

39707
EB

SERVICE DATE – MAY 19, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-1023 (Sub-No. 1X)

PUGET SOUND & PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—
IN GRAYS HARBOR COUNTY, WA

Decided: May 13, 2009

By petition filed on January 29, 2009, Puget Sound & Pacific Railroad Company (PS&P)¹ seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon an 8,344-foot long rail line that begins just south of where the railroad line crosses U.S. Highway 101 in Hoquiam, and proceeds in a northerly direction to the end of the line, in Grays Harbor County, WA. The line begins 3,424 feet north of the main track clearance off of the Elma Main and is part of the line known as the Horn Spur.² Notice of the filing was served and published in the Federal Register on February 18, 2009 (74 FR 7638). We will grant the petition for exemption, subject to environmental, historic preservation, and standard employee protective conditions.

BACKGROUND

The line proposed for abandonment has been operated by PS&P since purchased from the Burlington Northern and Santa Fe Railway Company in 1977.³ Hoquiam Plywood Company, Inc. (Hoquiam Plywood), the only shipper on the line since 2005, is located at the northern stub end of the line and has used the line to receive veneer in boxcars and to ship out plywood in boxcars from its facility. In 2005 and 2006, PS&P provided 5 days per week service to Hoquiam Plywood and transported inbound and outbound shipments totaling 532 carloads in 2005 and 470 carloads in 2006.

According to PS&P, traffic volume on the line has been decreasing. PS&P indicates that, in 2007, traffic volume fell to 335 carloads and service was reduced to 2 to 3 days per week.

¹ PS&P is a subsidiary of RailAmerica, Inc. (RailAmerica).

² PS&P states that there are no mileposts on the line.

³ See Arizona & California Railroad Company Limited Partnership—Acquisition and Operation Exemption—The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 33448 (STB served Sept. 11, 1997); and PSAP Operating Company, Inc.—Acquisition and Operation Exemption—ParkSierra Corp., STB Finance Docket No. 34200 (STB served May 23, 2002).

PS&P embargoed the line in February 2008 due to the condition of the tracks. There were 36 carloads delivered to Hoquiam Plywood's facility in 2008 prior to the embargo. Since the embargo, all rail traffic to the Hoquiam Plywood facility has been diverted to truck transportation over local roads. PS&P states that, from the February 2008 embargo through November 2008, Hoquiam Plywood has transloaded 224 carloads at a warehouse in Aberdeen, WA, which is approximately 2 miles from Hoquiam Plywood's facility. PS&P then transported those carloads from an interchange with BNSF Railway Company at Centralia, WA, a distance of about 59 miles. PS&P states that Hoquiam Plywood closed its facility in December 2008 because of the downturn in the economy, and that it does not know whether this is a temporary or permanent closure.

According to PS&P, the line currently requires substantial maintenance and rehabilitation because of its age. Because of the condition of the line, PS&P submits that it would incur a substantial expenditure in order to return the line to service. PS&P estimates that it would cost between \$925,921 and \$1,407,610 to rehabilitate the line to Federal Railroad Administration Class 1 standards. PS&P states that, any revenue generated from future traffic would not be sufficient to cover operational or rehabilitation expenses. To support its assertion that continued operations over the line would be unprofitable, PS&P has submitted several verified statements from employees of RailAmerica. PS&P proposes to abandon the line (subject to any sale for continued rail service) and salvage the tracks and materials and dispose of the property. If the line is converted to interim trail use/rail banking, PS&P states that it will leave the ballast, ties, bridges, and culverts in place for the use of the trail.

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 it is found 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 allowing PS&P to avoid the cost of owning and maintaining a line that will not be used. [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 under 49 U.S.C. 10903 is not necessary to protect shippers from the abuse of market power. Hoquiam Plywood, the only shipper on the line, has alternative transportation service available and was using trucks to transport its goods after the embargo of the line. Hoquiam Plywood has not objected to the abandonment and in fact has closed its facility as of December 2008. Nevertheless, to ensure that Hoquiam Plywood is

informed of this action, the Board will require PS&P to serve a copy of this decision on Hoquiam Plywood at 1000 Woodlawn Avenue, Hoquiam, within 5 days of the service date of the decision and certify to the Board 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 the exemption, we will impose the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

PS&P 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 abandonment. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental and historic 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) in this proceeding on March 30, 2009, and requested comments by April 30, 2009. In the EA, SEA recommends that three conditions be imposed on any decision granting abandonment authority.

First, SEA states in the EA that the City of Hoquiam (the City) submitted comments regarding: (1) the removal of 12 public road crossing and six private crossings, and whether the roads would be restored to the City's road standards; (2) unsafe conditions (such as broken pavement, raised planks, and uneven track) associated with the rail line traversing Polk Street; (3) the accuracy of PS&P's statement that the proposed abandonment is consistent with land use plans given that the land use plans show rail service to Hoquiam Plywood; (4) whether the bridges on the line are historic and what their status would be if the abandonment is approved; and (5) the relocation of tax-generating business from the City to the transloading facility 2 miles away, which could cause job losses for the city. To ensure that the proposed abandonment does not adversely impact the City and surrounding community, SEA recommends that, prior to salvage operations, PS&P be required to consult with the City regarding the safety and condition of the bridges, railroad trestles, infrastructure in the railroad right-of-way along Polk Street, permit requirements for closing crossings, and any other reasonable requirements, and to report the results of the consultations to SEA in writing.

