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SERVICE DATE - JUNE 18, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-434 (Sub-No. 3X)

WINCHESTER & WESTERN RAILROAD COMPANY--ABANDONMENT EXEMPTION--  
IN CUMBERLAND COUNTY, NJ

Decided: June 15, 2001

By petition filed on February 28, 2001,<sup>1</sup> Winchester & Western Railroad Company (WW) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a 1.3-mile line of railroad, extending from milepost 16.7 to milepost 18.0, at or near Haleyville, in the township of Commercial, in Cumberland County, NJ. We will grant the exemption, subject to environmental and standard employee protective conditions.

BACKGROUND

WW owns and/or operates rail lines in Virginia, West Virginia, Maryland, and New Jersey. In southern New Jersey, it owns and operates approximately 48.2 miles of rail line and has trackage rights over another 9.3 miles of rail line owned by Consolidated Rail Corporation. The line proposed for abandonment is the last segment of a stub-ended line.<sup>2</sup> Because the segment dead-ends, there is no overhead traffic.

Only three shippers, Unimin Corporation (Unimin), which is the parent company of WW, U.S. Silica Company (U.S. Silica), and Ricci Bros. Sand Co., Inc. (Ricci Bros.), have used the line in the past 3 years. Unimin has not shipped any traffic over the line since April 1999, when it sold a sand mine that it owned, located approximately 1 mile south of the line near Mauricetown, NJ (Mauricetown Mine), to U.S. Silica. When it was conducting mining operations at the Mauricetown Mine, Unimin would truck sand from the mine to its load-out facility, which is adjacent to the line near milepost 18.0, and then transload the sand into rail cars on the line for further movement. U.S. Silica used the load-out facility pursuant to a lease agreement with Unimin. After the lease expired, U.S. Silica continued to use the Unimin load-out facility, on an interim basis, through March 2001. Ricci Bros. also trucks sand to the line from its facility, which is 1½ miles away, and then transloads the sand into rail cars, but it uses its own portable loading device to transload its shipments wherever WW has spotted a car for its use.

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<sup>1</sup> Notice of the filing was served and published in the Federal Register on March 20, 2001 (66 FR 15780).

<sup>2</sup> WW states that the line segment includes one grade crossing.

U.S. Silica tendered 97% of the traffic on the line during the year 2000, and it supports the proposed abandonment. U.S. Silica will continue to have access to rail service from WW at two nearby locations. One is a load-out facility approximately 2½ miles from the Unimin load-out facility, near Newport, NJ. The other is a load-out facility approximately 3½ miles from the Unimin load-out facility, near Port Elizabeth, NJ. In addition, U.S. Silica can use trucks, without transloading the sand into rail cars, as there is easy access to the public highway system within 6 miles of the line.

Ricci Bros.' use of the line has dramatically decreased in the last several years, from 50 carloads in 1998, to 24 carloads in 1999, and only 3 carloads in 2000. Like U.S. Silica, Ricci Bros. has alternative access to rail service from WW at two nearby locations. One is about 5 miles from the line, and the other is a public site about 15 miles away in Bridgeton, NJ. Ricci Bros. can also transport its sand entirely by truck over the easily accessible public highways in the area.

WW states that, once U.S. Silica stops tendering traffic over the line, the sole source of revenue generated by the line will be from Ricci Bros. In the year 2000, that revenue amounted to \$969, which WW submits cannot support the cost of maintaining and operating the line.

WW asserts that, upon consummation of the proposed abandonment, it will convey to Unimin the real property underlying the line and its right-of-way. According to WW, Unimin anticipates expanding its mining operations. Currently, Unimin mines sand on the rail property lying on either side of the line, and the proposed abandonment would enable Unimin to connect its current mining sites and access previously untapped sand resources. This will likely strengthen traffic levels on other parts of WW's rail system.<sup>3</sup>

## 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

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<sup>3</sup> Unimin transports the sand it mines via slurry lines to its processing facility located on WW's line in Dividing Creek, NJ, at approximately milepost 16.0. Once the sand is processed, it is transported over WW's rail system. The real property underlying the line segment is within easy reach of the slurry lines.

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 WW of the cost of owning, operating, and maintaining an uneconomic line that generates little traffic or revenue and by allowing WW 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 the line has only two active shippers, neither of which is physically located on the line, and both of which will have adequate, post-abandonment transportation alternatives. Moreover, U.S. Silica, the shipper that tendered 97% of the traffic in the year 2000, supports the abandonment.<sup>4</sup> Nevertheless, to ensure that all shippers are informed of our decision, we will require WW 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.

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).

WW 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 April 27, 2001, and requested comments. In the EA, SEA notes that the New Jersey Department of Environmental Protection (NJDEP) has indicated that, based on its review of the project, freshwater wetlands and/or transition areas may be present immediately adjacent to the right-of-way. Should excavation of the roadbed beyond the level of the ballast or any other demolition not exempted under New Jersey's Waterfront Development Act, the Wetlands Act of 1970, or the Coastal Area Facility Review Act be considered, then NJDEP states that a review under the Freshwater Wetlands Protection Act would be required. Therefore, SEA recommends that WW consult with NJDEP if any work is to be undertaken in freshwater and/or transition areas proximate to the right-of-way. SEA also notes that the New Jersey State Historic Preservation Officer (SHPO) has not yet completed review of the proposed abandonment. However, SEA has subsequently advised us that the SHPO now indicates that there are no historic properties on the Line.

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<sup>4</sup> Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

No comments to the EA were filed by the May 25, 2001 due date. We will impose the condition recommended by SEA. Based on SEA's recommendations, 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.

SEA has indicated in its EA that the right-of-way may be suitable for other public use following abandonment. We note that no one has sought a public use condition, and none will be imposed.<sup>5</sup>

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 condition that WW shall consult with NJDEP if any work is to be undertaken in freshwater and/or transition areas proximate to the right-of-way.

2. WW is directed to serve a copy of this decision on all shippers on the line within 5 days after the service date and certify to the Board that it has done so.

3. An offer of financial assistance (OFA) under 49 CFR 1152.27(c)(1)<sup>6</sup> to allow rail service to continue must be received by the railroad and the Board by June 28, 2001, 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 July 18, 2001. Petitions to stay must be filed by July 3, 2001, and petitions to reopen must be filed by July 13, 2001.

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<sup>5</sup> Public use requests were due no later than 20 days after publication of the notice of the petition in the Federal Register, or by April 9, 2001.

<sup>6</sup> See Aban. and Discon. of R. Lines and Transp. Under 49 U.S.C. 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997).

6. Pursuant to the provisions of 49 CFR 1152.29(e)(2), WW 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 WW's filing of a notice of consummation by June 18, 2002, 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