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SERVICE DATE - DECEMBER 15, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-486 (Sub-No. 2X)

KYLE RAILROAD COMPANY—DISCONTINUANCE OF SERVICE EXEMPTION—IN
SMITH, PHILLIPS AND NORTON COUNTIES, KS

STB Docket No. AB-33 (Sub-No. 154X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN SMITH,
PHILLIPS AND NORTON COUNTIES, KS

Decided: December 13, 2000

By petition filed on August 28, 2000,¹ Kyle Railroad Company (Kyle) and Union Pacific Railroad Company (UP) (collectively, petitioners) seek an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 for Kyle to discontinue service over and UP to abandon a 70.5-mile² segment of a line of railroad known as the Lenora Branch, extending from milepost 552.7 near Harlan to the end of the line at milepost 623.6 near Lenora, in Smith, Phillips, and Norton Counties, KS.³ We will grant the exemption, subject to standard employee protective conditions and an environmental condition.

¹ Notice was served and published in the Federal Register on September 15, 2000 (65 FR 56019).

² Petitioners state that milepost 582.52 is equivalent to milepost 582.92, which makes the line 0.4 mile shorter than it would appear from the terminal mileposts.

³ The Lenora Branch is approximately 84 miles long. The segment from Harlan to Downs, KS, where the Lenora Branch connects with UP's Concordia Branch (Frankfort to Stockton, KS) is not proposed for abandonment or discontinuance here. A portion of the Concordia Branch, known as the Frankfort Branch, from Frankfort to Ames, KS, has been authorized for abandonment and discontinuance in Kyle Railroad Company—Discontinuance Exemption—In Marshall, Washington, and Cloud Counties, KS, STB Docket No. AB-486 (Sub-No. 3X), et al. (STB served Dec. 13, 2000).

BACKGROUND

The Lenora Branch was formerly owned and operated by Missouri Pacific Railroad Company (MP). In 1982, when UP acquired control of MP,⁴ UP had its own lines through northern Kansas paralleling those of MP. UP continued to operate the MP lines until, according to petitioners, it became evident that the “redundant” Lenora Branch was a marginal property that would have to be abandoned unless a short line railroad could be found to assume operations. UP entertained bids to lease the Lenora Branch (as well as other MP lines in northern Kansas, including the Concordia Branch) and entered into a lease with Kyle in 1991.⁵ Kyle has leased and operated the Lenora Branch since that time.

The Lenora Branch serves the agricultural community of northern Kansas. Petitioners submit that traffic and revenues are insufficient to sustain the line. They cite a number of reasons for why this has happened. According to petitioners, area farmers have been buffeted by declining prices for their corn and milo, the principal crops grown in this region. Overseas markets for these grains have declined as a result of depressed economies and competition from other sources. The farmers have had to shift to other crops, such as sunflower seeds, which are marketed differently than corn and milo. In addition, increasing amounts of the region’s corn and milo are being trucked to nearby ethanol plants, rather than being shipped by rail. Large amounts of grain also are being trucked to Ogallah and Wakeeney, KS, points on a UP line south of the Lenora Branch. As a result, the elevators along the Lenora Branch handle far less grain than in the past. Petitioners state that efforts to build business on the Lenora Branch since Kyle began operating the line in 1991 have been unsuccessful. They maintain that, because of the low volume of traffic, there is no economic justification for continued operation.

There are nine shippers on the line.⁶ According to petitioners, the proposed abandonment will have minimal effect on these shippers because they have made relatively little use of the line.⁷ Petitioners state that Kyle has sustained significant losses in the recent past, averaging

⁴ See Union Pacific–Control–Missouri Pacific; Western Pacific, 366 I.C.C. 462 (1982).

⁵ See Kyle Railroad Company–Lease and Trackage Rights–Missouri Pacific Railroad Company and Union Pacific Railroad Company Northern Kansas Rail Lines, Finance Docket No. 31754 (ICC served Apr. 5, 1991).

⁶ They are: Harlan Grain; Frieling Grain Co., Inc.; Boettcher Enterprises; Kirchhoff Grain Co.; Pro-Ag Marketing; Rangeland Cooperatives, Inc.; Logan Grain Co., Inc.; Brady Grain, Inc.; and Hi-Plains Coop Assn.

⁷ Petitioners provide annual carload figures for the period 1997 through 1999, as follows: 883 outbound carloads in 1997; 867 carloads in 1998 (8 inbound carloads and 859 outbound
(continued...)

nearly \$90,000 a year.⁸ Petitioners submit that Kyle's shareholders simply cannot continue to carry the Lenora Branch.

Petitioners assert that the shippers on the line will continue to have rail service available to them within relatively short distances. According to petitioners, four of the shippers, accounting for more than half of the carload traffic on the Lenora Branch, have elevators at other nearby locations served by Kyle and the remaining shippers are close to alternative rail service. Petitioners also assert that ample truck service is available, as the Lenora Branch is adjacent to U.S. Highway 281 and Kansas Highways 9, 173, and 123.

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 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)]. Moreover, an exemption will foster sound economic conditions and encourage efficient management by permitting UP to avoid the costs of owning and Kyle to avoid the costs of maintaining and operating the line, and by allowing UP to use its assets more productively elsewhere on its rail system. [49 U.S.C. 10101(4), (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 alternative rail and motor carrier service is available and no shipper has objected to the proposed discontinuance of service and abandonment. Nevertheless, to ensure that the shippers are informed of our action, we will require petitioners to serve a copy of this decision on the shippers within 5 days of the service date and certify to us that they have done so.

⁷(...continued)
carloads); and 922 carloads in 1999 (5 inbound carloads and 917 outbound carloads).

⁸ Petitioners provide annual revenue and cost figures for the years 1997 through 1999, as follows: in 1997, Kyle had revenues of \$377,592, avoidable costs of \$431,470, and an operating loss of \$53,878; in 1998, it had revenues of \$369,966, avoidable costs of \$486,058, and an operating loss of \$116,092; and in 1999, it had revenues of \$394,917, avoidable costs of \$490,227, and an operating loss of \$95,310.

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

Petitioners have submitted an environmental report with their petition and have 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, analyzed the probable effects of the proposed action on the quality of the human environment, and served an environmental assessment (EA) on October 27, 2000. In the EA, SEA notes that the Department of the Army, Kansas City District Corps of Engineers (Army Corps), has indicated that, if the abandonment requires excavation or the discharge of dredge fill material in any waters, including wetlands, a Department of the Army permit will be required. Therefore, SEA recommends that a condition be imposed requiring UP to consult with Army Corps prior to salvaging the right-of-way to determine if permits are required under section 404 of the Clean Water Act, 33, U.S.C. 1344.

No comments to the EA were filed by the November 27, 2000 due date. We will impose the condition recommended by SEA. Based on SEA's recommendation, 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. Although SEA has indicated 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.⁹

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 and discontinuance of service by petitioners 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 requiring UP to consult with Army Corps prior to salvaging the right-of-way to determine if permits are required under section 404 of the Clean Water Act, 33 U.S.C. 1344.

⁹ Public use requests were due no later than 20 days after publication of the notice of the petition in the Federal Register, or by October 5, 2000.

2. Petitioners are directed to serve a copy of this decision on the shippers on the line within 5 days after the service date of this decision and to certify to the Board that they have done so.

3. An OFA under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by petitioners and the Board by December 26, 2000, 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 \$1,000. 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 January 14, 2001. Petitions to stay must be filed by January 2, 2001, and petitions to reopen must be filed by January 9, 2001.

6. Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP 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 UP's filing of a notice of consummation by December 15, 2001, 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 Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams
Secretary