Second, SEA states that the National Geodetic Survey (NGS) has submitted comments regarding two geodetic station markers that may be located within the area of the proposed abandonment. Because of this, SEA recommends a condition that PS&P be required to consult with and notify NGS at least 90 days prior to beginning salvage activities so that NGS may plan for the possible relocation of the geodetic station markers, and to report the results of its consultation to SEA in writing.

In addition to environmental concerns, SEA has made recommendations with regard to the historical background of the land affected by the proposed abandonment. In the EA, SEA indicates that the Washington Department of Archaeology and Historic Preservation (SHPO) has requested that PS&P conduct a formal survey and inventory of the rail line proposed for abandonment to determine if the three bridges on the line or other portions of the line, such as the bridge approaches, are eligible for inclusion in the National Register of Historic Places (National Register). Accordingly, SEA recommends that PS&P be required to retain its interest in and take no further steps to alter the historic integrity of all sites, buildings, and structures within the project right-of-way that are eligible for listing or are listed in the National Register until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. § 470(f) (NHPA). SEA also recommends that PS&P be required to report back to SEA regarding any consultations with the SHPO and any other section 106 consulting parties, and that PS&P be prohibited from filing its consummation notice or initiating any salvage activities related to abandonment until the section 106 process has been completed and the Board has removed this condition.

SEA received comments to the EA from the Washington State Department of Ecology, Southwest Regional Office (WADOE), stating that: (1) oils, hydraulic fluids, fuels, and other petroleum products and pollutants could be released into neighboring waterways during salvage activities, and that such discharges are a violation of the Federal Pollution Control Act and the Water Quality Standards for Surface Water of the State of Washington; (2) PS&P may be required to install sediment control devices as a means for managing such pollutant-laden runoff; (3) the wood railroad ties within the area of the proposed abandonment could be chemically treated, and therefore should be removed in accordance with the document entitled “Focus on Treated Wood Exclusions” available on WADOE’s website at <http://www.ecy.wa.gov/pubs/0304038.pdf>; and (4) WADOE encourages recycling of waste material by providing a hotline number that lists recycling and reuse facilities within the area. Therefore, SEA recommends that, prior to commencement of any salvage activities, PS&P be required to consult with WADOE to ensure that any concerns regarding potential contamination of the right-of-way and applicable stormwater management, sediment control, and railroad tie recycling requirements are addressed. SEA also recommends that PS&P be required to report the results of its consultations to SEA in writing.

Accordingly, SEA recommends that the three conditions recommended in the EA and the new condition SEA now also recommends be imposed upon any decision granting abandonment authority. The Board will adopt SEA’s recommendations. Based on SEA’s recommendations, 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 indicates in the EA that the right-of-way may be suitable for public use under 49 U.S.C. 10905, no one has sought a public use condition, and none will be imposed.⁴

It is ordered:

1. Under 49 U.S.C. 10502, the Board exempts from the prior approval requirements of 49 U.S.C. 10903, the abandonment by PS&P 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 PS&P shall: (1) contact the City, prior to beginning salvage activities, to address its concerns regarding the safety and condition of the bridges, railroad trestles, infrastructure in the railroad right-of-way along Polk Street, permit requirements for closing crossings, and any other reasonable requirements, and report the results of the consultations to SEA in writing; (2) consult with and notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers and report the results of the consultations to SEA in writing; (3) retain its interest in and take no further steps to alter the historic integrity of all sites, buildings, and structures within the project right-of-way that are eligible for listing or are listed in the National Register until completion of the section 106 process of the NHPA, report back to SEA regarding any consultations with the SHPO and any other section 106 consulting parties, and be prohibited from filing its consummation notice or initiating any salvage activities related to abandonment until the section 106 process has been completed and the Board has removed this condition; and (4) consult with WADOE, prior to commencement of any salvage activities, to ensure that any concerns regarding potential contamination of the right-of-way and applicable stormwater management, sediment control, and railroad tie recycling requirements are addressed, and to report the results of those consultations in writing to SEA.

2. PS&P must serve a copy of this decision on Hoquiam Plywood at 1000 Woodlawn Avenue, Hoquiam, within 5 days of the service date of this decision and 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 May 29, 2009, 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 \$1,500. 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.”**

⁴ Public use requests were due no later than 20 days after publication of the notice in the Federal Register, or by March 10, 2009.

5. Provided no OFA has been received, this exemption will be effective on June 18, 2009. Petitions to stay must be filed by June 3, 2009, and petitions to reopen must be filed by June 15, 2009.

6. Pursuant to 49 CFR 1152.29(e)(2), PS&P 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 PS&P's filing of a notice of consummation by May 19, 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, Acting Chairman Mulvey, and Vice Chairman Nottingham.

Anne K. Quinlan
Acting Secretary