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SERVICE DATE - SEPTEMBER 7, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-425 (Sub-No. 1X)

LONE STAR RAILROAD, INC.--ABANDONMENT EXEMPTION--
IN TAYLOR AND JONES COUNTIES, TX

STB Docket No. AB-426 (Sub-No. 1X)

SOUTHERN SWITCHING COMPANY--DISCONTINUANCE OF SERVICE EXEMPTION--
IN TAYLOR AND JONES COUNTIES, TX

Decided: September 3, 1999

By a joint petition filed on May 20, 1999,¹ Lone Star Railroad, Inc. (LSRI), and Southern Switching Company (SSC) (collectively, petitioners) seek exemptions under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 for LSRI to abandon, and SSC to discontinue service over, a 4.5-mile line of railroad, known as the North Abilene line, extending from milepost 147.3 at or near Abilene to milepost 142.8 at or near North Abilene, in Taylor and Jones Counties, TX (the line).² We will grant the exemption, subject to environmental and standard employee protective conditions.

¹ Notice of the filing was served and published in the Federal Register on June 9, 1999 (64 FR 31035).

² LSRI owns the line, and SSC operates it pursuant to a contract with LSRI. The line was part of a 143.3-mile line, from Howard, TX, to Abilene, that LSRI acquired from Burlington Northern Railroad Company and SSC was authorized to operate over, in Lone Star Railroad, Inc. and Southern Switching Company--Acquisition and Operation Exemption--Line of Burlington Northern Railroad Company, Finance Docket No. 32500 (ICC served May 27, 1994). In Lone Star Railroad, Inc.--Abandonment and Discontinuance of Trackage Rights--In Wichita, Archer, Baylor, Knox, Haskell and Jones Counties, TX, Docket No. AB-425 et al. (ICC served June 9, 1995), LSRI was authorized to abandon, and SSC was authorized to discontinue service over, 134.8 miles from Lanius, TX (petitioners note that the milepost designation was actually at North Abilene), to Howard. LSRI will continue to own and SSC will continue to operate 4 miles of rail line in Abilene, TX, between milepost 147.3 and milepost 151.3.

BACKGROUND

Petitioners state that the line was used in recent years to transport asphalt and gasoline for Pride Refining, Inc. (Pride), and methanol for Fraley Butane (Fraley). In 1997, SSC transported 548 carloads for Pride and 9 carloads for Fraley, but petitioners report that both Pride and Fraley discontinued use of the line in 1998. According to petitioners, there is no realistic prospect for rail traffic from any other shipper on the line. As indicated by letters attached to the petition, neither Pride nor Fraley opposes abandonment of the line because Pride is phasing out its refinery and Fraley has found a satisfactory alternative location for unloading its cars.

Petitioners state that without any new rail traffic there will be no sources of revenue to offset the significant expenses that would be incurred if the line were not abandoned and service discontinued. According to petitioners, if the line is not abandoned, LSRI would be required to spend approximately \$200,000 for rehabilitation of the four bridges on the line and approximately \$112,500 for rehabilitation of the track to comply with Federal Railroad Administration Class 1 safety standards. In addition, LSRI would incur an opportunity cost of at least \$36,643 per year if the rail line were not abandoned.³ There would be lesser but still significant operating losses resulting from SSC's need to continue to provide maintenance of the five public road crossings on the line.

In contrast, petitioners assert that abandonment and discontinuance of service would not be harmful to local interests as no current or prospective shipper would lose rail service. Petitioners state that rail service will continue to be provided by petitioners and by Union Pacific Railroad Company in Abilene. In fact, Fraley is currently using the alternative service provided by petitioners. Motor carrier service is also readily available in the area over U.S. Highway 83-277, a major north-south highway, and Interstate 20 to east-west points or to Mexico via El Paso, TX.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned or service discontinued 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 the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also foster sound

³ That cost is based on net salvage value for track materials only and does not include land value.

economic conditions and encourage efficient management by relieving LSRI of the costs of owning, and SSC of the costs of maintaining and operating, a line that is no longer used and by allowing LSRI to apply its assets more productively elsewhere on its system [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 no shippers currently use the line, the two former shippers no longer require rail service at this location and do not object to the proposed abandonment and discontinuance of service, and adequate transportation alternatives are available.⁴ Nevertheless, to ensure that the former shippers are informed of our decision, we will require petitioners to serve a copy of this decision on Pride and Fraley within 5 days of the service date and to certify to us that they have done so.

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 in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979).

Petitioners have submitted an environmental report with their petition and have 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 July 19, 1999.

In the EA, SEA indicated that the National Geodetic Survey (NGS) has identified three geodetic station markers (V 261, U 216, and T 261) that may be affected by the proposed abandonment. Therefore, SEA recommends that a condition be imposed requiring LSRI to consult with NGS at least 90 days prior to salvage activities in order to plan for the relocation of any marker that will be disturbed or destroyed by abandonment activities. SEA also indicated that the Texas Natural Resource Conservation Commission recommends, based on the Water Policy Division's review, that LSRI use the best management practices during and after any construction activities to preclude contamination of runoff which could affect surface and ground water quality. Therefore, SEA recommends the imposition of this condition as well.

No comments to the EA were filed by the August 18, 1999 due date. We will impose the recommended conditions and conclude that the proposed abandonment, if implemented as

⁴ Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

SEA has indicated in its EA that 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.⁵

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 and discontinuance of service by LSRI and SSC, respectively, of the above-described line, subject to the employee protective conditions set forth in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979), and the conditions that LSRI shall: (1) consult with NGS at least 90 days prior to salvage activities in order to plan for the relocation of any station marker that will be disturbed or destroyed by abandonment activities; and (2) use the best management practices during and after any construction activities to preclude contamination of runoff which could affect surface and ground water quality.

2. Petitioners are directed to serve a copy of this decision on Pride and Fraley within 5 days after the service date of this decision and 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 railroads and the Board by September 17, 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 a \$1,000 filing fee. See 49 CFR 1002.2(f)(25).

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 on October 7, 1999. Petitions to stay must be filed by September 22, 1999, and petitions to reopen must be filed by October 4, 1999.

6. Pursuant to the provisions of 49 CFR 1152.29(e)(2), LSRI 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 LSRI's filing of a notice of

⁵ Public use requests were due no later than 20 days after publication of the notice of the petition in the Federal Register, or by June 29, 1999.

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consummation by October 7, 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, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams
Secretary