

SERVICE DATE - FEBRUARY 12, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-167 (Sub-No. 1177X)<sup>1</sup>

CONSOLIDATED RAIL CORPORATION--DISCONTINUANCE EXEMPTION--  
IN MONTGOMERY AND BUCKS COUNTIES, PA

Decided: February 3, 1997

By petition filed on October 25, 1996, Consolidated Rail Corporation (Conrail) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to discontinue service over a 14.9-mile line of railroad, known as the Bethlehem Branch, between milepost 30.5±, near Telford, and milepost 45.4±, near Quakertown, in Montgomery and Bucks Counties, PA. The United Transportation Union seeks imposition of labor protective conditions. We will grant the exemption subject to standard labor protective conditions.

PRELIMINARY MATTERS

On September 10, 1996, Conrail filed a notice of intent to discontinue service over the line that is the subject of this petition, signaling that it intended to file an application under 49 U.S.C. 10903 for authority to discontinue service over the line. The notice of intent was assigned STB Docket No. AB-167 (Sub-No. 1170). Previously on August 21, 1996, Conrail had filed a petition requesting that we waive our existing rules for the handling of abandonment and discontinuance applications at 49 CFR 1152.13(d) and 49 CFR part 1152, subparts C and D, and that we process the application under the rules proposed for adoption in Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903, STB Docket No. 537 (STB served Mar. 15, 1996) (Abandonment Rules). The petition for waiver was denied by decision served on September 26, 1996.<sup>2</sup>

By filing a notice of intent to seek authority to discontinue service over the line in Sub-No. 1170, Conrail indicated that it expected opposition to the proposed discontinuance. In view of the fact that Conrail anticipated opposition to the proposed discontinuance, but nevertheless chose to file a petition for exemption under section 10502 rather than an application for discontinuance authority under section 10903, a procedural schedule was established by decision served November 8, 1996, to permit any interested person to file comments on the proposed exemption and to permit Conrail to reply to the comments. Comments on the proposed exemption were due by December 9, 1996. None was filed.

BACKGROUND

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<sup>1</sup> This proceeding has been redocketed. It was previously filed by Conrail under Sub-No. 1170X.

<sup>2</sup> Final rules have since gone into effect (on January 23, 1997). See decision served December 24, 1996, in Abandonment Rules.

Operations on the line are conducted by Conrail pursuant to a trackage rights agreement with Southeastern Pennsylvania Transportation Authority (SEPTA). Conrail seeks to discontinue service because revenue generated from traffic is inadequate to cover the cost of maintaining and operating the line.<sup>3</sup>

According to Conrail, the line is in poor condition. It is classified as Federal Railroad Administration (FRA) class 1, but is designated "excepted track," and a portion of the line from milepost 42.3 to milepost 45.4 is out of service. The line is composed of 130-lb. jointed rail with the majority of it having been manufactured in 1925. There are 4 private crossings and 17 public at-grade crossings, 13 of which are equipped with automatic warning devices. There are also 15 undergrade bridges, 4 overhead bridges, and 1 rock cut/stone arch tunnel. The tunnel is 2,142 feet long and requires extraordinary maintenance and specialized equipment during the winter season to facilitate the removal of ice buildup.<sup>4</sup>

Endura Products (Endura), the only active shipper on the line, requires service less than twice a week.<sup>5</sup> Two currently inactive shippers on the line are Atlas Roofing (Atlas) and Lehigh Coal and Navigation (Lehigh).<sup>6</sup> Conrail states that traffic levels have declined from 79 carloads in 1993 to 54 carloads in the base year (April 1995-March 1996), with Endura generating 52 carloads and Lehigh only 2. Conrail projects 57 carloads in the forecast year (September 1996-August 1997), but states that the expected increase of 3 carloads from Endura in the forecast year will not be sufficient to support continuation of its operations.<sup>7</sup>

Conrail states that alternate transportation is available. The line proposed for abandonment is located approximately five highway miles from Exit 32 on Route 9, known as the Northeast Extension of the Pennsylvania Turnpike System, and less than two highway miles from State Route 309. It is also less than ten highway miles from Bethlehem and Lansdale, PA, which will each continue to be served by Conrail. In addition, Conrail operates a multi-modal facility within 45 highway miles of the subject line at Philadelphia, PA. Conrail also serves transloading facilities located in Pottstown, Reading, Allentown, and Philadelphia, all within 50 highway miles of the line and capable of handling the products currently handled on the line.

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<sup>3</sup> Conrail has the sole obligation to maintain the line under its trackage rights agreement with SEPTA.

<sup>4</sup> According to Conrail, to ensure safe operation of the line, inspection and manual and mechanized removal of the ice buildup on the tunnel floor and walls must be performed prior to the passage of trains.

<sup>5</sup> Conrail indicates that, although service to the industries on the line is scheduled twice a week, it is actually offered only on an "as needed" basis because of the small traffic volume.

<sup>6</sup> Lehigh is served via a team track.

<sup>7</sup> Conrail notes that the potential exists for traffic being generated by Atlas, but not by Lehigh.

Conrail has served a copy of the petition on Endura, Atlas, and Lehigh. No comments in opposition to the proposed exemption for discontinuance of service have been filed.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, rail operations may not be discontinued without prior Board 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 needed 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 time and expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. By allowing Conrail to avoid maintenance and operating costs on this high-maintenance, low-volume line, an exemption will promote a safe and efficient rail transportation system, foster sound economic conditions in transportation and encourage efficient management [49 U.S.C. 10101(3), (5) and (9)]. Other aspects of the rail transportation policy are not affected adversely.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power because the shippers on the line have viable alternative transportation options. Nevertheless, to ensure that the shippers are informed of our action, we will require Conrail to serve a copy of this decision on all of the shippers on the line within 5 days of the service date of this decision and certify to us that it has done so. Given our finding regarding the probable effect of the transaction on market power, we need not determine whether the 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 set forth in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979).

This proceeding 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). As such, this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903 Conrail's discontinuance of service over the above-described line, subject to the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979).

2. Notice will be published in the Federal Register on February 12, 1997.

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

4. Provided no formal expression of intent to file an offer of financial assistance (OFA) to subsidize continued rail service has been received, this exemption will be effective on March 14, 1997.

5. Formal expressions of intent to file an OFA to subsidize continued rail service under 49 CFR 1152.27(c)(2)<sup>8</sup> must be filed by February 24, 1997. Petitions to stay must be filed by February 27, 1997. Petitions to reopen must be filed by March 10, 1997.

6. 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)(2)(ii)(C) and (D). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(2).

7. 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

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<sup>8</sup> 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, as previously noted, we have issued final rules in Abandonment Rules that became effective on January 23, 1997. Because we have processed the exemption petition under the former regulations, we will continue to use the former regulations in this proceeding to process an OFA, if one is filed.