

SERVICE DATE – APRIL 25, 2007

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-1000X

GEORGIA SOUTHWESTERN RAILROAD, INC.–ABANDONMENT EXEMPTION–  
IN BARBOUR COUNTY, AL

Decided: April 23, 2007

By petition filed on January 5, 2007, Georgia Southwestern Railroad, Inc. (GSWR) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a 4.54-mile line of railroad extending from milepost H-334.46, at Eufaula, to milepost H-339.00, near Eufaula, in Barbour, AL. GSWR also seeks to be exempted from the offer of financial assistance (OFA) provisions of 49 U.S.C. 10904 and the public use provisions of 49 U.S.C. 10905. Notice of the filing was served and published in the Federal Register on January 25, 2007 (72 FR 12962). On March 27, 2007, the City of Eufaula (City) late-filed a request for issuance of a notice of interim trail use (NITU). We will grant the petition for exemption, subject to trail use, environmental, and standard employee protective conditions.

BACKGROUND

GSWR and its predecessors leased the line from the Central of Georgia Railroad Company (CGA), along with other rail lines, since 1988. GSWR recently acquired the line from CGA as part of a much larger transaction.<sup>1</sup>

GSWR states that no local traffic has moved over the line since at least 1999. GSWR also states that the line to be abandoned is stub-ended, and is not capable of handling overhead traffic. According to GSWR, its prior owners and managers have removed rail and other track materials (OTM) on the line over the years to replace worn rail and OTM on other parts of the railroad, with most of the rail and OTM on the line having been removed by 1999. Because there have been no operations and maintenance on the line in over 7 years, the only costs currently associated with the line are property taxes and certain minor administration costs. GSWR asserts that the line would require substantial rehabilitation if rail operations were to resume. GSWR estimates that it would cost approximately \$4 million to restart operations on the line and adds that there are approximately 70 acres associated with the line, which have a value

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<sup>1</sup> See Georgia Southwestern Railroad, Inc.–Acquisition Exemption–The South Western Rail Road Company and Central of Georgia Railroad Company, STB Finance Docket No. 34949 (STB served Nov. 22, 2006).

of approximately \$245,000. GSWR calculates that, based on its current operating ratio and the railroad industry's current after-tax cost of capital, the line would need to generate over \$2.5 million in gross revenues in order for it to earn a fair return on its investment in the rehabilitated line.

GSWR asserts that the City of Eufaula (the City) has been interested in rail-banking the line for years and has been waiting for GSWR's acquisition of the line to be consummated. GSWR states that the City has received a Federal grant to construct a trail along the corridor of the line but that the grant money for the project is about to expire. GSWR states that, as the new owner of the line, it is seeking to expeditiously abandon this unneeded rail line to accommodate the City, including seeking exemption from the OFA and public use provisions.

### 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 also will foster sound economic conditions and encourage efficient management by allowing GSWR to avoid the significant rehabilitation and maintenance costs necessary to reactivate the line and the ownership costs associated with retaining a line that has been dormant for over 7 years [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be adversely affected.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power. No traffic has moved over the line in more than 7 years, and there are no shippers remaining on the line. Given our market power finding, we need not determine whether the proposed abandonment 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. Accordingly, as a condition to granting this exemption, we will impose the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

GSWR has submitted an environmental and historic 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 action. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified the data it contains, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on

March 6, 2007, requesting comments by April 6, 2007. In the EA, SEA recommended that three conditions be imposed on any decision granting abandonment authority.

In the EA, SEA states that, in a letter dated December 5, 2006, Ms. Laura Ming of the Alabama Department of Environmental Management (ADOEM), has indicated that the proposed salvage activities would require a National Pollutant Discharge Elimination System (NPDES) permit. Therefore, SEA recommends that a condition be imposed requiring that GSWR consult with ADOEM regarding the need to secure an NPDES permit prior to the initiation of any salvage activities and comply with reasonable NPDES requirements.

SEA notes that, in a letter dated December 13, 2006, the Alabama Historical Commission (State Historic Preservation Office or SHPO) has submitted comments in response to the historic report. Based on the available information, the SHPO indicates that no historic properties listed in or eligible for inclusion in the National Register of Historic Places (National Register) would be affected within the right-of-way, which has been identified for the historic review as the "Area of Potential Effect" of the proposed abandonment. The SHPO further states that, should artifacts or archaeological features be encountered during salvage activities, GSWR must cease all salvage work and contact the SHPO's office immediately. Therefore, SEA recommends that, if any unanticipated archaeological sites, human remains, funerary items or associated artifacts are discovered during GSWR's salvage activities, GSWR be required to immediately cease all work and notify SEA, the SHPO, and interested Federally recognized tribes, and then SEA shall consult with them to determine appropriate mitigation measures, as necessary.

