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SERVICE DATE - MAY 17, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33709

LAMOILLE VALLEY RAILROAD COMPANY, INC.--MODIFIED  
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

Decided: May 12, 1999

On January 22, 1999, Lamoille Valley Railroad Company, Inc. (LVRC) filed a notice for a modified certificate of public convenience and necessity under 49 CFR 1150, Subpart C, Modified Certificate of Public Convenience and Necessity, to operate over approximately 95 miles of rail line between milepost 95.324 in Swanton, VT, and milepost 0.058 in St. Johnsbury, VT, in Caledonia, Washington, Lamoille, and Franklin Counties, VT. In the same filing, LVRC also provided notice of termination of service over the line.

PRIOR DECISION

By a decision served February 10, 1999, the Director of the Board's Office of Proceedings rejected the notice because LVRC did not propose service as contemplated by the governing rules. The notice indicated that LVRC is now the leaseholder and operator of a line owned by the State of Vermont. The notice added that LVRC and the State have entered into an agreement under which the railroad will surrender its leasehold of the line.

The Director concluded that LVRC could not obtain a modified certificate as an operator because LVRC did not intend to conduct any operations. He also found that there has been no request for service for many years, and LVRC does not seek to continue an existing service.

APPEAL

On February 22, 1999, Vermont filed a request for leave to intervene and filed an appeal of the Director's decision.<sup>1</sup> Also on February 22, John K. Dunleavy, an Assistant Attorney General for Vermont, filed a verified statement on behalf of the Vermont Agency of Transportation (VAOT). Inasmuch as the subject line is a State-owned railroad property administered by VAOT, and the State thus clearly has a legitimate interest in this proceeding, we will grant the intervention request. We will consider the pleadings jointly and refer to the parties collectively as Vermont or Appellant.

Vermont indicates that LVRC has been the lessee of the subject line, and that it has held a certificate of public convenience and necessity enabling it to operate over the line since January

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<sup>1</sup> The State's pleading is styled "Motion to Intervene and Motion to Reconsider."

1978. However, Appellant states, the line has not been operated for several years, and Vermont and LVRC now have reached an agreement on winding up LVRC's tenancy. The obstacle to full implementation of the agreement, the State avers, is LVRC's need to be relieved of its Federal common carrier responsibility. Appellant claims that LVRC is a moribund carrier incapable of the organizational effort and legal expense necessary to file a conventional application for discontinuance authority or even to invoke the Board's class exemption. The State does not want to assume the burden of proceeding under the Board's adverse discontinuance procedures in order to regain control of its property.

Vermont asks the Board to allow LVRC to convert its certificate of public convenience and necessity into a modified rail certificate and to then accept LVRC's notice of termination of service over most of the line. Appellant argues that LVRC would have qualified for the modified certificate procedure had that procedure been available when the railroad commenced operations in 1978. The State emphasizes that the modified certificate procedure was intended to facilitate both start-ups and terminations of operations. The State argues that there does not appear to be any statutory, regulatory, or policy obstacle to the Board's allowing the proposed conversion.

#### DISCUSSION AND CONCLUSIONS

The appeal will be denied. Although we construe our rules liberally to secure just, speedy, and inexpensive determination of the issues presented (49 CFR 1100.3), we cannot accede to the misuse of our procedures advocated here. As the Director stated, the purpose of the modified certification procedure is to reduce regulatory barriers so as to encourage the continuation of rail service that might otherwise be ended. LVRC and the State propose to use the procedure as a stepping stone to the immediate discontinuance of a service that long has been authorized under a certificate of public convenience and necessity. This cannot be permitted. The State's argument that the modified certificate regulations apply to the termination as well as the inception of operations overlooks the fact that the termination procedures at 49 CFR 1150.24 apply only to already existing modified certificates issued under those regulations.

There are various appropriate avenues available for achieving the end that the State and the railroad desire. The railroad can file a notice of exemption under the 2 year out-of-service procedures at 49 CFR 1152.50. The procedures are simple, inexpensive, and certainly less onerous than the unorthodox procedure the parties have chosen to pursue.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The State of Vermont is granted leave to intervene and participate in this proceeding.
2. The appeal is denied.
3. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary