

SERVICE DATE - FEBRUARY 21, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-397 (Sub-No. 5X)

TULARE VALLEY RAILROAD COMPANY
--ABANDONMENT AND DISCONTINUANCE EXEMPTION--
IN TULARE AND KERN COUNTIES, CA

Decided: February 13, 1997

By petition filed on October 25, 1996, Tulare Valley Railroad Company (TVR) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon 24.4 miles of railroad line extending from milepost 47.2 near Lindsay to milepost 71+2969.2 near Ducor, in Tulare County, CA (the Ducor line). TVR also seeks to discontinue trackage rights over a contiguous 25.7-mile railroad line owned by San Joaquin Valley Railroad Co. (SJVR)¹ from SP milepost 287.1 (milepost 71+2969.2) near Ducor to SP milepost 308.7 near Famoso, including the branch line from SP milepost 295.0 near Richgrove to SP milepost 299.1 near Jovista, in Tulare and Kern Counties, CA (Famoso line). On November 6, 1996, TVR filed an amendment to correct certain traffic levels that it had reported in its petition. On November 15, 1996, the Public Utilities Commission of the State of California (CPUC) filed a response in opposition to abandonment of the 5.9-mile portion of the Ducor line from Ultra, CA, to Ducor. On November 21, 1996, Cannella Chemical Company (Cannella), located on the Ultra to Ducor segment, also filed a response in opposition to abandonment of that portion of the Ducor line. TVR replied to these filings on December 3, 1996. We will grant the exemption for the discontinuance of trackage rights over the Famoso line and for the unopposed portion of the abandonment on the Ducor line, excluding the Ultra to Ducor segment, subject to standard labor protective conditions and environmental conditions.

PROCEDURAL MATTERS

On December 23, 1996, CPUC filed a motion for leave to file a reply to a reply, and tendered a reply statement and a supplemental verified statement. In support of its motion, CPUC argues that TVR only briefly addressed service to Cannella in its petition despite the fact that it knew that the only portion of the abandonment that would be opposed was the Ultra to Ducor segment, and instead filed a 32-page reply statement devoted to why Cannella should lose its railroad service. CPUC also argues that TVR introduced for the first time in its reply the apparent fact that TVR receives little revenue from SJVR's shipments that involve Cannella, most of which goes to SJVR. CPUC submits that the public should be afforded an opportunity to reply in light of the fact that the petitioner presented new information in its reply that should have been disclosed earlier.

¹ SJVR purchased this line and leased the underlying right-of-way from Southern Pacific Transportation Company (SP) in San Joaquin Valley Railroad Co.--Acquisition and Lease Exemption--Southern Pacific Transportation Company, Finance Docket No. 31993 (Sub-No. 1) (ICC served Oct. 4, 1993).

On January 16, 1997, TVR filed a reply to CPUC's motion, asking that it be denied and that CPUC's reply be stricken from the record.² TVR argues that 49 CFR 1104.13(c) prohibits the filing of replies to replies and that CPUC has stated no good cause for waiving this rule. In addition, TVR submits that its reply did not raise any new issues. It argues that, if we delve further into the issue of TVR's agency relationship with SJVR, this inquiry would only delay the proceeding, placing further financial strain on TVR. TVR notes that, when it acquired the line,³ it disclosed that it would operate the line under an agency agreement and that, even if TVR received all of SJVR's revenues, the line still could not be operated at a profit.

We will grant CPUC's motion for leave to file a reply to TVR's reply and accept its tendered reply for filing.⁴ TVR's petition for exemption was not clear as to the total traffic on the line and the division of revenues. Its reply statement provided additional evidence of the number of carloads transported and the nature of its agency relationship with SJVR. CPUC is entitled to address this evidence, which was not stated clearly in TVR's petition or provided in its response to CPUC's interrogatories.

BACKGROUND

TVR acquired the lines proposed for abandonment and the trackage rights for which it seeks discontinuance in Tulare Valley. Cannella, located at Ultra, is the only active shipper on the Ducor line. Two shippers are located on the Famoso line: Great Lakes at Hollis, CA, and J.R. Simplot at Jovista.

