

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-914X

McCLOUD RAILWAY COMPANY—ABANDONMENT AND DISCONTINUANCE
OF SERVICE EXEMPTION—IN SISKIYOU, SHASTA,
AND MODOC COUNTIES, CA

Decided: October 14, 2005

By petition filed on June 27, 2005, McCloud Railway Company (MCR) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon, and discontinue service over, certain rail lines described below. MCR proposes to abandon approximately 80 miles of rail line in Siskiyou and Shasta Counties, CA.¹ The specific rail lines proposed for abandonment include: (1) a rail line between milepost 3.3 east of McCloud and the end of the track at milepost B-61 at or near Burney; (2) a rail line between milepost B-19 at or near Bartle and milepost B-31.4 at or near Hambone; (3) a rail line between milepost B-58 at or near Berry and milepost S-7 at or near Sierra; and (4) a rail line between milepost B-31.6 at or near Bear Flat and milepost P-3.93 at or near Pondosa. MCR also proposes to discontinue trackage rights over a BNSF Railway Company (BNSF) rail line between milepost 31.4 at Hambone and milepost 0.0 at Lookout Junction, a distance of approximately 31.4 miles in Siskiyou and Modoc Counties, CA.² Notice of the filing was served and published in the Federal Register on July 15, 2005 (70 FR 41074-01). Dicalite Minerals Corp. (Dicalite) filed a protest to the exemption, and MCR filed a reply. The exemption will be granted, subject to environmental and standard employee protective conditions.

¹ In a draft environmental and historic report that MCR submitted in this proceeding on March 8, 2005, the carrier proposed to abandon approximately 100 miles of rail line, the carrier's entire system. Subsequent to that submission, however, MCR decided to retain approximately 19.6 miles of rail line between MCR's point of connection to Union Pacific Railroad Company (UP) at milepost 16.3 at or near Mt. Shasta, CA, and milepost 3.3 east of McCloud, CA. The environmental report submitted by MCR on March 8 erroneously stated that the milepost of the MCR-UP connection was at milepost 15.2 rather than at milepost 16.3.

² The Board issued an exemption for abandonment of the Hambone-Lookout Junction rail line in The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—in Modoc and Siskiyou Counties, CA, STB Docket No. AB-6 (Sub-No. 414X) (STB served May 21, 2004). However, an exemption was not sought in that proceeding for discontinuance of MCR's operations over that line, which MCR has conducted pursuant to a grant of trackage rights.

PRELIMINARY MATTER

Because MCR's response to Dicalite's protest submits data and arguments only in reply to the issues raised by Dicalite and was filed in time for us to adequately consider it without jeopardizing our ability to meet our statutory deadline, we will accept it. Acceptance of the response will provide a more complete record.

BACKGROUND

Two principal shippers, Sierra Pacific and Dicalite, have used the lines in the past 3 years. Sierra Pacific, which owns and operates a sawmill near Burney, CA, ships lumber and wood chips outbound by rail. The shipper's traffic amounted to 1,108 cars in 2002, 1,669 cars in 2003, and 1,620 cars in 2004. Dicalite mines and processes diatomaceous earth, which it transports approximately 4 miles for transloading onto railcars at Cayton Siding at milepost 48.0. Dicalite's traffic has increased over the last few years. While the lines handled 103 cars for Dicalite in 1999, the Dicalite traffic increased to 194 cars in 2004.

In addition to these principal shippers, Werner Enterprises (Werner), a motor carrier, receives occasional inbound shipments of sulfate at a rail siding near Burney. This traffic amounted to only 17 cars between 2002 and 2004. According to the petitioner, there was a small volume of rail traffic tendered by other shippers in years past. Between 2002 and 2004, the lines handled 16 cars for Cal Cedar, 10 cars for Louisiana Pacific, and 10 cars of other miscellaneous traffic.

The petition states that the level of traffic on the lines has generally dropped steadily over the years since 3,000 cars were carried in 1996. After 1997, BNSF started transporting paper shipments directly to Reno, NV, rather than having MCR haul the paper to McCloud where it was transloaded onto Reno-bound trucks. In 2003, the level of traffic further declined when BNSF entered into a haulage agreement with UP whereby traffic formerly handled in MCR-BNSF service via Lookout Junction was diverted onto a UP line between Mt. Shasta and Klamath Falls, OR. MCR handled only 1,820 cars in 2004, a decline of almost 40% since 1996. The level of traffic fell even further in 2005 with the lines carrying only 549 carloads during the first 7 months of the year.

MCR explains that the revenue generated by the lines has not been sufficient to compensate for the costs of operating them. The carrier calculates that operating costs exceeded revenues by approximately \$690,000 in 2002, \$458,000 in 2003, and \$477,000 in 2004.

MCR does not believe that the financial situation will improve in the future. The carrier forecasts that it will incur an avoidable operating loss of approximately \$520,000 from operating the lines in the 12 months beginning on June 1, 2005. Moreover, according to MCR, Sierra Pacific does not believe the lines can be a competitive

transportation option for its lumber shipments absent significant expenditures for renewal of track materials. According to MCR, the rail, which is 90-pound rail or lighter, cannot accommodate the most current cars used in the transportation of lumber. Furthermore, MCR states that a bridge spanning Lake Britton at milepost 50.5 requires a complete retimbering for continued safe operation. MCR estimates that the retimbering would cost \$225,000.

