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SERVICE DATE - JANUARY 14, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-487 (Sub-No. 3X)

PITTSBURG & SHAWMUT RAILROAD, INC.--ABANDONMENT EXEMPTION--  
IN JEFFERSON AND CLARION COUNTIES, PA

Decided: January 12, 1998

By petition filed September 26, 1997,<sup>1</sup> Pittsburg & Shawmut Railroad, Inc. (PSRR), seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon its line of railroad known as the Piney Branch, extending from milepost 0.00 (milepost 40.60 on the main line of the Laurel Subdivision), located at or near Coder to milepost 23.80 located at or near Piney, a distance of 23.80 miles, in Jefferson and Clarion Counties, PA. We will grant the exemption, subject to environmental, historic preservation and standard employee protective conditions.

BACKGROUND

PSRR currently owns approximately 216 miles of rail lines in Pennsylvania. It purchased the line proposed for abandonment from the Mountain Laurel Railroad Company in April 1996, and has never provided service on the line. According to PSRR, the last time service was provided on the line was by its predecessor in December 1994. Because there are no active shippers on the line, PSRR does not expect that there will be any future need for service.

PSRR states that the line, including the rail, ties, roadbed and approximately 25 railroad bridges constructed in the early 1900s, is in generally fair condition. The tunnel located at milepost 23.58, also constructed in the early 1900s, is deteriorating. PSRR submits that, because of the absence of traffic, there is no justification for PSRR to continue to incur the costs necessary to maintain and operate the line.

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.

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<sup>1</sup> Notice of the filing was served and published in the Federal Register on October 16, 1997 (62 FR 53875).

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 PSRR from the costs of maintaining a line which is not in use, and allow PSRR's assets to be used 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 an abuse of market power as there have been no active shippers on the line since December 1994. 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 in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979).

PSRR 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 November 28, 1997. In the EA, SEA indicated that the Pennsylvania Historical and Museum Commission has identified a tunnel and bridge as properties eligible for the National Registry of Historic Places under Criterion C for their engineering significance. Accordingly, SEA recommends that a condition be imposed on any decision granting abandonment authority requiring PSRR to retain its interest in and take no steps to alter the historic integrity of all sites and structures on the line, including the Coder Viaduct bridge, located at milepost 1.41, and the railroad tunnel located at milepost 23.52, until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f. SEA also notes that the U.S. Department of Commerce, National Geodetic Survey (NGS), has identified three geodetic station markers that could be affected by the proposed abandonment. Therefore, SEA recommends that a condition be imposed requiring PSRR 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 December 29, 1997 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 conditions that: (1) PSRR shall retain its interest in and take no steps to alter the historic integrity of all sites and structures on the line, including the Coder Viaduct bridge, located at milepost 1.41, and the railroad tunnel located at milepost 23.52, until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f; and (2) PSRR shall consult with the NGS and provide it with 90 days' notice prior to disturbing or destroying any geodetic marker.

2. An offer of financial assistance (OFA) under 49 CFR 1152.27(c)(1)<sup>2</sup> to allow rail service to continue must be received by the railroad and the Board by January 23, 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 \$900 filing fee. See 49 CFR 1002.2(f)(25).

3. 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.**"

4. Provided no OFA has been received, this exemption will be effective on February 13, 1998. Petitions to stay must be filed by January 26, 1998, and petitions to reopen must be filed by February 3, 1998.

5. Pursuant to the provisions of 49 CFR 1152.29(e)(2), PSRR 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 PSRR's filing of a notice of consummation by January 14, 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.

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<sup>2</sup> 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).

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Vernon A. Williams  
Secretary