TVR's Arguments. During the first 9 months of 1996, TVR states that Cannella shipped or received 44 carloads via TVR.⁵ This amounts to fewer than 2.5 carloads per mile per year.⁶ TVR

² TVR's opposition to CPUC's December 23, 1996 motion to file a reply to a reply was due January 12, 1997. See 49 CFR 1104.13(a). On January 3, 1997, TVR filed a request to extend the date for reply to CPUC's motion to January 16, 1997. TVR stated that CPUC agreed to the extension. Because consideration of TVR's comments will not prejudice any party or delay a decision in this proceeding, it will be accepted.

³ See Tulare Valley Railroad Company--Acquisition and Operation Exemption--The Atchison, Topeka & Santa Fe Railway Company, Finance Docket No. 32215 (ICC served Jan. 13, 1993) (Tulare Valley).

⁴ CPUC also filed a supplemental verified statement by James T. Quinn of CPUC's Legal Division, who filed a verified statement attached to CPUC's response to the petition for exemption. That statement questions the division of freight between TVR and SJVR as well as other information.

⁵ TVR provides historic carload data for Cannella as follows: 7 carloads in 1995, 35 carloads in 1994, and 57 carloads in 1993.

⁶ According to TVR, even if Cannella shipped at 1993 levels, the traffic would produce just 4.2 carloads per mile per
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states that at the current level, Cannella will ship or receive just 59 carloads via TVR for all of 1996, which constitutes only 10 carloads per mile per year over the 5.9-mile Ultra to Ducor segment. This traffic volume, according to TVR, will generate insufficient revenues to cover the direct costs of operation and maintenance of the line, much less the various indirect costs.⁷ TVR believes that there is little likelihood that Cannella will increase its use of the line in the future. Carload data for the first 9 months of 1996 for the other shippers are: 36 carloads for Great Lakes, and 133 carloads for J.R. Simplot. TVR concludes that this traffic is insufficient to support two carriers on the Famoso line.

TVR provides service under an agency agreement with SJVR, which is a Class III carrier that owns and operates the line that connects to TVR's system at Ducor. SJVR will continue to provide service on the Famoso line so that neither Great Lakes nor J.R. Simplot will experience any disruption of service as a result of TVR's discontinuance. As far as Cannella is concerned, TVR states that alternative service will be available at a proposed transloading facility at Lindsay, with rail service at that point provided by SJVR. Additionally, TVR notes that two highways, U.S. Highway 99 and State Highway 65, are near the affected lines, providing access to motor carrier service for all three shippers.⁸

Cannella's Arguments. Cannella disagrees with TVR's characterization of its transportation alternatives and its potential for growth. First of all, Cannella states that it is a growing company attaining an annual growth rate of 15% annually and has room for expansion. It currently ships between 125-150 carloads annually. In addition, Cannella states that it located its plant at Ultra (milepost 66.0) in reliance upon The Atchison, Topeka, and Santa Fe Railway Company's (Santa Fe) promise to continue rail service. This promise allegedly induced Cannella to purchase the former Santa Fe property and make a \$4 million investment in its plant, which is designed to be served by rail. Cannella alleges that TVR is bound by Santa Fe's understanding that Cannella was locating its facility on this line with the expectation of continued rail service. Cannella includes the verified statement of Benny F. Cannella, Area Manager of Cannella Chemical Company, who states that the company faces substantial competition from other local agricultural chemical businesses. Because these competitors all have rail access, Mr. Cannella

⁶(...continued)
year, which TVR states is insufficient to support an economically viable operation.

⁷ TVR did not generate the precise avoidable costs of operations and maintenance, stating that such financial evidence is not required for a petition for exemption.

⁸ TVR also argues that the abandonment of the Ducor line will benefit the surrounding communities by eliminating 17 grade crossings, and allow some of the grade crossing equipment to be used on other crossings. By letter dated November 5, 1996, and filed on November 12, 1996, James H. Larsen, Traffic Engineer for the Public Works Department of Tulare County, states that the elimination of grade crossings and the presence of parallel rail service supports a grant of TVR's petition.

states that his company will be economically disadvantaged if it is left without rail service. Mr. Cannella estimates that it will have to pay approximately \$8.00 per ton more in transportation costs than its competitors if the Ultra to Ducor segment is abandoned and Cannella is forced to rely on motor carrier service. Consequently, Mr. Cannella denies that suitable transportation alternatives are available and states that the transloading facility is not a viable option for Cannella's transportation needs.⁹

CPUC's Arguments. CPUC basically supports Cannella's position and reiterates many of the same arguments. CPUC does not oppose the abandonment of the Ducor line, except for the Ultra to Ducor segment, and does not oppose discontinuance of service by TVR on the Famoso line. CPUC notes that shippers on the SJVR track between Ducor and Famoso apparently would not be affected by a termination of TVR's trackage rights.

