

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-474X

OLD AUGUSTA RAILROAD COMPANY--WHOLE-LINE ABANDONMENT
EXEMPTION--IN PERRY COUNTY, MS

Decided: January 6, 1997

Old Augusta Railroad Company (Old Augusta) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903-04 to abandon its entire 2.5-mile rail line located between milepost 0.0 at Augusta and milepost 2.5 at New Augusta, in Perry County, MS. We will grant the petition for exemption, subject to labor protective conditions.

BACKGROUND

Old Augusta is a wholly owned subsidiary of Leaf River Forest Products, Inc. (Leaf River), a paper and forest products company. Leaf River uses the line exclusively to ship and receive freight at its plant. The rail line connects Leaf River's plant at Augusta with the Illinois Central Railroad at New Augusta, MS.

Old Augusta was authorized to construct and operate the line proposed for abandonment in 1983. Its original construction and operation application was dismissed by the Interstate Commerce Commission (ICC) as outside its jurisdiction because the line appeared to be a spur located in a single state being constructed only for one shipper. On reconsideration of the application, however, new evidence that other industries were looking to locate along the line convinced the ICC to grant common carrier status to Old Augusta. The ICC stated that "the fact that applicant's plans to assume the obligations of a common carrier are tied to an undetermined future date provides no basis for withholding certification."¹

It appears, however, that efforts to attract other shippers to the line did not succeed, and Leaf River has remained the only shipper on the line. Because the promise of future traffic did not materialize, Old Augusta seeks relief from its common carrier obligation and plans to go out of business. Following abandonment, Leaf River will operate the rail line as a private industrial track in its business.

Old Augusta has specifically invoked our authority to abandon the line. We will not rule on whether the line may properly be classified as an industrial spur. A finding to that effect has not been requested and no evidence has been submitted in that regard. See St. Joseph Terminal Railroad Company--Abandonment Exemption--In St. Joseph, MO, ICC Docket No. 327X (ICC served Jan. 2, 1991).

¹ Old Augusta Railroad Company Construction and Operation of a Line of Railroad in Perry County, MS, Finance Docket No. 30019 (ICC served Dec. 23, 1982 and Feb. 23, 1983).

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without 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 abandoning this line, an exemption will reduce regulatory barriers to exit and provide for the expeditious handling and resolution of this proceeding [49 U.S.C. 10101(2), (7), and (15)]. By allowing Leaf River to eliminate the expense of maintaining a separate entity to provide duplicate rail service, an exemption will promote 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 by the proposed abandonment.

Because there are no other shippers on the line besides the owner of the line itself, we find that regulation is not necessary to protect shippers from an abuse of market power. To ensure that Leaf River is informed of our action, especially as discussed below, we will require Old Augusta to serve a copy of this decision on Leaf River within 5 days of the service date of this decision and certify to us that it has done so. Given our market power finding, we need not determine whether the proposed transaction is limited in scope, although the proposed abandonment appears to satisfy that criterion as well.

In its petition, Old Augusta states that its rail employees will become Leaf River employees. 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.² On the other hand, we do not normally impose employee protective conditions when a carrier abandons service over its entire line unless the evidence shows the existence of: (1) a corporate affiliate that will continue substantially similar rail operations; or (2) a corporate parent that will realize substantial financial benefits over and above relief from the burden of deficit operations by its subsidiary railroad. See Northampton and Bath R. Co.--Abandonment, 354 I.C.C. 784 (1978) (Northampton). The rationale for not imposing labor protective conditions when an entire line of railroad is abandoned is that no operating carrier remains to enjoy the benefits of the abandonment or pay the costs of the employee protection. In this case, applicant has a parent-affiliate, Leaf River, that will benefit from continuing rail operations, and the continuing operations may reasonably be required to absorb labor protection

² Abandonment exemptions are normally subject to Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979) (Oregon Short Line).

costs, if any. See Arcata and Mad River Rail Road Company--Abandonment Exemption--in Humboldt County, CA, Docket No. AB-241X (ICC served Apr. 10, 1986). The fact that Leaf River will conduct rail operations as a non-regulated carrier does not, in any way, diminish its ability to continue to pay employee salaries or otherwise provide employee protection.³ Indeed, as we understand Old Augusta's representation, Leaf River has in effect undertaken to do so. Accordingly, we will impose labor protective conditions on this exemption with the costs to be borne by Leaf River.

Old Augusta 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 its data, and analyzed the probable effect of the proposed abandonment on environmental and historic resources. SEA served an environmental assessment (EA) on November 8, 1996, recommending that no environmental or historic conditions be imposed on the abandonment authority. No comments were filed in response to the EA. Accordingly, we will impose no environmental or historic conditions on the proposed abandonment. Based on SEA's recommendation, which we adopt, we conclude that the proposed abandonment will not significantly affect either the quality of the human environment or conservation of energy resources.

SEA has determined that the involved right-of-way may not be suitable for other public purposes, because Leaf River proposes to take over and continue all operations on the line directly. Under these circumstances, it would serve no useful purpose to make the routine provisions for the submission of requests for a public use condition, a notice of interim trail use, or for offers of financial assistance.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the requirements of 49 U.S.C. 10903-04 the abandonment by Old Augusta of the above-described 2.5-mile rail 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 January 21, 1997.

3. Old Augusta must serve a copy of this decision on Leaf River within 5 days after the service date of this decision and certify to the Board that it has done so.

³ Similarly, employee protective conditions are imposed on a parent in an entire line abandonment, whether or not it is a carrier, if it will realize substantial financial benefits over and above relief from the burden of deficit operations by its subsidiary railroad. Northampton, supra, at 786.

4. Petitions to stay must be filed by February 5, 1997 and petitions to reopen must be filed by February 17, 1997.

By the Board, Chairman Morgan, Vice Chairman Owen, and Commissioner Simmons. Commissioner Simmons did not participate.

Vernon A. Williams
Secretary