that the Public Library of Steubenville and Jefferson County (the Library), a public body, indicated by letter that it was interested in acquiring a portion of the right-of-way for parking space. The Library's letter is included as an appendix to W&LE's environmental report. It appears to have been transmitted to the Board on June 18, 1999, before the July 21 notice in this proceeding, and does not constitute a formal request for a public use condition within the meaning of our rules. Should the Library wish to pursue a public use condition, it may file a formal request under 49 U.S.C. 10905 in the form prescribed in 49 CFR 1152.28, along with a timely petition to reopen. The Library is free, of course, to negotiate directly with W&LE in the absence of a public use condition.

old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

2. W&LE is directed to serve a copy of this decision on Camco (and its successor) and WMO within 5 days after the service date of this decision and to certify to the Board that it has done so.

3. An offer of financial assistance (OFA) under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by October 29, 1999, 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 \$1,000 filing fee. 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 November 18, 1999. Petitions to stay must be filed by November 3, 1999, and petitions to reopen must be filed by November 15, 1999.

6. Pursuant to the provisions of 49 CFR 1152.29(e)(2), W&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 W&LE's filing of a notice of consummation by October 19, 2000, 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, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams
Secretary