

SERVICE DATE - OCTOBER 10, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-470 (Sub-No. 1X)

SOUTHEAST KANSAS RAILROAD COMPANY--ABANDONMENT EXEMPTION--
IN MONTGOMERY, LABETTE AND CHEROKEE COUNTIES, KS

Decided: October 2, 1997

On June 24, 1997, Southeast Kansas Railroad Company (SEK) filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line of railroad extending from milepost 421.0 near Coffeyville, KS, to milepost 387.0 near Faulkner, KS, a distance of 34 miles in Montgomery, Labette and Cherokee Counties, KS. A notice was published in the Federal Register at 62 FR 37639 on July 14, 1997, instituting an exemption proceeding. We will grant the exemption, subject to labor protective conditions and an environmental condition.

BACKGROUND

SEK acquired this line from Missouri Pacific Railroad Company in 1987. According to SEK, in recent years the line has had very few local shipments and limited overhead movements of soybean and grain products. Local traffic on the line ceased in March 1996 and all overhead traffic was rerouted in November 1996. SEK adds that there is only one shipper on the line, Bartlett Coop (BC), which has facilities at Bartlett and Edna, KS. Shipments moving into and out of the Bartlett facility totaled 23 cars in 1994, 22 cars in 1995, and 4 cars in 1996; inbound shipments consisted of fertilizer and outbound shipments consisted of grain. The only traffic moving to or from the Edna facility in recent years was a one-car shipment that moved in 1994. SEK avers that all BC traffic now moves by truck and that the shipper apparently no longer needs rail service.

Petitioner claims that the line is currently in very poor condition. SEK estimates that it would cost over \$200,000 to make necessary repairs to the track and ties, and that virtually all of the 26 bridges on the line are in need of repair.¹ According to SEK, because of the unsafe condition of the line, it obtained detour rights in November 1996 from the Burlington Northern Railroad Company to handle the remaining overhead traffic, and subsequently made alternative arrangements to reroute the overhead traffic over a parallel line.

Petitioner submits that it cannot economically justify the rehabilitation (approximately \$1 million) and maintenance expenses (approximately \$119,000 annually) necessary to maintain the line at Federal Railroad Administration Class 1 condition, given the anticipated low volume of traffic and the low rates needed to attract traffic to the line. SEK asserts that it would not be able to generate an operating profit if it were to perform normalized maintenance on the line, much less recoup its investment for rehabilitation costs.

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 expense of an abandonment application, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also promote a safe and efficient rail transportation system, foster sound economic conditions, and encourage efficient

¹ Specifically, petitioner asserts that the bridge over the Neosha River at Chetopa, KS, would require at least \$700,000 to repair.

management by relieving SEK of the costs of owning, rehabilitating, and maintaining the line [49 U.S.C. 10101(3), (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. Only one shipper has used the line in recent years, BC, which moved only four carloads at the beginning of 1996. Moreover, BC has diverted all of its traffic to trucks and apparently no longer requires rail service. Additionally, all remaining overhead traffic has been rerouted over a parallel rail line. Nevertheless, to ensure that BC is informed of our action, we will require SEK to serve a copy of this decision on BC within 5 days of the service date and to certify to us that it has done so. 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).

SEK 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. SEA served an environmental assessment (EA) on August 27, 1997, in which it stated that the National Geodetic Survey (NGS) has identified three geodetic station markers that may be affected by the proposed abandonment. Consequently, SEA recommended that SEK provide NGS with at least 90 days' notice before SEK undertakes any activities that will disturb or destroy these markers. No comments on the EA were received by the September 22, 1997 due date.

We will impose the condition recommended by SEA. 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 states that the right-of-way may be suitable for other public use under 49 U.S.C. 10905. We note, however, that no one has requested a public use condition and none will be imposed.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

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: (1) the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979); and (2) the condition that SEK provide NGS with at least 90 days' notice before undertaking any activities that will disturb or destroy geodetic station markers on the line.

2. SEK must serve a copy of this decision on BC within 5 days after the service date of this decision and certify to us that it has done so.

3. An offer of financial assistance (OFA) under 49 CFR 1152.27(c)(1)² to allow rail service to continue must be received by the railroad and the Board by October 20, 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

² 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).

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 November 9, 1997. Petitions to stay must be filed by October 27, 1997; petitions to reopen must be filed by November 4, 1997.

6. Pursuant to the provisions of 49 CFR 1152.29(e)(2), SEK 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 SEK's filing of a notice of consummation by October 10, 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.

Vernon A. Williams
Secretary