

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-406 (Sub-No. 7X)

CENTRAL KANSAS RAILWAY, LIMITED LIABILITY COMPANY--ABANDONMENT  
EXEMPTION--IN BARTON, ELLSWORTH AND RICE COUNTIES, KS

Decided: April 15, 1997

By petition filed December 6, 1996, Central Kansas Railway, Limited Liability Company (CKR) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903-06<sup>1</sup> to abandon a 53.2-mile portion of its Little River Subdivision from milepost 577.1 near Lyons to milepost 594.1 near Lorraine, thence from milepost 20.7 near Lorraine to milepost 56.9 near Galatia, in Barton, Ellsworth and Rice Counties, KS. The United Transportation Union requests imposition of labor protective conditions. We will grant the exemption, subject to labor protective conditions and an historic preservation condition.

BACKGROUND

The CKR line involved here is located in a rural area of Kansas and has not carried freight since May 1995. CKR avers that the line is in unsafe condition and would require an estimated \$1,225,220 in rehabilitation costs. The line handled 458 carloads of wheat, milo, sorghum and fertilizer in 1993, 510 carloads in 1994, and 144 carloads through May 1995. Since that time, there has been no traffic on the line and no shippers have requested service. CKR contends that all traffic that moved over the line is moving by truck or on another railroad.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned 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 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 time and expense of abandoning this line, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. By allowing CKR to avoid the expense of rehabilitating this line and to apply its assets more productively elsewhere on its system, an exemption will promote safe and efficient rail transportation, foster sound economic conditions, and encourage efficient management [49 U.S.C. 10101(3), (5), and (9)]. Other aspects of the rail transportation policy are not affected adversely. For example, competition and the continuation of a sound rail transportation system are not affected [49 U.S.C. 10101(4)].

Because the former shippers apparently have adequate alternative transportation available to them in the form of motor carriers and other rail service, we find that regulation is not necessary here to protect the shippers from an abuse of market power. Nevertheless, to ensure

that the former shippers are aware of the status of this line, we will require CKR to serve them with a copy of this decision within 5 days of the service date and to certify to us that it has done so.

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<sup>1</sup> In its petition, CKR seeks an exemption from 49 U.S.C. 10903-06. CKR appears to be citing the provisions of the former Interstate Commerce Act rather than those of the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (ICCTA). Regardless, CKR has not supported its request for exemption from any sections other than current section 10903. Accordingly, we will limit the exemption to that section.

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 a statutory obligation to protect the interests of its employees. Accordingly, we will impose the employee protective conditions in *Oregon Short Line R. Co.--Abandonment--Goshen*, 360 I.C.C. 91 (1979), as a condition to granting this exemption.

CKR has submitted an environmental report with its petition and has notified the appropriate Federal, state, and local agencies of the opportunity to file comments concerning the energy and environmental effects 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 effect of the proposed abandonment on environmental and historic resources. SEA served an environmental assessment (EA) on February 28, 1997, in which it notes that The Kansas Cultural Resources Division has raised a number of questions concerning a depot at Holyrood, KS. Therefore, SEA recommends that, until a final determination is made on the eligibility of the depot for the National Register of Historic Places, a condition be imposed requiring CKR to retain its interest in and take no steps to alter the integrity of the Holyrood Depot until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f. SEA recommends that we impose no other environmental or historic conditions on the proposed abandonment. Comments on the EA were due on March 25, 1997, but none was received and SEA recommends that the historic condition be imposed. Based on SEA's recommendation, which we adopt, we conclude that the proposed abandonment, as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

Although SEA states 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. Nevertheless, we will provide a 20-day period after *Federal Register* publication for interested persons to request a public use condition.

*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 by Central Kansas Railway, Limited Liability Company of the above-described line, subject to: (1) the employee protective conditions in *Oregon Short Line R. Co.--Abandonment--Goshen*, 360 I.C.C. 91 (1979); and (2) the condition that CKR retain its interest in and take no steps to alter the integrity of the Holyrood Depot until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

2. Notice will be published in the *Federal Register* April 29, 1997.

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

4. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, the exemption will be effective on May 29, 1997.

5. Formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2)<sup>2</sup> must be filed by May 9, 1997; petitions to stay must be filed by May 14, 1997; requests for a public use condition under 49 U.S.C. 1152.28 and requests for a notice of interim trail use/rail banking under 49 CFR 1152.29 must be filed by May 19, 1997; petitions to reopen must be filed by May 27, 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). Each OFA must be accompanied by the filing fee, which currently is set at \$900. *See* 49 CFR 1002.2(f)(25).

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>2</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 ICCTA has made changes and additions to the previous law regarding the processing of abandonments and OFAs. To implement these changes, we have issued final rules in *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), 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. Each offer of financial assistance must be accompanied by the filing fee (currently \$900). *See* 49 CFR 1002.2(f)(25).