In CPUC's view, TVR's petition is wholly inadequate regarding the Ultra to Ducor segment and, therefore, should be denied or, alternatively, made subject to review under 49 U.S.C. 10903, for that segment. CPUC maintains that TVR not only failed to present any financial support for its allegation that the Ultra to Ducor segment is uneconomical, but also refused to answer CPUC's interrogatories on the matter.¹⁰ CPUC avers that the refusal of TVR to provide revenue figures and cost information precludes us from making a reasonable determination regarding the abandonment of the Ultra to Ducor segment.¹¹

CPUC states that the carload figures provided by TVR are misleading and grossly understate the volume of rail traffic at Ultra. CPUC submits that TVR's figures are well below the figures that have been made available to CPUC by SJVR. The SJVR figures show that Cannella shipped or received 91 carloads¹² for

⁹ In its reply, Cannella includes the verified statement of James Maples, Tulare County Supervisor of the Fifth District of Tulare County. Mr. Maples states that the diversion of Cannella's toxic or hazardous materials from rail to motor transportation is directly counter to Tulare County's public policy of discouraging the transportation of such commodities by truck and of encouraging the use of rail transportation for this service. Mr. Maples asks that we consider Tulare's public policy before authorizing the removal of rail service to Cannella.

¹⁰ On August 16, 1996, CPUC filed interrogatories, dated August 15, 1996, on TVR. On November 6, 1996, TVR replied.

¹¹ CPUC points out that TVR refused to answer its interrogatories or otherwise provide information on what route was used to provide service to Cannella; on the number of loaded cars that moved to or from Ultra for 1993, 1994, 1995, and through July of 1996; the portion of hauls to or from Ultra that went to or from Cannella; and TVR's gross revenues from the Ultra to Ducor segment for 1993, 1994, and 1995. TVR's stated reason for refusing this information was that it would "constitute unlawful disclosure of information."

¹² CPUC states that a total obtained from Cannella shows 111 carloads. Cannella subsequently clarified the figure as 91
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the first 9 months of 1996, not 44; 127 carloads for 1995, not 9;¹³ 110 carloads for 1994, not 35, and 101 carloads for 1993, not 57. CPUC argues that TVR's faulty figures distort the carload per mile averages that TVR sets forth. For example, using SJVR's figures for 1995, the last whole-year figures available, show better than 21 carloads per mile.¹⁴ Furthermore, CPUC points out that TVR stated in its response to interrogatories that a \$500 per car surcharge applied to this traffic.¹⁵

CPUC questions TVR's maintenance of the line. CPUC suggests that maintenance on the Ultra to Ducor segment might have been deferred¹⁶ in order to accomplish abandonment of the line so that TVR's affiliated company, A&K Railroad Materials, Inc. (A&K), could profit.

CPUC is concerned about TVR's relationship with A&K, a company that scraps abandoned railroad lines and sells salvaged track and materials. It notes that Morris H. Kulmer is President of both A&K and TVR, both of which have their headquarters at the same business address in Salt Lake City, UT. CPUC notes that when TVR purchased these lines in December 1992, they comprised 140 miles of right-of-way, and that, if the present petition is granted, almost all of TVR's right-of-way will have been abandoned. CPUC argues that this corporate affiliation raises questions concerning TVR's motivation for proposing the line for abandonment and, therefore, this abandonment proposal requires more careful scrutiny.

Finally, CPUC urges us to support Tulare County's public policy favoring the rail transportation of hazardous materials¹⁷ by considering the impact on the community of diverting traffic

¹²(...continued)
carloads.

¹³ TVR's stated carload figure for 1995 was 7, not 9. See, Petition at 8.