Finally, SEA states that, in an e-mail dated February 6, 2007, Mr. Simon Monroe of the U.S. Department of Commerce, National Geodetic Survey (NGS), has indicated that seven geodetic station markers may be located in the area of the proposed abandonment. Therefore, SEA recommends that GSWR be required to notify NGS at least 90 days prior to beginning salvage activities in order to plan for the possible relocation of the seven geodetic station markers by NGS.

No comments to the EA have been submitted. Therefore, we will impose the environmental conditions recommended by SEA in the EA. Based on SEA's recommendations, 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.

As previously noted, on March 27, 2007, the City late-filed a request for the issuance of a NITU under the National Trails System Act, 16 U.S.C. 1247(d) and 49 CFR 1152.29. The January 25, 2007 notice provided that any request for trail use/rail banking under 49 CFR 1152.29 was due by February 14, 2007. In revising its abandonment rules in Aban. and Discon. of R. Lines and Transp. Under 49 U.S.C. 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997), the Board retained the policy of accepting filings after the due date when good cause is shown. Because there is no indication that the City's late-filed request will prejudice any party, we find that good cause has been shown. The City's request will therefore be accepted.

The City has submitted a statement of willingness to assume financial responsibility for the right-of-way (ROW), and has acknowledged that the use of the ROW is subject to possible future reconstruction and reactivation of the ROW for rail service, as required under 49 CFR 1152.29. Also by letter filed on March 27, 2007, GSWR states that it is willing to negotiate with the City for interim trail use. Because the City's request complies with the requirements of 49 CFR 1152.29 and GSWR is willing to enter into trail use negotiations, we will issue a NITU authorizing the parties to negotiate an agreement for interim trail use/rail banking during the 180-day period prescribed below. If the parties reach an agreement, no further Board action is necessary. If no agreement is reached within 180 days, GSWR may fully abandon the line, provided that the conditions imposed below are met. See 49 CFR 1152.29(d)(1). Use of the ROW for trail purposes is subject to restoration for railroad purposes.

Also as previously noted, GSWR has requested that the abandonment be exempted from the OFA provisions of 49 U.S.C. 10904, and the public use provisions of 49 U.S.C. 10905. We have granted exemptions from these provisions from time to time, when the right-of-way is needed for a valid public purpose and there is no overriding public need for continued rail service.<sup>2</sup> Here, GSWR has established a valid public purpose of accommodating the City's need to expeditiously apply a grant to create a trail on this line before the grant expires. Additionally, no shippers have used the line for over 7 years and there is no current demand for continued rail service. Accordingly, we will exempt the proposed abandonment from the OFA and public use requirements of 49 U.S.C. 10904-05.

The evidence of record establishes that the proposed exemption from 49 U.S.C. 10904-05 meets the criteria of 49 U.S.C. 10502. Applying OFA or public use provisions in this instance is not necessary to carry out the rail transportation policy. Allowing the abandonment exemption to become effective expeditiously, without first being subject to these provisions, will minimize the need for Federal regulatory control over the rail transportation system, expedite the regulatory decision, and reduce regulatory barriers to exit [49 U.S.C. 10101(2) and (7)]. And it has already been determined that regulation is not necessary to protect shippers from an abuse of market power.

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

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903-05 the abandonment by GSWR 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 subject to the conditions that GSWR shall: (1) comply with the terms and conditions for implementing interim trail use/rail banking, as set forth below; (2) prior to the commencement of any salvage activities, consult with ADOEM to ensure appropriate

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<sup>2</sup> See, e.g., Norfolk Southern Railway Company–Abandonment Exemption–In Washington County, NC, STB Docket No. AB-290 (Sub-No. 248X) (STB served July 26, 2004), and cases cited therein.

consideration of NPDES requirements and comply with reasonable NPDES requirements; (3) in the event any unanticipated archaeological sites, human remains, funerary items or associated artifacts are discovered during GSWR's salvage activities, immediately cease all work and notify SEA, the SHPO, and interested Federally recognized tribes, and then SEA shall consult with them to determine appropriate mitigation measures, as necessary; and (4) notify NGS at least 90 days prior to beginning salvage activities in order to plan for the possible relocation of the seven geodetic station markers by NGS.

2. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the ROW.

3. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the ROW.

4. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

5. If an agreement for interim trail use/rail banking is reached by October 22, 2007, interim trail use may be implemented. If no agreement is reached by that time, GSWR may fully abandon the line, provided the conditions imposed above are met.

6. This exemption will be effective on May 25, 2007. Petitions to stay must be filed by May 7, 2007, and petitions to reopen must be filed by May 15, 2007.

7. Pursuant to the provisions of 49 CFR 1152.29(e)(2). GSWR 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 GSWR's filing of a notice of consummation by April 25, 2008, 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 Nottingham, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams  
Secretary