

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-481X

SOUTH PLAINS LAMESA RAILROAD, LTD.--ABANDONMENT EXEMPTION--
IN DAWSON AND LYNN COUNTIES, TX

Decided: December 23, 1996

On September 10, 1996, South Plains Lamesa Railroad, Ltd. (SPLR), filed a petition for exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon 49.06 miles of rail line between milepost 5.00 near Slaton and milepost 54.06 near Lamesa, in Dawson and Lynn Counties, TX. Based on the information provided in the petition, we will grant the exemption request, subject to standard employee protective conditions.

BACKGROUND

The line to be abandoned is part of a 54.5-mile line between Lamesa subdivision milepost 0 + 3.2916 feet and milepost 54.06. SPLR purchased the line from The Atchison, Topeka & Santa Fe Railway Company (now BNSF) in 1993. South Plains Lamesa Railroad, Ltd.--Acquisition and Operation Exemption--The Atchison, Topeka and Santa Fe Railway Company, Finance Docket No. 32372 (ICC served Nov. 4, 1993).¹ Following the proposed abandonment, SPLR's rail operations essentially will be confined to 5 miles of track near Slaton.

According to SPLR, the line is in fair condition and is classified as FRA excepted track with train speeds limited to 10 mph. The track primarily consists of 90-lb. rail interspersed with short segments of 110-lb. rail. Approximately 24 miles of line are described as requiring ballast as well as other roadbed and track improvements. The roadbed must be rebuilt and stabilized and ties must be replaced. Also, recent drought conditions have caused sand to drift over the rail, and shifting sand has changed local drainage patterns, leaving a few locations susceptible to washouts. SPLR estimates rehabilitation costs in excess of \$150,000.

SPLR asserts that carloadings originally increased when operations commenced, but, because of the drought conditions, they declined dramatically in 1996 and are not likely to turn around in the foreseeable future. It provides a list of the 10 shippers,² who received inbound and/or outbound service, and their carloadings, from the time operations commenced until

¹ Notice was simultaneously published in the Federal Register at 58 FR 58878.

² These shippers are identified as: (1) Bray Implement, Chickasha Oil Mill, Hughes Fertilizer, Lamesa Compress, Preferred Fertilizer, Inc., and Southwestern Public Ser. (at Lamesa); (2) O'Donnell Compress and Taylor Equipment (Taylor) (at O'Donnell); and (3) Poole Chemical, Tahoka Warehouse and Taylor (at Tahoka).

June 30, 1996. SPLR contends that the line has little potential for traffic growth and that the marginal revenues that are generated are inadequate to cover the necessary rehabilitation and to offset increasing maintenance expenses and operating costs.

SPLR states that the proposed abandonment is an initial step in a coordinated plan to relocate shippers to rail sidings at a new industrial park to be constructed near Slaton. The proposed industrial park allegedly will be able to accommodate all of the former rail traffic and there will be only minimal interruption to the shippers. Additionally, it asserts that, by consolidating operations into an industrial park, greater operating efficiencies will accrue and existing shippers will benefit from improved rail service.

SPLR states that all affected shippers have been advised of the proposed abandonment. According to SPLR, arrangements for the shippers to relocate to Slaton are being made and those that relocate will receive rail service at very favorable terms. SPLR asserts that the shippers have all indicated that they will not object to the proposed abandonment, and it otherwise asserts that they have transportation alternatives, including motor carrier service and easy access to BNSF for competitive rail service.

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.

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 abandoning this line, an exemption will expedite regulatory decisions and reduce regulatory barriers to exit [49 U.S.C. 10101(2), (7), and (15)]. An exemption will also promote an efficient rail transportation system, ensure the development and continuation of a sound rail transportation system, foster sound economic conditions, and encourage efficient management by allowing SPLR to liquidate less productive assets and redeploy them, along with the services it offers, more efficiently on the remainder of its rail system [49 U.S.C. 10101(3), (4), (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. SPLR states that all affected shippers have been informed of the proposed abandonment and consolidation of existing service into an industrial park, and they have indicated that they would not object. Moreover, any potential for an abuse of market power is mitigated by existing transportation alternatives including nearby rail

service by BNSF and motor carrier service.³ Nevertheless, to ensure that shippers are informed of our decision, we will require SPLR to serve a copy on each shipper that has used the line since it was acquired by SPLR in 1993 within 5 days after the decision's service date and certify to us that it has done so.

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. Although SPLR states that it has no employees that will require protection, we must, as a condition to granting this exemption, impose the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979).

SPLR 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 impact 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, analyzed the probable effects of the proposed action on the quality of the human environment, and served an environmental assessment (EA) on November 13, 1996. In the EA, SEA recommended against imposing environmental conditions.

No comments to the EA were filed by the December 9, 1996 due date. Based on SEA's recommendation, we conclude that the proposed abandonment 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 and salvage, the right-of-way may not be suitable for other public uses under 49 U.S.C. 10905. No one has sought 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 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).

2. SPLR must serve a copy of this decision on each shipper that has used the line since it was acquired by SPLR in 1993 within 5 days after the service date and certify to us that it has done so.

3. Notice will be published in the Federal Register on January 3, 1997.

³ Given our market power finding, we need not determine whether the proposed abandonment of 49.06 miles of rail line in a single state is limited in scope.

4. Provided no formal expression of intent to file an offer of financial assistance (OFA) is received, this exemption will be effective on February 3, 1997.

5. Formal expressions of intent to file an OFA⁴ under 49 CFR 1152.27(c)(2) must be filed by January 13, 1997; petitions to stay must be filed by January 21, 1997; requests for public use conditions in conformity with 49 CFR 1152.28(a)(2) must be filed by January 23, 1997; and petitions to reopen must be filed by January 28, 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, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams
Secretary

⁴ See Exempt. of Rail Abandonment--Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).