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SERVICE DATE – JANUARY 13, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-842X

ALMONO LP–ABANDONMENT EXEMPTION–IN ALLEGHENY COUNTY, PA

Decided: January 12, 2003

By petition filed on September 25, 2003, Almono LP (Almono) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon its entire line of railroad extending between the plant of shipper MetalTech on the north side of the Monongahela River and an interchange point with CSX Transportation, Inc. (CSXT) north of CSXT's Glenwood Yard in Hazelwood, Allegheny County, PA, a distance of approximately 2 miles (the line). Notice of the filing of the petition for exemption was served and published in the Federal Register on October 15, 2003 (68 FR 59443). Almono also seeks exemption from the offer of financial assistance (OFA) procedures of 49 U.S.C. 10904 and the public use provisions of 49 U.S.C. 10905. On January 9, 2004, the Allegheny Valley Railroad Company (AVR) filed with the Board a copy of a letter it was sending to counsel for Almono expressing an intent to file an offer of financial assistance. On January 12, 2004, AVR filed a motion for leave to intervene in this proceeding for the purpose of opposing the proposed exemption from the OFA provisions of section 10904. On January 12, 2004, Almono responded to AVR's objection to the Board's granting an exemption from the requirements of section 10904, and reiterated its request that the Board relieve Almono from those requirements. AVR's motion for leave to intervene will be granted. The Board will grant the exemptions from 49 U.S.C. 10903 and 49 U.S.C. 10905, subject to environmental and historic preservation conditions, but will deny the request for an exemption from 49 U.S.C. 10904.

BACKGROUND

Almono is a Pennsylvania limited partnership. Its general partner (Almono, LLC), the sole member of Almono's general partnership (RIDC Southwestern Pennsylvania Growth Fund), and Almono's limited partners do not have any affiliation with other common carrier railroads. Almono acquired the line from Monongahela Connecting Railroad Company (Mon Con) in Almono LP–Acquisition and Operation Exemption–Line of Monongahela Connecting Railroad Company, STB Finance Docket No. 34250 (STB served Oct. 2, 2002) (October 2002 decision). In that proceeding, Almono stated that Mon Con was a wholly owned subsidiary of LTV Steel Corporation (LTV), which was in bankruptcy and was liquidating its assets, and that Almono acquired Mon Con's assets as well as adjoining LTV property with court approval. Also, Almono informed the Board that it intended to seek abandonment of the acquired line shortly after consummation of the transaction. The Board in turn noted that if Almono elected to file for abandonment authority, it would have to submit evidence

showing that abandonment of the line is warranted and that the interests of MetalTech would be protected. See October 2002 decision, slip op. at 1 n.2.

If the abandonment petition for exemption is granted, Almono states that it intends to operate the line as a private spur, rather than a common carrier line, consistent with Consolidated Rail Corp.–Petition for Declaratory Order, 1 I.C.C.2d 284 (1984). According to Almono, this arrangement will enable it to proceed with the redevelopment of the right-of-way and adjoining property and enable the shippers to continue to receive service, while avoiding the regulatory costs associated with common carrier service. Eventually, Almono may salvage the line and develop the right-of-way for commercial, retail, and residential use. However, it will not complete such renovations for several years and will continue to operate the line as a private spur with shippers receiving service at current levels.

The current shippers located on the line are: MetalTech, a manufacturer of galvanized steel coils; and Hantz Locomotive Repair (Hantz), a locomotive repair business. MetalTech shipped 559 carloads in 2000, 667 carloads in 2001, and projected shipments of 685 carloads in 2002. According to Almono, Hantz' traffic is extremely sporadic as it works on no more than one or two locomotives at a time. Almono also contends that MetalTech ships the vast bulk of its output by truck, and that Hantz' operations could be shifted to other railroad-served locations. Almono states that the line will require rehabilitation costs of \$300,000 but contends that such costs would increase significantly if the parties were to incur "common carriage regulatory overhead requirements." Almono notes that its customers have been apprised of the filing and includes declarations from MetalTech and Hantz stipulating that they support the proposed abandonment.

## DISCUSSION AND CONCLUSIONS

Abandonment exemption. Under 49 U.S.C. 10903, a rail line may not be abandoned without the Board's prior approval. Under 49 U.S.C. 10502, however, the Board must exempt a transaction or service from regulation when it finds 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 [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 an abuse of market power. In accordance with the October 2002 decision, Almono has submitted statements from

the shippers indicating that their interests are being protected. Nevertheless, to ensure that MetalTech and Hantz are informed of the Board's action, Almono will be required to serve a copy of this decision on these shippers within 5 days of the service date and certify to the Board that it has done so. In light of the market power finding, the Board need not determine whether the proposed abandonment is limited in scope.

Other Exemptions. Almono requests that the Board exempt the proposed transaction from the OFA procedures of 49 U.S.C. 10904 and the public use provisions of 49 U.S.C. 10905. According to Almono, an OFA or a public use condition would prevent MetalTech and Hantz from realizing the benefits that would flow from operating over a private spur following abandonment. As previously stated, AVR intends to file an OFA for continued rail service under section 10904. AVR states that it operates over the connecting line over which all rail traffic handled on the line currently moves. See Allegheny Valley Railroad Company—Lease, Operation, and Trackage Rights Exemption—Lines of CSX Transportation, Inc., STB Finance Docket No. 34431 (STB served Nov. 26, 2003). According to AVR, the traffic moving on the line comprises a substantial percentage of the traffic moving over AVR's leased line, and continued common carrier service is of vital importance to AVR and the shippers served directly on AVR's line. AVR also expresses its concern that the private rail service anticipated by Almono is subject to cessation at any time on short notice depending upon Almono's redevelopment plans. Accordingly, it states that it is willing to make arrangements with MetalTech and Hantz to ensure that they receive rail service on terms at least as attractive as they would receive under the temporary private carriage as per Almono's intent and to cooperate with Almono on any redevelopment plans that do not interfere with continued rail operation over the line.