¹⁴ Citing the regulations at 49 CFR 1152.50(d)(3), which provides that notices of exemption that contain false or misleading information are deemed void ab initio, it argues that this same standard should be applied here and that, to the extent that the petition embraces the 5.9-mile segment between Ultra and Ducor, the petition should be rejected. That standard is exclusively applicable to the class exemption notices and will not be applied here.

¹⁵ TVR placed a \$500 surcharge on carloads to and from Ultra on October 12, 1994. On November 6, 1995, the surcharge was reduced to \$375. See Response of Tulare Valley Railroad Company to California Public Utilities Commission's First Set of Interrogatories, filed November 6, 1996, Interrogatory No. 4.

¹⁶ CPUC relies on an inspection tour performed by one of its staff members, David B. Williams, a Transportation Operations Supervisor. Mr. Williams submitted a verified statement, attached to CPUC's pleading.

¹⁷ That policy is designed to lessen the incidence of environmental spills and enhance highway safety.

on the Ultra to Ducor segment to trucks. CPUC estimates that more than 500 truckloads would have been needed to transport Cannella's 1995 chemical traffic, and it views this as a detriment to the public health and safety.

TVR's Reply. In reply, TVR challenges CPUC's carload figures. According to TVR, CPUC appears to be using aggregated figures for Cannella's traffic, combining TVR's carload figures with SJVR's figures. TVR states that, under the terms of the TVR-SJVR operating agreement, TVR does not receive revenue from SJVR line-haul moves to Cannella. TVR submits that aggregating the TVR and SJVR carload figures distorts the analysis of the actual economic impact on TVR because it is the traffic from which TVR receives revenues that is germane to its petition.

TVR argues that, even if the aggregate figures were used, TVR's continued operation of the line would be unprofitable.¹⁸ TVR supplies total aggregate figures for Cannella as follows: 74 carloads for 1993, 103 carloads for 1994, 128 carloads for 1995, and 119 carloads through October 31, 1996 [for a projected annual figure of 143 carloads for 1996]. Using these aggregate figures, TVR calculates that Cannella has shipped or received an average total of less than 20 carloads per mile per year, which, TVR submits, is significantly less than in other cases in which abandonment exemptions were granted.¹⁹ In these cases, TVR

¹⁸ In the verified statement of Fred L. Krebs, General Manager of SJVR, Mr. Krebs estimates that total revenues from Cannella are insufficient to cover the direct and indirect costs of operation and maintenance of the Ultra to Ducor segment. He states that a \$500 surcharge was placed in effect for carloads to and from Ultra on October 12, 1994, to generate additional revenue. The surcharge was lowered to \$375 on November 6, 1995, in an attempt to increase traffic. According to Mr. Krebs, the reduction did not result in increased traffic and did not produce sufficient additional revenue to support the continued operation of the Ducor line.

Mr. Krebs explains that TVR does not pay maintenance expenses directly, but instead pays SJVR a flat fee equal to a percentage of TVR's gross revenues. Although SJVR does not itemize and bill maintenance expenses by line segment, based on SJVR's 1996 average annual maintenance-of-way expenses of approximately \$7,363 per mile, the proportional allocation of those expenses to the 5.9-mile Ultra to Ducor segment amounts to approximately \$43,442. Additionally, Mr. Krebs estimates that to return the Ultra to Ducor segment to Federal Railroad Administration class 1 standards would cost approximately \$200,000, principally for tie replacement and surfacing. This is roughly twice the annual amount of aggregate revenue obtained from Cannella's traffic, according to Mr. Krebs. He notes that when TVR purchased the Ducor line in 1992, it was already in poor condition and that all but 2.7 miles of operations were restricted to 10 m.p.h. as a result of a slow order imposed by Santa Fe dispatchers prior to the sale. See Exhibit A to TVR's reply statement.

¹⁹ TVR notes that: in Burlington Northern Railroad Company--Abandonment Exemption--In Mobile County, AL, Docket No. AB-6 (Sub-No. 359X) (ICC served Apr. 13, 1994), the carrier was transporting approximately 58.7 carloads per mile in the last

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maintains, it was determined that the traffic was light, that the geographic area was confined, and that the transactions were of limited scope. TVR states further that case precedent is against requiring a carrier to keep an unprofitable line in operation for the sake of one shipper, citing Burlington Northern R.R. Co.-Abandonment, 7 I.C.C.2d 308, 315 (1990).

