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SERVICE DATE - LATE RELEASE FEBRUARY 24, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-493 (Sub-No. 3X)

TRACK TECH, INC.--ABANDONMENT EXEMPTION--IN EDDY COUNTY, ND

Decided: February 23, 1998

By petition filed on November 6, 1997, Track Tech, Inc. (Track Tech) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a line of railroad between Hamar, ND (milepost 98.0), and Warwick, ND (milepost 103.92), a distance of 5.92 miles in Eddy County, ND.¹ We will grant the exemption, subject to an environmental condition and standard employee protective conditions.

BACKGROUND

The line proposed for abandonment was formerly owned by Burlington Northern Railroad Company (BN). According to Track Tech, BN took the line out of service in 1994 due to the lack of rail customers and unsafe track conditions. BN sold the line to petitioner on November 27, 1996,² but petitioner has never operated trains over it. Petitioner reports that there are no shippers located on the line, and that no local or overhead traffic has moved over the line for at least 3 years. Track Tech asserts that there is no possibility that operations over this line could be viable for local service needs because no traffic could reasonably be expected to be generated on the line in the future.

Petitioner states that alternative transportation service is available through other rail carriers and trucking companies that operate in the area. This alternate service includes a BN east-west line, which ends at Hamar, and Red River Valley and Western Railroad Company's north-south mainline, which is approximately 21 miles west of Warwick at Oberon, ND.

DISCUSSION AND CONCLUSIONS

¹ Notice of the filing was served and published in the Federal Register on November 26, 1997 (62 FR 63215).

² Petitioner also acquired 5 other lines from BN in November 1996. Petitioner filed petitions for exemption to abandon the other lines in STB Docket No. AB-493 (Sub-Nos. 1X, 2X, 4X, 5X, and 6X). The petitions in Sub-Nos. 1X, 2X, and 5X were granted by decisions served on January 12, 1998.

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 an abandonment application, 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 Track Tech of the costs of owning and maintaining the line [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation of the transaction is not necessary to protect shippers from an abuse of market power because there are no shippers on the line. Given our market power finding, we need not determine whether the proposed abandonment 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).

Track Tech 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 January 9, 1998, in which it noted that the North Dakota Department of Health (NDDH) states that the environmental impacts from the proposed construction will be minor and can be controlled by proper construction methods. SEA further noted, however, that, in order to avoid any adverse impacts, NDDH recommends that care be taken during construction activity near any water of the state to minimize adverse effects on state waters, and has listed several requirements for minimizing or preventing any environmental degradation to a waterway as a result of construction activities at a site. Accordingly, SEA recommends that a condition be imposed on any grant of abandonment authority requiring Track Tech to consult with NDDH, Environmental Health Section, prior to salvaging the right-of-way.

No comments to the EA were received by the February 5, 1998 due date. We will impose the condition as recommended. 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.

SEA states that, following abandonment of the line, the right-of-way may be suitable for other public use under 49 U.S.C. 10905. We note that no one has sought a public use condition, and none will be imposed.

This decision 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 the abandonment of the above-described line, subject to: (1) the employee protective conditions set forth in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979); and (2) the condition that Track Tech be required to consult with NDDH, Environmental Health Section, prior to salvaging the right-of-way.

2. An offer of financial assistance (OFA) under 49 CFR 1152.27(c)(1)³ to allow rail service to continue must be received by the railroad and the Board by March 6, 1998, 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 \$900 filing fee. See 49 CFR 1002.2(f)(25).

3. 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.**"

4. Provided no OFA has been received, this exemption will be effective on March 26, 1998. Petitions to stay must be filed by March 6, 1998, and petitions to reopen must be filed by March 16, 1998.

5. Pursuant to the provisions of 49 CFR 1152.29(e)(2), Track Tech 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 Track Tech's filing of a notice of consummation by February 24, 1999, 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 and Vice Chairman Owen.

³ See Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903, STB Ex Parte No. 537 (STB served Dec. 24, 1996, and June 27, 1997).

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Vernon A. Williams
Secretary