

30210
EB

SERVICE DATE - AUGUST 6, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-462 (Sub-No. 2X)

SOUTHEASTERN INTERNATIONAL CORPORATION--ABANDONMENT
EXEMPTION--IN WHARTON COUNTY, TX

Decided: August 2, 1999

By petition filed on April 14, 1999,¹ Southeastern International Corporation (SEI) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon its 11.76-mile line of railroad extending between milepost 42.24 in Wharton and milepost 54.0 near Lane City, in Wharton County, TX. We will grant the exemption subject to an environmental condition.

BACKGROUND

SEI acquired the line proposed for abandonment from the former Atchison, Topeka, and Santa Fe Railway Company (Santa Fe)² in 1995.³ The line had been used almost exclusively for outbound shipments of grain and inbound movements of chicken feed and chemicals. Most of the traffic moved from July through September, with SEI providing service on an as-needed basis. There is no overhead traffic on the line.⁴

There are three shippers located on the line: Coastal Warehouse (Coastal); Maxim Production (Maxim); and Terra Chemical (Terra). None of the shippers currently use the line.⁵

¹ Notice was served and published in the Federal Register on May 4, 1999 (64 FR 23898-99).

² On December 31, 1996, Santa Fe merged with Burlington Northern Railroad Company to become The Burlington Northern and Santa Fe Railway Company (BNSF).

³ See Southeastern International Corporation--Acquisition Exemption--Lines of The Atchison, Topeka, and Santa Fe Railway Company, Finance Docket No. 32741 (ICC served and published at 60 FR 36829 on July 18, 1995).

⁴ SEI states that the track that connected its line to Union Pacific Railroad Company's (UP) main line at Wharton has deteriorated to the point that it is inoperable.

⁵ Coastal last used the line in October 1997; Maxim last used the line in May 1997; and Terra has not had a shipment on the line since April 1996.

According to SEI, in 1997, the volume of traffic moving over the line dropped significantly,⁶ due to poor crops and increased competition from trucking. SEI states that it has no reasonable expectation of being able to recapture its former traffic, particularly in light of a rate increase by BNSF in 1998 for traffic moving to and from the line. SEI submits that, as a result of the rate increase, the traffic is not competitive with truck rates.⁷

In 1997, the last year in which it had traffic on the line, SEI states that it generated revenues of \$47,126 but incurred \$164,207 of avoidable costs resulting in an avoidable loss from operations of \$117,081. SEI also states that the line is in need of significant rehabilitation in order for safe operations to be restored.⁸ SEI estimates the cost of rehabilitating the line to FRA Class 1 safety standards to be \$848,300. It estimates the net liquidation value at \$608,142, which is comprised of a net salvage value of \$392,172 and a real estate value of the right-of-way of \$215,970. SEI calculates its annual opportunity cost of operating the line based on current values to be \$105,146.

Kenneth B. Cotton, owner of the Houston and Gulf Coast Railroad (H&GC), filed a comment on July 9, 1999. According to Mr. Cotton, H&GC operated over the line proposed to be abandoned, and BNSF has agreed to grant trackage rights to H&GC from Cane Junction to Bay City to interchange with UP. Mr. Cotton states that his shipper is Coastal, but that rising freight rates have made it uneconomical for the shipper to continue to ship grain by rail and for H&GC to stay in business. While no specific relief is requested, Mr. Cotton urges the Board to support the participation of members of minority groups in the rail transportation industry.⁹

⁶ The number of carloads was 79 in 1997, compared with 621 in 1996 and 177 in 1995. SEI attributes the surge in traffic in 1996 to a contaminated corn crop that could not be exported and, therefore, was shipped by rail, rather than transported to Houston by truck for export.

⁷ According to SEI, BNSF raised its rates because, in order to interchange traffic with SEI at Cane Junction, TX, BNSF must make a round-trip move over the 59-mile UP line between Alvin and Bay City, TX, and over BNSF's 15-mile line between Bay City and Cane Junction. One round trip to pick up SEI interchange traffic involves two crew changes for BNSF.

