

SERVICE DATE - DECEMBER 18, 1996

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-364 (Sub-No. 3X)

TEXAS NORTHEASTERN DIVISION, MID-MICHIGAN RAILROAD, INC.
--DISCONTINUANCE OF SERVICE EXEMPTION--
IN RED RIVER AND BOWIE COUNTIES, TX

STB Docket No. AB-3 (Sub-No. 137X)

MISSOURI PACIFIC RAILROAD COMPANY--ABANDONMENT EXEMPTION--
IN RED RIVER AND BOWIE COUNTIES, TX

Decided: December 4, 1996

By petition filed July 30, 1996, Texas Northeastern Division, Mid-Michigan Railroad, Inc. (TNER), and Missouri Pacific Railroad Company (MP) seek an exemption under 49 U.S.C. 10502 from the requirements of 49 U.S.C. 10903-05¹ for TNER to discontinue service over, and for MP to abandon, a railroad line extending from milepost 23.0 at New Boston, to the end of track at milepost 61.5 near Clarksville, in Red River and Bowie Counties, TX. The United Transportation Union requests the imposition of labor protective conditions. The City of DeKalb, TX (City) and Red River County Judge L.D. Williamson request a delay in any Board decision on this abandonment request. We will grant the exemption, subject to the standard labor protective conditions and an historic preservation condition.

BACKGROUND

Petitioners state that the railroad line proposed for abandonment and discontinuance of service is in poor condition because of deterioration of the cross ties and the condition of the track in road crossings. Rehabilitation of the track to FRA class 1 standards would cost at least \$475,000, according to TNER and MP.

Petitioners aver that there are only three active shippers on the line, and that the shippers have stated that they have no objection to the abandonment.² The petitioners state that they have sent copies of the petitions to all three shippers. None has filed in opposition to either the proposed discontinuance or abandonment.

Traffic on the line consisted of 56 carloads in 1995, and 10 carloads from January 1, 1996, through April 30, 1996. TNER and

¹ Petitioners request exemption from section 10903 through section 10905. They have not, however, supported an exemption from section 10904, which allows financially responsible persons to purchase or subsidize the line for continued rail service, or from section 10905, which provides an opportunity for sales for public purposes. Accordingly, we will limit our consideration here to the request for exemption from section 10903 only.

² The shippers are Annona Manufacturing at Annona, TX; Eubanks Agricultural at Annona; and We Pak at Clarksville.

MP argue that even if the line were rehabilitated, the traffic would not produce sufficient revenues to pay operating and maintenance costs and provide TNER with an adequate financial return. For that reason, TNER seeks an exemption to discontinue service. MP, lessor of the line, states that it has no interest in operating it, and desires to recover its investment in the track materials and property through abandonment.

The City requests a 2-year delay in the Board's decision to permit the construction of an environmentally friendly pulp mill adjacent to the line. According to the City, the ability to ship goods to and from the mill by rail is a crucial and necessary component for the success of the pulp mill. Judge Williamson is concerned about detrimental effects to Red River County stemming from abandonment of the line at this time.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned or service discontinued without prior approval. However, under 49 U.S.C. 10502, 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 filing an abandonment application, an exemption will expedite regulatory decisions and reduce regulatory barriers to exit [49 U.S.C. 10101(2) and (7)]. An exemption will also promote a safe and efficient rail transportation system, foster sound economic conditions, and encourage efficient management because MP will be able to reallocate the funds and materials needed to maintain and operate the line elsewhere on its rail system [49 U.S.C. 10101(3), (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. There are only three active shippers on the line, and they have not objected to the abandonment. Nevertheless, to ensure that they are informed of our decision, we will require petitioners to serve a copy of this decision on the shippers and other interested parties within 5 days of the decision's service date, and to certify to us that they have done so. Given our finding regarding the probable effect of our decision on market power, we need not determine whether the transaction is of limited scope.

