

SERVICE DATE - APRIL 18, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-167 (Sub-No. 1174X)

CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--IN
CRAWFORD COUNTY, PA

Decided: April 14, 1997

By petition filed on December 31, 1996, Consolidated Rail Corporation (Conrail) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a 1.25-mile portion of its Meadville Branch,¹ known as the Dad's Dog Food Company Lead (the line), extending between milepost 0.00± and milepost 1.25±, in Crawford County, PA. The United Transportation Union seeks imposition of labor protective conditions. We will grant the exemption, subject to an environmental condition and standard employee protective conditions.

BACKGROUND

Conrail seeks to abandon the line to facilitate its transfer to the Crawford County Development Corporation (Crawford), which will use the line for industrial development. Attached to Conrail's petition is a copy of a letter from Crawford to Conrail, dated July 29, 1995, in which Crawford states its support for the proposed abandonment and indicates its interest in acquiring the line following abandonment.² According to Conrail, it has reached a preliminary agreement with Crawford concerning the sale. Conrail states that Crawford does not want to become a common carrier and will arrange for contract rail service to be provided on the line. Following abandonment, Conrail would continue to provide rail service to the line's connection with Conrail at milepost 103 in the Town of Meadville, PA.

Conrail states that there is only one shipper on the line, Dad's Products Company (Dad's). Conrail submits that Dad's received 127 carloads in 1994, none in 1995, and 45 carloads in the first 9 months of 1996. Conrail states that Dad's will continue to receive rail service should the line be sold to Dad's, but, that in any event, Crawford has other viable transportation options available to it. These include direct truck service via U.S. Routes 6, 19, and 322, which all connect to Interstate 79, and Conrail/truck transfer service at Meadville. Conrail attaches to the petition a copy of a letter from Dad's to Conrail, dated July 29, 1995, in which Dad's states its support for the proposed abandonment.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without prior Board 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 time and expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. By allowing Conrail to avoid maintenance on this line and to apply its assets more productively elsewhere on its rail system, an

¹ The Meadville Branch is a former rail line of the Bessemer & Lake Erie Railroad Company.

² Crawford also indicates in the letter that the acquisition will actually be made by Interpark Rail Corp., a non-profit corporation established to own and operate interplant connecting railroads serving the industrial parks owned by Crawford.

exemption will promote a safe and efficient rail transportation system, foster sound economic conditions in transportation, and encourage efficient management [49 U.S.C. 10101(3), (5), and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power because the only shipper on the line has viable alternative transportation options available to it, has been notified of the proposed abandonment, and supports it. Nevertheless, to ensure that the shipper is notified of our action, we will direct Conrail to serve a copy of this decision on Dad's within 5 days of the service date of this decision and certify to us that it has done so. Given our finding regarding the probable effect of the transaction on market power, we need not determine whether the transaction 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).

Conrail 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 effect of the proposed action on the quality of the human environment. Based upon this analysis and the comments of the U.S. Fish and Wildlife Service, the Pennsylvania Department of Conservation and Natural Resources, and the Pennsylvania Department of Environmental Protection, SEA preliminarily recommended in its environmental assessment (EA), served on March 6, 1997, imposition of the following condition: if salvage operations are to be undertaken, Conrail shall consult with the Pennsylvania Department of Conservation and Natural Resources to determine if permits will be required for (a) disposal of waste materials from salvage operations and (b) removal of bridges and culverts. Similarly, Conrail shall consult with the Pennsylvania Department of Environmental Protection and the Crawford County Conservation District to determine which measures, if any, must be taken to comply with regulations covering disposal of track ballast and the prevention of erosion and entry of sediment into waterways. SEA also concluded that the abandonment, if implemented and subject to the noted condition, will not significantly affect either the quality of the human environment or the conservation of energy resources. The condition recommended by SEA will be imposed.

No comments to the EA were filed by the March 31, 1997 due date. Accordingly, based on SEA's recommendation, we conclude 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.

SEA has indicated that Conrail states that it is unaware of an alternative public use for which the right-of-way is suitable under 49 U.S.C. 10905. No one has requested a public use condition and none will be imposed. Nevertheless, we will provide a 20-day period 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 Conrail 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 environmental condition that, if salvage operations are to be undertaken, Conrail shall consult with the Pennsylvania Department of Conservation and Natural Resources to determine if permits will be required for (a) disposal of waste materials from salvage operations and (b) removal of bridges and culverts. Similarly, Conrail shall consult with the Pennsylvania Department of Environmental Protection and the Crawford County Conservation District to determine which measures, if any, must be taken to comply with regulations covering disposal of track ballast and the prevention of erosion and entry of sediment into waterways.

2. Notice will be published in the *Federal Register* on April 18, 1997.
3. Conrail is directed to serve a copy of this decision on Dad's within 5 days after service of this decision and certify to us that it has done so.
4. Provided no formal expression of intent of file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 18, 1997.
5. Formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2)³ must be filed by April 28, 1997; petitions to stay must be filed by May 5, 1997; requests for a public use condition in conformity with 49 CFR 1152.28(a)(2) must be filed by May 8, 1997; and petitions to reopen must be filed by May 13, 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). Each OFA must be accompanied by the filing fee, which currently is set at \$900. *See* 49 CFR 1002.2(f)(25).
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 *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 former regulations, we will continue to use the former regulations in this proceeding to process an OFA, if one is filed.