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SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-57 (Sub-No. 46X)

SOO LINE RAILROAD COMPANY--ABANDONMENT EXEMPTION--IN ST. PAUL,
RAMSEY COUNTY, MN

Decided: April 19, 1999

By petition filed on December 31, 1998,¹ Soo Line Railroad Company, doing business as Canadian Pacific Railway (Soo), seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a line of railroad known as the St. Paul Terminal Trackage, extending from milepost 17.29± (southeast of Jackson Street) to the end of the line at milepost 18.19± (near I-35E North), a distance of .90± miles, in Ramsey County, MN. The United Transportation Union requests imposition of labor protective conditions. Comments in opposition to the petition were filed by Ramsey County Board of Commissioners (RCBC) and Tilsner Carton Company (Tilsner). We will grant the exemption, subject to an environmental condition and standard employee protective conditions.

BACKGROUND

The rail line proposed for abandonment is the stub-end of a line that once served the former East 7th Street freight house in St. Paul, MN. In 1978, the line segment extending south from the end of this line was approved for abandonment in Soo Line Railroad Company Abandonment at St. Paul in Ramsey County, MN, Docket No. AB-57 (Sub-No. 8F) (ICC served June 30, 1978). Soo seeks to abandon the stub-end because in its view the line is no longer viable.

Only one shipper, Tilsner, is located on the line. Soo states that Tilsner primarily ships by truck and is not and has not been a regular user of the line. According to Soo, on August 19, 1998, Tilsner used the line to ship one carload, but prior to that time, it had been more than 2 years since Tilsner had used the line.² Soo asserts that there is insufficient traffic from Tilsner to justify continued service to its facility. Because it is stub-ended, there is no overhead traffic on the line.

¹ Notice was served and published in the Federal Register on January 20, 1999 (64 FR 3150).

² In its petition for exemption, Soo states that one carload was tendered after it filed environmental and historic reports in connection with this abandonment, which Soo originally intended to process under the 2-year out-of-service notice provisions of 49 CFR 1152.50. Tilsner counters in its protest that it tendered two shipments for rail service within the past year.

Soo submits that, in the base year (September 1, 1997, through August 31, 1998), the line generated revenues of only \$300 and total avoidable costs of \$5,326. Soo estimates that the net liquidation value of the line is \$528,460, which includes a land value of \$525,000.³ Soo calculates that it incurs an opportunity cost of \$54,471 per year to keep the line in service.

Tilsner, a manufacturer of corrugated boxes and cartons, is located at the south end of the line proposed for abandonment. Tilsner states that it is planning a major expansion of its plant, which will include the acquisition of a corrugator machine that will enable Tilsner to produce the liner board used in the manufacture of its boxes and cartons. Tilsner asserts that this will double the capacity of its plant and will create significant additional volumes of inbound rail freight as well as increase the outbound shipments by rail of finished boxes and cartons. Tilsner estimates that as many as 50 carloads per month of pulp board will be needed to support the corrugator, and that if rail service is not available it may have to relocate its facility. It argues that retaining the line constitutes a minimal burden on Soo and that Soo has made no effort to market its rail service even after being advised of Tilsner's expansion plans.

Tilsner also argues that Soo made an implied promise to continue rail service when it sold Tilsner land and spur track that serves its loading docks.⁴ According to Tilsner, the Track Agreement, that it entered into with Soo regarding the spur track, prohibits the proposed abandonment of the connecting Soo line.⁵

RCBC also opposes the abandonment because it is concerned about the effect on Tilsner and on Ramsey County. According to RCBC, Tilsner has undergone a multi-million dollar expansion within the past 6 years and is planning future expansion of its site. RCBC asserts that the residential neighborhood as well as the business community believe that Tilsner provides an enormous asset to the area and that the lack of rail service may impair Tilsner's expansion and its viability to continue in its current location. RCBC also asserts that the proposed abandonment will affect the future of light rail and/or commuter services, and possible trail use. It does not want to be precluded from possible use of the right-of-way for a trail and light rail and/or commuter service, but the County is

³ Soo states that it has pending a sale of the right-of-way for \$525,000.

⁴ Tilsner states that the land which it purchased from Soo on January 15, 1993, for \$100,000, consists of several hundred feet of right-of-way adjacent to Tilsner's plant, that arguably is part of the right-of-way of the line proposed for abandonment. After learning that Soo intended to remove the track on the land that it was purchasing, Tilsner also purchased the track for \$2,000 to keep it in place and retain railroad access to its plant.

