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SERVICE DATE - MARCH 5, 2004

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SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-855 (Sub-No. 1X)

A & R LINE, INC.–ABANDONMENT EXEMPTION–
IN CASS AND PULASKI COUNTIES, IN

STB Docket No. AB-847 (Sub-No. 2X)

TOLEDO, PEORIA & WESTERN RAILWAY CORPORATION–DISCONTINUANCE OF
SERVICE EXEMPTION–IN CASS AND PULASKI COUNTIES, IN,

Decided: March 3, 2004

By decision and notice of interim trail use (NITU) served on November 18, 2003, the Board, under 49 U.S.C. 10502, exempted from the prior approval requirements of 49 U.S.C. 10903, the abandonment by A & R Line, Inc. (A&R) of, and discontinuance of service by Toledo, Peoria & Western Railway Corporation (TP&W) over, a line of railroad known as the A&R line, extending from milepost 5.1W near Kenneth to the end of the line at milepost 21.0W near Winamac, a distance of 15.9 miles in Cass and Pulaski Counties, IN, subject to environmental, trail use, public use, and employee protective conditions.

On November 28, 2003, Kokomo Grain Company (Kokomo) timely filed an offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27 to purchase the line for \$525,000. In a decision served on December 3, 2003, the effective date of the exemption authorizing abandonment was postponed to permit the OFA process to proceed.

In a motion filed on December 23, 2003, A&R and TP&W (jointly, petitioners) indicate that pleadings that they have filed in this proceeding incorrectly described the subject line as a 15.9-mile line of railroad. According to petitioners, the subject line is actually 21 miles long, extending from milepost 0.0W¹ at Kenneth to milepost 21.0W at Winamac. The petitioners state that they became aware of the error when analyzing the OFA filed by Kokomo. In the motion, petitioners ask that the Board permit them to amend their pleadings to correct these errors. They also request that the Board revise its decisions to reflect the correct description of the line. A decision served on December 23, 2003, held the OFA process in abeyance while the Board considered the motion. No replies were filed to the motion.

¹ Petitioners state that this milepost also has been designated as milepost 5.1W, leading the petitioners to mistakenly refer to the length of the line as 15.9 miles rather than 21 miles.

Good cause exists to grant the motion to amend. The Board's decision granting the abandonment and discontinuance exemptions is revised to correct the description of the subject line as a 21-mile rail line, extending from milepost 0.0W at Kenneth to milepost 21.0W at Winamac. The remainder of the decision, including the environmental² and standard employee protective conditions that were imposed, remains unchanged.

The Board's decision also imposed trail use and public use conditions that had been requested by the Indiana Trails Fund, Inc. (ITF) for the 15.9-mile line as originally described in the Board's decision.³ ITF may file⁴ a revised request for a public use condition and an interim trail use condition for the 21-mile line or any portion of the line by March 15, 2004.⁵

As noted, the effective date of the decision has been postponed to consider an OFA that was filed by Kokomo to purchase the 15.9-mile line as originally described in the Board's decision. The OFA process was then held in abeyance to consider the petitioners' motion. To resume the OFA process, Kokomo must submit a new OFA for the 21-mile line by March 15, 2004.⁶ If a revised OFA is not received, the Board will issue a decision setting the effective date of the abandonment exemption.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

² In a notice served and published on January 12, 2004 (69 FR 1780), the Board's Section of Environmental Analysis corrected the description of the line in the environmental assessment (EA) that it previously issued in this proceeding. SEA stated that it considered the impact that the abandonment and discontinuance would have between Kenneth and Winamac, which covered the full 21 miles of the line and that, therefore, all other information in the EA remains unchanged.

³ Petitioners indicate that they would agree to the filing of a revised trail use request for the 21-mile line.

⁴ No additional filing fee would be due if ITF refiles its request for a public use condition and interim trail use.

⁵ A request by Pulaski County that the Board require the railroad or not-for-profit interim trail user to be bonded or to escrow funds and be obligated for clean-up costs will be considered in a future decision, if appropriate, following completion of the OFA process.

⁶ No additional filing fee would be due if Kokomo refiles its OFA request.

It is ordered:

1. The Board's decision granting the abandonment and discontinuance exemptions is revised to correct the description of the subject line as a 21-mile rail line, extending from milepost 0.0W at Kenneth to milepost 21.0W at Winamac.
2. ITF may file a revised request for a public use condition and an interim trail use condition for the 21-mile line or any portion of the line by March 15, 2004.
3. Kokomo must submit a new OFA for the 21-mile line by March 15, 2004.
4. This decision is effective on its service date.

By the Board, Chairman Nober.

Vernon A. Williams
Secretary