According to MCR, it would incur economic losses of an even greater magnitude when opportunity costs are factored into the analysis. MCR states that it owns 40% of the right-of-way in fee simple, and estimates that, based on a recent study, the track materials have a net salvage value of approximately \$1.8 million.

MCR states that the shippers have transportation alternatives. MCR notes that Sierra Pacific has been trucking shipments via California Highway 299 to a transloading facility on BNSF's rail line at or near Bieber, CA. Alternatively, Sierra Pacific can truck shipments via California Highway 299 and then Interstate 5 to the shipper's own transloading site on UP's rail line at Anderson, CA. According to MCR, representatives of Sierra Pacific have stated that the transportation alternatives are adequate for the shipper's needs. MCR states that Werner's inbound sulfate traffic can be transloaded onto trucks along the carrier's McCloud-Mt. Shasta line, along the BNSF line at or near Lookout Junction, and at two points on the UP line. According to MCR, Dicalite stated that, should the Board grant abandonment authority, the shipper would likely send shipments by truck to the MCR line at McCloud, and thence by rail via MCR to the connection with UP at Mt. Shasta.

Dicalite filed a protest in opposition to the petition. Dicalite claims that MCR has misrepresented the shipper's position by making it appear as if the shipper approves of the abandonment. Dicalite states that, while it is true that shipping to McCloud is an alternative, it is not the most favored alternative. Currently, Dicalite trucks 15% of its product 3.5 miles to Cayton Siding for transloading onto MCR, from where it moves by rail to interchange with UP at Mt. Shasta. Should MCR abandon the line, the shipper would need to truck this product either to McCloud, Mt. Shasta, or the BNSF line, for rail access. Dicalite claims that such a change in operations would hurt its growing business, costing \$150,000 per year and resulting in infrastructure costs of \$50,000. Dicalite also expresses concern over such a change in operations, because Dicalite believes it would add approximately 32 trucks a day onto the local highways. To correct these harms, Dicalite desires continued rail service over the portion of the lines between Cayton Siding and Mt. Shasta. Lastly, the shipper indicates that it will tender increasing amounts of product to be shipped over the Cayton Siding-Mt. Shasta segment of the line in the future.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned or service discontinued 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 is limited in scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

MCR has shown that a substantial portion of its prior traffic no longer moves over the lines, and MCR has produced unrefuted evidence that revenues are inadequate to cover the costs of operating and rehabilitating the lines. The predominant remaining shipper on the lines, Sierra Pacific, has been trucking shipments to a transloading facility at or near Bieber and has not filed in opposition to the proposed abandonment and discontinuance. While Dicalite has filed a protest, it is speculative whether Dicalite's growth will continue or that this growth will ever result in sufficient revenues for MCR to operate these lines profitably. This is particularly true given that the carrier has handled only 15% of Dicalite's shipments in years past and that MCR's operating losses alone have amounted to close to \$500,000 a year. Indeed, while Sierra Pacific accounted for some 90% of the traffic on the lines in 2004, Dicalite shipped only about 10% of the 1,820 cars that moved over the lines that year. And Dicalite has failed to meet its burden of establishing the viability of the line segment between Cayton Siding and Mt. Shasta, which Dicalite expresses interest in keeping in operation. See Conrail-Aban.-Bet. Warsaw and Valp., Counties, IN, 9 I.C.C.2d 1299, 1319 (1993).

In these circumstances, 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 MCR of the expense of maintaining lines that generate marginal amounts of traffic and revenue and by allowing MCR to apply its assets more productively to the line it is retaining. [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be adversely affected.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power. The shippers on the lines have transportation alternatives. As noted, Sierra Pacific, the predominant shipper, has been trucking shipments to the BNSF line at or near Bieber, has told the petitioner that the alternatives are adequate, and has not filed a protest.

Dicalite does not question the existence of transportation alternatives, but argues that the alternatives will result in higher shipping costs. The costs Dicalite provides are vague and unsubstantiated. Moreover, the fact that a shipper is likely to suffer some harm and added expense is insufficient by itself to outweigh the detriment to the public interest caused by continued operation of uneconomic and excess facilities, such as here, especially where alternative transportation is available. See Chicago and North Western Transp. Co.—Abandonment, 354 I.C.C. 1, 7 (1977). And we are not persuaded that the transportation costs will cause significant harm to Dicalite, given that the shipper uses the lines in question to transport only 15% of its freight, which already is subject to transloading.