⁸ The line is currently classified as Federal Railroad Administration (FRA) excepted track.

⁹ Because the concerns raised by Mr. Cotton do not address the specifics of SEI's petition for exemption or the factors we must weigh in considering whether to grant the exemption, there is no remedy we can afford him in this case. Furthermore, there is no indication that H&GC is currently providing any service that would be affected by a grant of the petition for exemption in this proceeding. Nevertheless, we do take seriously any allegations of discrimination in the railroad industry. While there is nothing in this record to show that discrimination has occurred, and there is indeed evidence that the railroads have been working with Mr. Cotton to explore business opportunities for H&GC [see UP's report filed July 1, 1999, in Union Pacific Corp., et al.--Control and Merger--Southern Pacific Rail Corp., et al.--Oversight, STB Finance Docket No. 32760 (Sub-
(continued...)]

DISCUSSION AND CONCLUSIONS

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. is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. By abandoning the line, SEI will be able to avoid rehabilitation costs and further operating losses it has incurred by operating the line. In addition, SEI will be able to avoid the opportunity costs associated with maintaining a largely dormant line. An exemption, therefore, will foster sound economic conditions and encourage efficient management by relieving SEI 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 the abuse of market power because the three shippers on the line have not objected to the proposed transaction and appear to be using alternative motor carrier service. Nevertheless, to ensure that these shippers are informed of our decision, we will require SEI to serve a copy of this decision on them within 5 days of the service date 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.

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. However, we do not normally impose employee protective conditions when a carrier abandons 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 Wellsville, Addison & Galeton R. Corp.--Abandonment, 354 I.C.C. 744 (1978); and Northampton and Bath R. Co.--Abandonment, 354 I.C.C. 784 (1978) (Northampton). SEI proposes to abandon its entire line and go out of the railroad business. It does not appear to have any corporate affiliate or parent that could benefit from the proposed abandonment. And no one has attempted to show that the situation under Northampton exists for imposing labor protection in entire line abandonments. Under the circumstances, we will not impose labor protective conditions in this case.

⁹(...continued)

No. 21)], we admonish all participants in the rail transportation sector to ensure that no form of discrimination occurs in the railroad industry.

SEI has submitted an environmental report with its application 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 its data, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on June 11, 1999, and requested comments.

In the EA, SEA noted that the U.S. Army Corps of Engineers expressed a concern that an embankment on Panels 220 and 325 of the Flood Insurance Rate Maps for Wharton County may be impacted as a result of the proposed abandonment. Therefore, SEA recommends that a condition be imposed requiring SEI to consult with the Department of the Army to determine if any permits are necessary prior to salvage activities. SEA also has determined that the right-of-way may be suitable for other public use following abandonment.

No comments to the EA were filed by the July 13, 1999 due date. We will impose the condition recommended by SEA. Accordingly, 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. Although SEA has indicated that the right-of-way may be suitable for public use under 49 U.S.C. 10905, no one has sought a public use condition, and none will be imposed.¹⁰

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 SEI of the above-described line, subject to the condition that SEI shall consult with the Department of the Army to determine if any permits are necessary prior to any salvage activities.

2. SEI is directed to serve a copy of this decision on Coastal Warehouse, Maxim Production, and Terra Chemical within 5 days after the service date of this decision and to certify to the Board that it has done so.

3. An offer of financial assistance (OFA) under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by August 16, 1999, 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 the filing fee, which currently is set at \$1,000. See 49 CFR 1002.2(f)(25).

¹⁰ Public use requests were due no later than 20 days after publication of the notice of the petition in the Federal Register, or by May 24, 1999.

4. 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.”**

5. Provided no OFA has been received, this exemption will be effective September 5, 1999. Petitions to stay must be filed by August 23, 1999, and petitions to reopen must be filed by August 31, 1999.

6. Pursuant to the provisions of 49 CFR 1152.29(e)(2), SEI 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 SEI's filing of a notice of consummation by August 6, 2000, 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 no later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams
Secretary