Although TVR disputes Cannella's estimate that annually some 127 rail carloads would be diverted to about 500 truckloads,²⁰ TVR notes that rail line abandonments involving the diversion from rail to truck of the type of chemicals involved here have been approved in the past. See, e.g., Union Pacific Railroad Company--Abandonment--In Butte County, ID (Scoville Branch), Docket No. AB-33 (Sub-No. 88) (ICC served Nov. 17, 1994). TVR also notes that in ConRail-Aban.-Bet. Warsaw and Valp., Counties, IN, 9 I.C.C.2d 1299 (1993), it was recognized that the U.S. Department of Transportation has comprehensive rules and regulations for the movement of hazardous material on the nation's highways.

Finally, TVR disputes that its proposed abandonment will result in environmental problems and notes that it has submitted an environmental report in accord with our regulations at 49 CFR 1105.7. It discounts the environmental concerns raised by CPUC and Cannella, arguing that they are overstated and unfounded.

CPUC's Reply. In response to TVR's reply, CPUC argues that more information is needed regarding the freight revenue arrangement between TVR and SJVR. CPUC argues that TVR never informed it about this relationship in the previous information that TVR provided. CPUC avers that the arrangement appears to put TVR at a disadvantage vis-a-vis SJVR and requests that TVR be required to explain this arrangement and its financial repercussions.

CPUC argues that the reluctance of TVR to reveal specific financial figures casts doubt on any inference that serving Cannella is a financial burden and that specific financial figures might disclose that TVR has been making a profit on this line segment over the last 4 years. CPUC maintains that total

¹⁹(...continued)
full year of operation; in Burlington Northern Railroad Company--Abandonment Exemption--In King County, WA, Docket No. AB-6 (Sub-No. 357X) (ICC served Feb. 3, 1994), the carrier was transporting approximately 21.8 carloads per mile in the last full year of operation; that in Southern Pacific Transportation Company--Abandonment Exemption--In San Bernardino County, CA, Docket No. AB-12 (Sub-No. 145X) (ICC served Feb. 16, 1993), the carrier would have transported approximately 39.3 carloads per mile in the next projected year of operation; and in CSX Transportation Company, Inc.--Abandonment Exemption--In Hamilton County, OH, Docket No. AB-55 (Sub-No. 440X) (ICC served Feb. 2, 1993), the carrier was transporting approximately 28.8 carloads per mile in the last full year of operation.

²⁰ According to TVR, the generally accepted rail-to-truck conversion ratio of 3-to-1 results in only 381 truckloads per year, or just over one truckload per day.

revenues from serving Cannella are about \$100,000 per year and that annual maintenance expenses are slightly above \$43,000.²¹

DISCUSSION AND CONCLUSIONS

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.

The exemption process is designed to minimize regulatory burdens. However, it is used only when the information provided is sufficient for us to reach an informed decision. Typically, the type of abandonment transactions that are exempted are those where the shippers do not contest the abandonment or if they do contest it, revenue from their traffic is clearly marginal compared to the cost of operating the line. See Boston and Maine Corporation--Abandonment Exemption--In Hartford and New Haven Counties, CT, STB Docket No. AB-32 (Sub-No. 75X) et al., (STB served Dec. 31, 1996), slip op. at 5 (Boston and Maine). In this proceeding, the total lack of opposition to the discontinuance of TVR's trackage rights and to TVR's proposed abandonment of the portion of its line between Ultra and Lindsay supports the conclusion that the statutory requirements of 49 U.S.C. 10502 have been met; and therefore, we must grant the exemption to that extent. On the other hand, the evidence of record is insufficient to make the same findings for the 5.9-mile Ultra to Ducor segment that is required to serve Cannella. Accordingly, we will deny that part of the request.

With regard to the Ultra to Ducor line segment, TVR has failed to present credible evidence that this line segment cannot be operated profitably. It has advanced the novel argument that 4.2 carloads per mile per year show that the line is unprofitable. This is not a standard that we use to determine a line's profitability. TVR has cited four cases that it argues show that lines with less traffic per mile have been approved for abandonment through the exemption procedures. But, in each of those exemption proceedings, the proposed abandonments were unopposed and the carloads per mile factors were not discussed or given as a reason for approval. Accordingly, we attach no weight to TVR's proposed standard and will not use TVR's carload per mile comparisons as a substitute for legitimate methods of determining profitability.