We will not grant the requested 2-year delay of this abandonment. Mere speculation that traffic might materialize in the future does not justify forcing the railroad to continue to incur losses by operating this little-used rail line. Nor does it justify tying up assets that could be used more productively elsewhere.³ Should the City of DeKalb, the involved counties, or

³ See, e.g., Michigan Shore Railroad, Inc.--Abandonment Exemption--In Muskegon, Muskegon County, MI, STB Docket No. AB-
(continued...)

any area businesses wish to retain the line, they may acquire the line or subsidize its continued operation under the offer of financial assistance (OFA) procedures contained in 49 U.S.C. 10904.⁴

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of its obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, we will impose the labor protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979).

TNER and MP have submitted an environmental report with their petition and have notified the appropriate agencies of the opportunity to submit information concerning the energy and environmental impact of the proposed action. 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 issued an environmental assessment (EA) of the effects of the discontinuance and abandonment on September 30, 1996. In the EA, SEA noted that the Texas Historical Commission (SHPO) has identified the bridges at mileposts 58.4 and 60.4 as eligible for listing in the National Register of Historic Places. According to SEA, the SHPO has requested copies of any extant drawings of these bridges and has indicated that buried cultural materials may be present in the project area. The SHPO has added that, if such materials are encountered during construction or disturbance activities, work should cease in the immediate area. Accordingly, SEA has recommended that a condition be placed on any decision granting abandonment authority requiring the railroad to retain its interest in and take no steps to alter the historic integrity of all sites or structures on the line, including the bridges at mileposts 58.4 and 60.4, until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f. Based on SEA's recommendation, and subject to the recommended condition, we conclude that the proposed abandonment, if implemented, will not affect

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361 (Sub-No. 2X) (STB served Oct. 8, 1996) CSX Transportation, Inc. v. Surface Transportation Board, No. 95-1513 (D.C. Cir. Oct. 11, 1996).

⁴ See Exempt. of Rail Abandonment--Offers of Finan. Assist., 4 I.C.C.2d 164 (1987) for current regulations. We note that the ICC Termination Act of 1995 has made changes and additions to the previous law regarding the processing of abandonments and OFAs. To implement these changes, we have issued a notice of proposed rulemaking in Abandonment and Discontinuance of Rail Lines and Rail Transportation under 49 U.S.C. 10903, STB Ex Parte No. 537 (STB served Mar. 15, 1996). We have received comments from the public on our proposed rules and are in the process of adopting final rules, which we expect to issue shortly. Until final rules are adopted and become effective, however, the current regulations will apply if there is an OFA. See Consolidated Rail Corporation--Abandonment Exemption--in Hudson County, NJ, STB Docket No. AB-167 (Sub-No. 1158X) (STB served July 25, 1996).

significantly either the quality of the human environment or the conservation of energy resources.

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 of, and discontinuance of service over, the above-described 38.5-mile 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 MP shall retain its interest in and take no steps to alter the historic integrity of all sites or structures on the line, including the bridges at mileposts 58.4 and 60.4, 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 on December 18, 1996.

3. Petitioners must serve a copy of this decision on the City of DeKalb, TX, Annona Manufacturing, Eubanks Agricultural, We Pak, and Judge L.D. Williamson within 5 days of the decision's service date, and certify to the Board that they have done so.

4. Provided no formal expression of intent to file an OFA has been received, the exemption will be effective on January 17, 1997.

5. Formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2)⁵ and requests for a notice of interim trail use/rail banking under 49 CFR 1152.29 must be filed by December 30, 1996; petitions to stay must be filed by January 2, 1997; requests for a public use condition must be filed by January 7, 1997; and petitions to reopen must be filed by January 13, 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)(ii)(C) and (D). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(2).

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, Vice Chairman Simmons, and Commissioner Owen.

⁵ See Exempt. of Rail Abandonment--Offers of Finan. Assist., 4 I.C.C.2d 164 (1987). Also, see footnote 4.

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Vernon A. Williams
Secretary