⁵ Tilsner apparently views the Track Agreement, dated March 30, 1993, as a commitment by Soo to keep Tilsner's spur track connected to Soo's system and to provide Tilsner with common carrier rail service indefinitely.

not in a position at this time to determine if this property may be used for these purposes because the routes have not yet been chosen and funding has not been secured.⁶

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. 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 economic conditions and encourage efficient management by permitting Soo to abandon the line and use 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 proposed transaction is not necessary to protect shippers from the abuse of market power because the sole shipper on the line has made minimal use of it. Although Tilsner desires to retain the line in order to have rail service available once its plant expansion is completed, it has not specified how long that will take. Nor has it indicated how much of this future traffic will in fact be tendered to Soo and how much might move by motor carriers. Mere speculation about future traffic is not a sound basis upon which to deny an abandonment exemption. See Burlington Northern Railroad Company--Abandonment Exemption--Between Mesa and Basin City, in Franklin County, WA, Docket No. AB-6 (Sub-No. 370X), slip op. at 4 (STB served Jan. 27, 1997). The Track Agreement, cited by Tilsner as another reason for denying the abandonment, sets forth the rights and obligations of Tilsner and Soo with respect to the spur track that it purchased in 1993,⁷ but that transaction does not bind Soo to operate a line of railroad in interstate commerce indefinitely, if we find its operation is no longer required under the criteria of 49 U.S.C. 10502. RCBC's concern about ensuring Tilsner's continued presence in Ramsey County, while understandable, does not outweigh the demonstrated harm to Soo which would result from continued operation of this uneconomical line. To ensure that Tilsner and RCBC are informed of

⁶ RCBC also states that the Minnesota Department of Natural Resources (DNR) may be interested in purchasing or using part of the right-of-way in conjunction with the Munger Trail. According to RCBC, the Tri-Area Block Club is currently submitting a Metro Greenways Site nomination proposal to DNR requesting that it purchase part of this right-of-way for trail use and environmental learning experiences.

⁷ Under 49 U.S.C. 10906, the Board does not have authority over construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks.

our action, we will require Soo to serve a copy of this decision on them 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.

We note that 49 U.S.C. 10904 provides a mechanism for those who want to continue rail service that the Board has authorized to be discontinued or abandoned. Under section 10904, any financially responsible person (and all government agencies are deemed to be financially responsible) may file an offer of financial assistance (OFA). Should Ramsey County, Tilsner, or any area businesses wish to retain the line, they may acquire the line or subsidize its continued operation under the OFA procedures contained in 49 U.S.C. 10904 and 49 CFR 1152.27. Also, late-filed trail use requests under 49 CFR 1152.29 will be accepted so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement. As an alternative to interim trail use, the right-of-way may be acquired for public use as a trail under the public use provisions. See Rail Abandonments--Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 609 (1986). Should any interested person wish to file a request for a public use condition, the request must comply with the requirements at 49 CFR 1152.28.

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).

Soo has submitted an environmental report with its petition 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 the data it contains, analyzed the probable effects of the proposed action on the quality of the human environment, and served an environmental assessment (EA) on March 2, 1999. In the EA, SEA indicated that: (1) the Minnesota Historical Society (the SHPO) indicates that the area of the proposed abandonment includes Westminster Junction, which meets the criteria of the National Register of Historic Places and that SHPO may need additional information to complete its evaluation of the potential impact of the abandonment on historic resources; and (2) that the National Geodetic Survey (NGS) has identified two geodetic station markers along the rail line that may be affected by the proposed abandonment and requests 90 days' notice to plan relocation of any markers which may be disturbed or destroyed. In the EA, SEA recommended that we impose conditions requiring Soo to: (1) retain its interest in and take no steps to alter any sites and structures on the line that are 50 years old or older, including Westminster Junction, until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f ; and (2) consult with NGS and provide it with 90 days' notice prior to engaging in any activities that would disturb or destroy any geodetic markers identified on the line.

Comments to the EA were due April 1, 1999. The SHPO has advised SEA that the proposed abandonment will not have any physical or rail traffic effects on the Westminster Junction area. SEA states that this completes the section 106 process and recommends that the historic preservation condition previously recommended in the EA not be imposed. In addition, a comment was received from the U.S. Environmental Protection Agency (EPA) encouraging continued consultation with NGS regarding the geodetic markers identified on the line.⁸ Accordingly, as to the environment, we will only impose the condition that Soo consult with NGS and provide it with 90 days' notice prior to engaging in any activities that would disturb or destroy any geodetic markers identified on the line. 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.

SEA states that, following the line's abandonment, the right-of-way may be suitable for other public use under 49 U.S.C. 10905. However, no one sought a public use condition and none will be imposed.⁹

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 Soo of the above-described line, subject to the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979), and the condition that Soo consult with NGS and provide it with 90 days' notice prior to engaging in any activities that would disturb or destroy any geodetic markers identified on the line.

2. Soo is directed to serve a copy of this decision on Tilsner and RCBC within 5 days after the service date of this decision and to certify to the Board that it has done so.

3. An OFA under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by April 30, 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).

⁸ EPA's comment also concerned the historical integrity of Westminster Junction. However, as we have already indicated, the SHPO has notified SEA that the proposed abandonment will not have any effect on the Westminster Junction area.

⁹ A comment in response to the EA was also filed by the Tri-Area Block Club, pertaining to the possible use of the right-of-way in conjunction with DNR's Metro Greenways Project. The comment does not include a request for a public use condition or otherwise address the criteria of 49 U.S.C. 10905.

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 May 20, 1999. Petitions to stay must be filed by May 5, 1999, and petitions to reopen must be filed by May 17, 1999.

6. Pursuant to the provisions of 49 CFR 1152.29(e)(2), Soo shall file 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 Soo's filing of a notice of consummation by April 20, 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