The OFA provisions—which permit a party genuinely interested in providing continued rail service to acquire a line for that purpose over the objections of the owner—reflect a Congressional intent that rail service be preserved whenever possible. While exemptions from 49 U.S.C. 10904 have been granted from time to time, they have been granted when the right-of-way is needed for an overriding public purpose and there is no apparent interest in continued rail service.<sup>1</sup> Here, AVR has shown an interest in providing continued rail service. Accordingly, the Board finds no basis for undercutting the Congressional objective of maintaining rail service.<sup>2</sup> Almono's request for exemption from the OFA requirements of 49 U.S.C. 10904 will be denied.

Almono's request for exemption from the requirements of section 10905 will be granted. The abandonment petition and the request for exemption from the public use provisions have been noticed in the Federal Register. Neither AVR nor any other interested party has objected to the proposed

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<sup>1</sup> See 1411 Corporation—Abandonment Exemption—In Lancaster County, PA, STB Docket No. AB-581X, et al., slip op. at 4 (STB served Sept. 6, 2001).

<sup>2</sup> Id.

exemption from section 10905. Accordingly, the petition for exemption of the proposed abandonment from the public use requirements of 49 U.S.C. 10905 will be granted.

The evidence of record establishes that the proposed exemption from 49 U.S.C. 10905 meets the criteria of 49 U.S.C. 10502. Applying the public use requirements in this instance is not necessary to carry out the rail transportation policy. Moreover, allowing the abandonment exemption to become effective without first being subject to these requirements, will minimize the need for Federal regulatory control over the rail system, expedite regulatory decisions, and reduce regulatory barriers to exit [49 U.S.C. 10101(2) and (7)]. The Board has already determined that regulation is not necessary to protect shippers from an abuse of market power.

Labor protection. Under 49 U.S.C. 10502(g), the Board's exemption authority may not be used to relieve a carrier of its statutory obligation to protect the interests of its employees. However, the Board does not normally impose employee protective conditions when a carrier abandons its entire line unless the evidence shows the existence of: (1) a corporate affiliate that will continue substantially similar rail operations; or (2) a corporate parent that will realize substantial financial benefits over and above relief from the burden of deficit operations by its subsidiary railroad. See Wellsville, Addison & Galetton R. Corp.—Abandonment, 354 I.C.C. 744 (1978); and Northampton and Bath R. Co.—Abandonment, 354 I.C.C. 784 (1978) (Northampton). As noted here and in the Federal Register notice, Almono proposes to abandon its entire line. Almono states that it has no employees who will be adversely affected by the proposed abandonment. Almono does not appear to have a corporate affiliate or parent that could benefit from the proposed abandonment. Further, no one has attempted to show that the situation under Northampton exists for imposing employee protection in this proceeding. Accordingly, the Board will not impose labor protective conditions.

Environmental Matters. Almono has submitted environmental and historic reports 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. The Board's 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 November 24, 2003, and requested comments by December 23, 2003.

In the EA, SEA notes that the National Geodetic Survey (NGS) has identified five geodetic station markers that may be affected by the proposed abandonment. Therefore, SEA recommends that Almono provide NGS with at least 90 days' notice prior to initiation of any salvage operations that may disturb or destroy any markers so that plans can be made for their relocation.

SEA also notes that the PA Historical and Museum Commission, Bureau of Historic Preservation (the State Historic Preservation Office or SHPO) concluded that the proposed

abandonment will have no effect on the Monongahela Connecting Railroad and Roundhouse, a property listed in or eligible for listing on the National Register of Historic Places but requested that Almono contact the SHPO should Almono become aware that previously unidentified historic or archaeological properties are located on the line or that abandonment activities would have an effect on known properties. Accordingly, SEA recommends that Almono contact the SHPO should it discover any such properties.

No comments to the EA were filed. Accordingly, the conditions recommended by SEA in the EA will be imposed. The Board concludes 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.

Other matters. The Board will not provide an opportunity for interested persons to file trail use/rail banking requests. Under section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d), trail use/rail banking is voluntary and can only be implemented if an abandoning railroad agrees to negotiate an agreement. Here, it is clear that Almono will not entertain trail use requests.

It is ordered:

1. Under 49 U.S.C. 10502, an exemption from the prior approval requirements of 49 U.S.C. 10903 and 49 U.S.C. 10905 for the abandonment by Almono of the above-described line is granted, subject to the conditions that Almono shall: (1) provide NGS with at least 90 days' notice prior to initiation of any salvage operations that may disturb or destroy any geodetic station markers so that plans can be made for their relocation; and (2) contact the SHPO immediately if it becomes aware that previously unidentified historic or archaeological properties are located on the line or that abandonment activities would have an effect on known properties.
2. AVR's motion for leave to intervene in the proceeding is granted.
3. The request for an exemption from the OFA requirements of 49 U.S.C. 10904 is denied.
4. Almono is directed to serve a copy of this decision on MetalTech and Hantz within 5 days after the service date of this decision and to certify to the Board that it has done so.
5. 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 January 23, 2004, 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 \$1,100. See 49 CFR 1002.2(f)(25).

6. 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.”**

7. Provided no OFA has been received, this exemption will be effective February 12, 2004. Petitions to stay must be filed by January 28, 2004; petitions to reopen must be filed by February 9, 2004.

8. Pursuant to the provisions of 49 CFR 1152.29(e)(2), Almono 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 Almono’s filing of a notice of consummation by January 13, 2005, 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 Nober.

Vernon A. Williams  
Secretary