Concerning Dicalite's fear of increased truck traffic, our Section of Environmental Analysis (SEA) has calculated the number of additional trucks that would be added to area roads in its environmental assessment (EA) served on August 26, 2005. SEA has found that the 1,818 rail carloads transported for Sierra Pacific, Dicalite, and Werner in 2004 (out of the total 1,820 carloads that moved on the lines³) would equate to approximately 60.6 trucks per day being added to area roads. Although SEA's figure represents a higher number of trucks being added to the area roads than that projected by Dicalite, SEA has determined that average daily traffic would increase less than 1% on area roads and would not significantly contribute to traffic delay. Moreover, even though there will be an increase in traffic on local roads, SEA notes that the proposed abandonment should improve overall safety through the elimination of many public rail-highway crossings. Accordingly, the increased truck traffic does not give us cause to deny the petition.

To ensure that the shippers are informed of our action, MCR will be required to serve a copy of this decision on the shippers on the lines within 5 days of the service date and to certify to us that it has done so. Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

We do note that the Board has a mechanism for those who want to continue rail service by either acquiring the line or subsidizing continued operations. If Dicalite wishes to have service continued along the portion of the line from Cayton Siding to Mt. Shasta, it can file an offer of financial assistance (OFA) pursuant to 49 U.S.C. 10904 and 49 CFR 1152.27.

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).

MCR has submitted an environmental and historic report 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. See 49 CFR 1105.11. SEA has examined the report, verified the data it contains, and analyzed the probable effects of the proposed action on the quality of the human environment. As noted, SEA served its EA on August 26, 2005. Comments on the EA were requested by September 26, 2005.

In the EA, SEA notes that the National Geodetic Survey (NGS) has identified 22 geodetic station markers that may be affected by the proposed abandonment. NGS has requested 90 days advance notification of any activities that would disturb or destroy these markers to plan for their relocation. Therefore, SEA recommends that MCR notify

³ According to SEA, the other two shipments were salvage shipments resulting from a derailment.

NGS 90 days prior to beginning salvage activities so that NGS may plan for the possible relocation of the 22 geodetic station markers located on the lines.

SEA further notes that six of the seven bridges located along the lines span water bodies, and that permits may be required from the United States Army Corps of Engineers (Corps) before the carrier begins salvage activities. Therefore, SEA recommends that, prior to commencement of any salvage activities, MCR shall consult with the Corps, Sacramento District, to determine the applicability and need for permits.

SEA states that the area proposed for abandonment may contain bald eagles and other Federally listed threatened and endangered species, and notes that the U.S. Fish and Wildlife Service (USFWS) has not yet filed a comment. Accordingly, SEA recommends that MCR shall consult with USFWS, Pacific Region, regarding potential impacts from salvage activities to Federally listed threatened and endangered species that may occur in the vicinity of the lines and report the results of these consultations to SEA prior to the onset of salvage operations.

MCR also has submitted an historic report, and has served the report on the California Office of Historic Preservation (the State Historic Preservation Officer or SHPO). See 49 CFR 1105.8. As requested by the SHPO, SEA has contacted the California Native American Heritage Commission regarding tribes that may have an interest in the project. The SHPO and SEA have not yet completed their evaluation of the potential impact of the proposed abandonment. Therefore, SEA recommends in its EA that, pending completion of the SHPO's and SEA's review, a condition be imposed requiring MCR to 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 old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA). To ensure that MCR notifies SEA when the SHPO has completed its review, SEA also recommends that MCR be required to report the results of the SHPO's review to SEA prior to the onset of salvage activities.

SEA has received no comments on the EA by the due date. Accordingly, we will impose the conditions recommended by SEA in the EA. Based on SEA's recommendations, we conclude that the proposed abandonment and discontinuance, if implemented as conditioned, will not significantly affect the quality of the human environment or the conservation of energy resources.

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

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903 the discontinuance of service pursuant to a grant of trackage rights over the above-described line by MCR.
2. 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 lines, subject to the conditions that MCR shall: (1) notify NGS 90 days prior to beginning salvage activities to plan for the possible relocation of the 22 identified geodetic station markers by NGS; (2) prior to the commencement of salvage activities, consult with the Corps to determine the applicability and need for permits in reference to the possible removal of six bridges spanning bodies of water; (3) consult with USFWS, Pacific Region, regarding the potential impacts from salvage activities to Federally listed threatened and endangered species that may occur in the vicinity of the lines and report the results of these consultations to SEA prior to the onset of salvage operations; and (4) 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 old or older until completion of the section 106 process of the NHPA and report the results of the SHPO's review to SEA prior to the onset of salvage activities.
3. MCR is directed to serve a copy of this decision on the shippers on the lines within 5 days after the service date of this decision and to certify to the Board that it has done so.
4. An OFA under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by MCR and the Board by October 24, 2005, 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). An OFA must be accompanied by the filing fee, which currently is set at \$1,200. See 49 CFR 1002.2(f)(25).
5. 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.”**
6. Provided no OFA has been received, this exemption will be effective on November 13, 2005. Petitions to stay must be filed by October 31, 2005; and petitions to reopen must be filed by November 8, 2005.

7. Pursuant to the provisions of 49 CFR 1152.29(e)(2), MCR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the lines. If consummation has not been effected by MCR's filing of a notice of consummation by October 14, 2006, 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, Chairman Nober, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams
Secretary