28101 SERVICE DATE - NOVEMBER 7, 1997
EB

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-477 (Sub-No. 2X)

OWENSVILLE TERMINAL COMPANY, INC.--ABANDONMENT EXEMPTION--IN GIBSON AND POSEY COUNTIES, IN

Decided: November 3, 1997

By petition filed on July 22, 1997, Owensville Terminal Company, Inc. (OTC) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a line of railroad known as the Cynthiana-Owensville line, extending from railroad milepost 277.0 north of Cynthiana to railroad milepost 271.0 north of Owensville, a distance of 6.0 miles, in Gibson and Posey Counties, IN.[1] We will grant the petition, subject to labor protective conditions.

BACKGROUND

The Cynthiana-Owensville line originally was constructed and operated by the Chicago and Eastern Illinois Railroad Company and later became a part of CSX Transportation, Inc. Thereafter, the segment was sold to the Poseyville and Owensville Railroad Company (POR), which became bankrupt. OTC acquired the line from the receiver of POR[2] and contracted with Huron and Eastern Railroad Company, Inc., for labor and equipment. Due to track conditions, OTC embargoed the line effective May 3, 1996, but provided for exceptions to the embargo pursuant to permit.

Only one shipper, Gibson County Co-op (the Co-op), located at Owensville, will be affected by a line abandonment.[3] Historically, the Co-op's traffic averaged 349 carloads per year. For the 12-month period ending March 31, 1997, however, OTC handled only 26 tank cars of anhydrous ammonia for the Co-op. OTC states that there is no evidence that the Co-op's recent low volume of

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[2] See Owensville Terminal Company, Inc.--Acquisition and Operation Exemption--Poseyville & Owensville Railroad Company, Inc., STB Finance Docket No. 32899 (STB served May 17, 1996).

[3] The other shipper on the line, Continental Grain Company (CGC), located at Cynthiana, will continue to have rail service, even if abandonment is approved, because there would remain approximately 1,000 feet of trackage north of CGC's sidetrack allowing rail service from Cynthiana to Evansville, IN, for interchange.

traffic will materially increase. OTC estimates the line's net liquidation value at $127,354 and claims that it would incur an opportunity cost of $9,768 per year if it were to continue to own the line. OTC further estimates that it would need to spend $193,118 to rehabilitate the line to comply with minimum Federal Railroad Administration Class 1 safety standards. Where there is virtually no demand for rail transportation, OTC maintains that it should not be made to rehabilitate the line and to incur opportunity costs.

OTC asserts that the Co-op has already diverted most of its traffic to other forms of transportation and that adequate transportation alternatives, i.e., truck, barge-truck, and rail-truck, are available. OTC certified that a copy of its petition was served on the Co-op. Neither the Co-op nor anyone else has appeared in this proceeding to oppose 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, 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 time and expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. Moreover, by allowing OTC to avoid the costs of owning and maintaining a minimally used line of railroad and to apply its assets more productively elsewhere on its rail 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.

Because Co-op does not oppose the proposed abandonment and appears to have adequate transportation alternatives, we find that regulation is not necessary to protect it or any other shippers from an abuse of market power. Nevertheless, to ensure that all shippers are informed of our action, we will require OTC to serve a copy of this decision on all shippers within 5 days of the service date of this decision and 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.

Under 49 U.S.C. 10502(g), 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.

OTC 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 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 action on the quality of the human environment. SEA served an environmental assessment (EA) on September 26, 1997, recommending that no environmental or historic conditions be imposed on the abandonment. No comments have been received in response to the EA. Based on SEA's recommendation, we conclude that the proposed abandonment, if implemented, will not significantly affect either the quality of the human environment or conservation of energy resources. Although the right-of-way may be suitable for other public use under 49 U.S.C. 10905, 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 by OTC of the above-described 6.0-mile rail line, subject to the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979).

2. Petitioner must serve a copy of this decision on the shippers within 5 days after the decision is served, and certify to the Board that service has been effected.

3. An 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 November 17, 1997, 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).

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 of Proceedings, AB-OFA."**

5. Provided no OFA has been received, this exemption will be effective on December 7, 1997. Petitions to stay must be filed by November 24, 1997. Petitions to reopen must be filed by December 2, 1997.

6. Pursuant to the provisions of 49 CFR 1152.29(e)(2), OTC 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 OTC’s filing of a notice of consummation by November 9, 1998, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If any 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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[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).

STB Docket No. AB-477 (Sub-No. 2)

Vernon A. Williams
Secretary

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BACKGROUND

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Only one shipper, Gibson County Co-op (the Co-op), located at Owensville, will be affected by a line abandonment.[3] Historically, the Co-op's traffic averaged 349 carloads per year. For the 12-month period ending March 31, 1997, however, OTC handled only 26 tank cars of anhydrous ammonia for the Co-op. OTC states that there is no evidence that the Co-op's recent low volume of

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OTC asserts that the Co-op has already diverted most of its traffic to other forms of transportation and that adequate transportation alternatives, i.e., truck, barge-truck, and rail-truck, are available. OTC certified that a copy of its petition was served on the Co-op. Neither the Co-op nor anyone else has appeared in this proceeding to oppose the proposed abandonment.

DISCUSSION AND CONCLUSIONS

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Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative time and expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. Moreover, by allowing OTC to avoid the costs of owning and maintaining a minimally used line of railroad and to apply its assets more productively elsewhere on its rail 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.

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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 OTC of the above-described 6.0-mile rail line, subject to the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979).

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