More importantly, we will not use it as a substitute for evidence, which is what is lacking here. For example, using TVR's aggregate figures for 1995, the last full year for which carload figures are available, Cannella moved 128 carloads and paid a surcharge of at least \$375 on each, producing revenues of

²¹ In its reply, CPUC also reiterates many of its previous arguments in response to some repetitive material in TVR's reply. The parties have argued back and forth on a number of points, e.g., the transloading option, on which we need not elaborate in light of our ultimate decision.

\$48,000.²² According to TVR, SJVR spent an average of \$7,363 per mile on maintenance, which translates into a total annual maintenance expense of \$43,442 for the 5.9-mile segment to serve Cannella.²³ Additionally, TVR incurred a property tax burden of \$1,110 on this line segment for 1995.²⁴ This shows a profit of \$3,448 before TVR's other revenues and expenses are considered. TVR submits no evidence, however, regarding its non-surcharge revenues, operating expenses, or indirect costs. Thus, ultimately, we do not have enough evidence to make a reasonable determination as to the line segment's profitability. Moreover, the shipper has shown that it has made a recent, substantial investment in its facilities based on continued rail service and has raised significant doubts as to the availability of viable transportation alternatives.

In summary, upon review of the record before us, we conclude that petitioner has failed to establish (nor are we able to find) that continued regulation of the Ultra to Ducor abandonment proposal is not necessary to carry out the rail transportation policy and either that it is not necessary to protect shippers from the abuse of market power or that the transaction is limited in scope. See Boston and Maine, slip op. at 5. Cannella's and CPUC's concerns warrant a more thorough review. We, therefore, conclude that use of the exemption process is not appropriate in these circumstances and that the petition for exemption should be denied for the Ultra to Ducor segment. If TVR desires to pursue this aspect of its abandonment proposal, it must file a formal application under 49 U.S.C 10903. See Boston and Maine, slip op. at 5-6.

Detailed scrutiny under 49 U.S.C. 10903 of the remainder of the Ducor line abandonment and the Famoso line discontinuance of trackage rights is not necessary to carry out the rail transportation policy. By minimizing the administrative time and expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. In addition, an exemption will foster sound economic conditions and encourage efficient management by permitting TVR to avoid the cost of operating and maintaining these lines [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

While the unopposed transactions appear to be limited in scope, we need not make that determination here. Rather, we find that regulation is not necessary to protect shippers from the abuse of market power. The shippers and receivers on the SJVR line over which TVR has trackage rights will continue to receive rail service from SJVR and have not objected to TVR's

²² In fact, Cannella paid a \$500 surcharge from January to November 1995, but the record is insufficient to produce the exact revenues generated. Accordingly, we have used the 1995 carload figures [128 carloads] and the current surcharge [\$375] to produce this illustration of the line segment's potential profitability.

²³ No evidence is offered, however, that SJVR spent this amount on any portion of TVR's system.

²⁴ See TVR's response to CPUC's First Set of Interrogatories, Interrogatory No. 9.

discontinuance. Shippers or receivers on the portion of the line to be abandoned from Ultra to Lindsay apparently have alternative transportation options and have not opposed the proposed abandonment. Nevertheless, to ensure that the shippers are informed of our action, we will require TVR to serve each of the shippers and receivers on these lines with a copy of this decision within 5 days after the service date of this decision, and to certify to us that it has done so.

Additionally, we do not find that TVR's agency relationship with SJVR or its affiliation with A&K by itself requires us to change our finding that the unopposed portion of its abandonment request and the unopposed discontinuation of trackage rights should be granted. The fact that a scrap dealer has a corporate relationship with a railroad that is seeking to abandon all or a significant portion of its system is not by itself a sufficient reason to deny a petition or application for abandonment authority that is otherwise justified. CPUC has presented no evidence that contradicts this finding, and we are not persuaded that this relationship alone should preclude us from granting the unopposed requests.

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 our partial grant of the exemption, we will impose the employee protective conditions in Oregon Short Line R. Co.-- Abandonment--Goshen, 360 I.C.C. 91 (1979).

