

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-227 (Sub-No. 7X)

WHEELING & LAKE ERIE RAILWAY COMPANY--ABANDONMENT
EXEMPTION--IN WYANDOT COUNTY, OH

Decided: January 23, 1997

Wheeling & Lake Erie Railway Company (W&LE) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon its 2.3-mile Carey Spur line located between milepost 55.3 and milepost 53.0 near Carey, in Wyandot County, OH. The United Transportation Union (UTU) requests imposition of labor protective conditions. We will grant the petition, subject to labor protective conditions and an environmental condition.

BACKGROUND

W&LE is a Class II rail common carrier that operates approximately 850 miles of rail line in Ohio, Pennsylvania, West Virginia and Maryland. W&LE began operations in May 1990 after acquiring its core rail lines from Norfolk & Western Railway Company.¹

The Carey Spur line is a single track, unsignaled branch line that crosses at grade a rail line of CSX Transportation, Inc. (CSXT), at Carey, OH. Due to poor track conditions, the line was embargoed on April 19, 1995. Prior to that time, service was provided on an as-needed basis by a crew based at Carey, OH, to the line's sole shipper, Budd Company (Budd). W&LE says that Budd's traffic consisted of outbound shipments of vehicle parts and accounted for 103 carloads in 1993, 99 carloads in 1994, and 12 carloads from January 1 through April 19, 1995. This traffic produced estimated revenues of \$24,608, \$31,208, and \$3,231, respectively.

According to W&LE, the line is in very poor condition. The line consists predominantly of 90-pound jointed rail laid in the 1920s. The line has two bridges. The bridge located at milepost 53.18 has been out of service since the line was acquired.² The second bridge, located at milepost 55.21, is in fair condition. W&LE estimates rehabilitation costs of \$325,000 to restore the line to minimum FRA class 1 standards and estimates the line's net liquidation value to be \$428,000. Because no growth in carloadings is expected and there is no prospect for industrial growth in the area, W&LE maintains that its resources would be more prudently allocated to other portions of its railroad.

¹ See Wheeling Acquisition Corporation--Acquisition and Operation Exemption--Lines of Norfolk & Western Railway Company, Finance Docket No. 31591 (ICC served May 7 and Dec. 28, 1990).

² This bridge was not used to provide service to Budd.

Prior to the embargo, Budd used the line for outbound shipments. Since the embargo, Budd has used trucks for all of its shipments, has removed all industrial trackage on its property, and has informed W&LE that rail service is no longer required. W&LE asserts that, following abandonment of the line, in addition to the truck transportation Budd is already using, rail service from W&LE or CSXT would be available at Carey, OH, approximately 3 miles from Budd's facility. W&LE certified that a copy of its petition was served on Budd. Neither that shipper nor anyone else has protested the proposed abandonment.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without 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 abandoning this line, an exemption will reduce regulatory barriers to exit and provide for the expeditious handling and resolution of this proceeding [49 U.S.C. 10101(2), (7), and (15)]. By allowing W&LE to avoid the expense of rehabilitating this line and to apply its assets more productively elsewhere on its system, an exemption will promote safe and efficient rail transportation, foster sound economic conditions, and encourage efficient management [49 U.S.C. 10101(3), (5), and (9)]. Other aspects of the rail transportation policy are not affected adversely. For example, competition and the continuation of a sound rail transportation system are not affected [49 U.S.C. 10101(4)].

Regulation of the proposed transaction is not necessary to protect shippers from an abuse of market power. Budd, the sole shipper on the line, has not objected to the proposed abandonment and appears to have adequate transportation alternatives available. Nevertheless, to ensure that Budd is aware of the status of this line, we will require W&LE to serve a copy of this decision on Budd within 5 days of the service date of this decision and to 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.

UTU requests imposition of labor protective conditions. W&LE does not anticipate any adverse impact on employees because its maintenance-of-way forces will continue to perform maintenance work on other lines. Under 49 U.S.C. 10502(g), however, we may not use our exemption authority to relieve a carrier of a statutory obligation to protect the interests of its employees. Accordingly, we will impose the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979), as a condition to granting this exemption.

W&LE has submitted an environmental report with its petition and has notified the appropriate Federal, state, and local agencies of the opportunity to file comments concerning the

energy and environmental effects of the proposed abandonment. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified its data, and analyzed the probable effect of the proposed abandonment on environmental and historic resources. SEA served an environmental assessment (EA) on November 18, 1996, preliminarily recommending imposition of the following condition: if the W&LE Railway Company has planned any activities that will disturb or destroy the eight markers previously identified, it shall provide at least 90 days' notification to the National Geodetic Survey (NGS) in advance of such activities in order to plan for relocation of these markers. No comments were received in response to the EA. Based upon SEA's recommendation, we conclude that the proposed abandonment, if implemented subject to the condition discussed above, will not significantly affect either the quality of the human environment or conservation of energy resources.

SEA has indicated that the right-of-way may be suitable for other public use under 49 U.S.C. 10905. We note that no one has requested a public use condition, and we will not impose one here. Nevertheless, we will provide a period of 20 days after Federal Register publication for interested persons to request a public use condition.

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 W&LE of the above-described 2.3-mile rail line, subject to: (1) the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979); and (2) the environmental condition that W&LE shall consult with the NGS and provide it with 90 days' notice prior to disturbing or destroying any geodetic markers.

2. Notice will be published in the Federal Register on February 4, 1997.

3. W&LE must serve a copy of this decision on Budd within 5 days after the service date of this decision and certify to us that it has done so.

4. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on March 6, 1997.

5. Formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2)³ and requests for interim trail use/rail banking

³ See Exempt. of Rail Abandonment--Offers of Finan. Assist., 4 I.C.C.2d 164 (1987) for regulations in effect at the time of filing of the exemption petition. We note that the ICC Termination Act of 1995 has made changes and additions to the previous law regarding the processing of abandonments and OFAs. To implement these changes, we have issued final rules in 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), that became effective on January 23, 1997. Because we have processed the exemption petition under the
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under 49 CFR 1152.29 must be filed by February 14, 1997. Petitions to stay must be filed by February 19, 1997. Requests for a public use condition in conformity with 49 CFR 1152.28(a)(2) must be filed by February 24, 1997. Petitions to reopen must be filed by March 3, 1997.

6. If a formal expression of intent to file an OFA has been timely submitted, an OFA to allow rail service to continue must be received by the railroad and the Board within 30 days after publication, subject to time extensions authorized under 49 CFR 1152.27(c)(2)(ii)(C) and (D). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(2).

7. 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."**

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

³(...continued)
former regulations, we will continue to use the former regulations in this proceeding to process an OFA, if one is filed.