

28836
EB

SERVICE DATE - APRIL 1, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-312 (Sub-No. 2X)

SOUTH CAROLINA CENTRAL RAILROAD COMPANY, INC., D/B/A CAROLINA
PIEDMONT DIVISION--ABANDONMENT EXEMPTION--IN GREENVILLE COUNTY, SC

Decided: March 30, 1998

By petition filed December 12, 1997,¹ South Carolina Central Railroad Company, Inc., d/b/a Carolina Piedmont Division (CPDR), seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon two segments of its line of railroad extending from: (1) milepost AJK 585.34, in East Greenville, SC, to milepost AJK 588.63 in Greenville, SC; and (2) milepost 0.0 to milepost 2.0 in Greenville, a total distance of 5.29 miles, in Greenville County, SC. We will grant the exemption, subject to environmental and standard employee protective conditions.

BACKGROUND

In April 1997, CPDR purchased the northern segment of the line (between milepost 0.0 and milepost 2.0) as part of an 11.8-mile line acquisition from the Greenville & Northern Railway (G&NR). According to CPDR, there are no rail shippers located on the northern segment of the line and no train has operated on this segment since 1993 because one of the bridges partially washed out and the line is in extremely poor condition. CPDR states that, prior to 1993, the northern segment was used by G&NR solely for movements of rail equipment to and from repair and storage facilities near milepost 0.0.

In 1990, CPDR purchased the southern segment of the line (between milepost AJK 585.34 and milepost AJK 588.63) from CSX Transportation, Inc. According to CPDR, Boral Brick Company (BBC) is the only active shipper located on the southern segment, and the only traffic moving over this segment during the past several years has been inbound shipments of brick.² CPDR states that alternative transportation is available to BBC over the extensive highway network in the area. CPDR asserts that BBC has been using motor carriers to meet more than 95% of its shipping needs and uses rail only as a last resort.

CPDR states that the southern segment of the line is constructed predominantly of 80 and 85

¹ Notice of the filing was served and published in the Federal Register on December 31, 1997 (62 FR 68352).

² CPDR indicates that BBC received 50 carloads in 1992, 65 carloads in 1993, 65 carloads in 1994, 34 carloads in 1995, 37 carloads in 1996, and 60 carloads in 1997 (through November).

pound rail, rolled between 1910 and 1925, and that the track is in fair condition. In order to continue operating over this segment, however, CPDR submits that an average of 500 ties per mile would need to be replaced and washouts would need to be repaired.

CPDR also provided rehabilitation figures estimating what it would cost to restore the entire line to Federal Railroad Administration (FRA) class 1 standards. According to CPDR, significant work is required on one bridge, about 30% of the ties need to be replaced, additional ballast is required, and nearly 3.2 miles of track will have to be resurfaced. The estimated cost of rehabilitating both the northern and southern segments of the line to FRA class 1 standards is \$128,500.

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 relieving CPDR from the costs of rehabilitating and maintaining the line, and by allowing CPDR to 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 transaction is not necessary to protect shippers from the abuse of market power because there are no shippers on the northern segment of the line and the sole shipper on the southern segment of the line apparently is already using motor carriers to meet the majority of its transportation needs.³ Nevertheless, to ensure that the shipper is informed of our action, we will require CPDR to serve a copy of this decision on BBC within 5 days of the service date of this decision and certify to us that it has 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).

³ Given our market power finding, we need not determine whether the proposed abandonment is limited in scope.

CPDR 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 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, and served an environmental assessment (EA) on February 10, 1998. In the EA, SEA indicated that the U.S. Department of Commerce, National Geodetic Survey (NGS), has identified two geodetic station markers that could be affected by the proposed abandonment. Therefore, SEA recommends that a condition be imposed requiring CPDR to consult with NGS and provide it with 90 days' notice prior to disturbing or destroying any geodetic marker.

No comments to the EA were filed by the March 12, 1998 due date. Based on SEA's recommendations, we conclude that the proposed abandonment, 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. We note that no one has sought a public use condition, and none will be imposed.

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 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 CPDR shall consult with the NGS and provide it with 90 days' notice prior to disturbing or destroying any geodetic marker.

2. CPDR must serve a copy of this decision on BBC 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)⁴ to allow rail service to continue must be received by the railroad and the Board by April 10, 1998, 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**

⁴ See Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903, STB Ex Parte No. 537 (STB served Dec. 24, 1996, and June 27, 1997).

of Proceedings, AB-OFA.”

5. Provided no OFA has been received, this exemption will be effective on May 1, 1998. Petitions to stay must be filed by April 16, 1998, and petitions to reopen must be filed by April 26, 1998.

6. Pursuant to the provisions of 49 CFR 1152.29(e)(2), CPDR 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 CPDR's filing of a notice of consummation by April 1, 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 and Vice Chairman Owen.

Vernon A. Williams
Secretary