TVR 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 action. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified its data, and analyzed the probable effect of the proposed abandonment²⁵ on the quality of the human environment. SEA served an environmental assessment (EA) on December 24, 1996, in which it recommended that the proposed abandonment be conditioned: (1) to require TVR to refrain from salvaging or disposing of the entire right-of-way until completion of the section 7 process of the Endangered Species Act, 16 U.S.C. 1531; and (2) to require TVR to give at least 90 days' notification to the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Geodetic Survey, if any of the 75 geodetic station markers located along the line will be disturbed in the salvage process. No comments to the EA were filed. Accordingly, we will impose SEA's recommended conditions.

We conclude that the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or conservation of energy resources.

Although SEA has indicated that the line may be suitable for other public use under 49 U.S.C. 10905, no one has sought a

²⁵ The discontinuance of trackage rights is exempt from environmental reporting requirements under 49 CFR 1105.6(c)(2) and from historic reporting requirements under 49 CFR 1105.8(b)(3).

public use condition, and none will be imposed. Nevertheless, we will provide a 20-day period after Federal Register publication for interested persons to request a public use condition.

It is ordered:

1. CPUC's motion to file a reply to a reply filed December 23, 1996, is granted.

2. The petition for exemption is denied to the extent it seeks an exemption to permit TVR to abandon the 5.9-mile segment between milepost 71+2969.2, near Ducor, to milepost 66.0, near Ultra, that is required to serve Cannella Chemical Company, in Tulare County, CA.

3. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903 the abandonment by Tulare Valley Railroad Company of the 18.5-mile line of railroad extending from milepost 47.2 near Lindsay to milepost 66.0 near Ultra, in Tulare County, CA, and to discontinue trackage rights over 25.7 miles of railroad owned by San Joaquin Valley Railroad Co. from SP milepost 287.1 (milepost 71+2969.2) near Ducor to SP milepost 308.7 near Famoso, including the branch line from SP milepost 295.0 near Richgrove to SP milepost 299.1 near Jovista, in Tulare and Kern Counties, CA, subject to: (1) the employee protective conditions in Oregon Short Line R. Co.-Abandonment-Goshen, 360 I.C.C. 91 (1979); (2) the condition that TVR shall refrain from salvaging or disposing of the entire right-of-way until completion of the section 7 process of the Endangered Species Act, 16 U.S.C. 1531; and (3) the condition that TVR give at least 90 days' notification to the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Geodetic Survey, if any of the 75 geodetic station markers located along the line will be disturbed by the salvage process.

4. Notice will be published in the Federal Register on February 21, 1997.

5. Petitioner must serve a copy of this decision on each shipper or receiver on the line within 5 days after this decision is served and certify to us that it has done so.

6. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on March 23, 1997.

7. Formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2)²⁶ and requests for a notice of interim trail

²⁶ See Exempt. of Rail Abandonment-Offers of Finan. Assist., 4 I.C.C.2d 164 (1987), for regulations in effect at the time of filing of the exemption petition. We note that the ICC Termination Act of 1995 has made changes and additions to the previous law regarding the processing of abandonments and discontinuances and OFAs. To implement these changes, we have issued final rules in 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), that became effective on January 23, 1997. Because we have processed the exemption petition under the former regulations, we will continue to use

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use/rail banking under 49 CFR 1152.29 must be filed by March 3, 1997;²⁷ petitions to stay must be filed by March 10, 1997; requests for a public use condition in conformity with 49 CFR 1152.28(a)(2) must be filed by March 13, 1997; and petitions to reopen must be filed by March 18, 1997.

8. If a formal expression of intent to file an OFA has been timely submitted, an OFA to allow rail service to continue must be received by the railroad and the Board within 30 days after publication, subject to time extensions authorized under 49 CFR 1152.27(c)(ii)(C) and (D). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.(c)(2).

9. 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."**

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

²⁶(...continued)
the former regulations in this proceeding to process an OFA, if one is filed.

²⁷ On August 15, 1996, the City of Porterville expressed an interest in developing the Ducor Line into a trail. Because we have denied the exemption for the Ultra to Ducor segment of the line, consideration of trail use for that segment is not appropriate at this time. We point out, however, that the City's expression of interest does not meet the requirements of 49 CFR 1152.29, which requires that potential trail users file a statement of willingness to assume financial responsibility for the line.