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SERVICE DATE – LATE RELEASE FEBRUARY 17, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-600 (Sub-No. 1X)

YAKIMA INTERURBAN LINES ASSOCIATION—ABANDONMENT EXEMPTION—IN  
YAKIMA COUNTY, WA

Decided: February 17, 2006

Yakima Interurban Lines Association (YILA) filed a verified notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a line of railroad known as the Naches Branch, from milepost 2.97 (near Yakima) to milepost 14.26 (near Naches), a distance of approximately 11.29 miles in Yakima County, WA. YILA also seeks exemption from the offer of financial assistance (OFA) procedures at 49 U.S.C. 10904. In addition, a request on behalf of Yakima County (County) for issuance of a notice of interim trail use (NITU) pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), was filed with the notice. Notice of the exemption was served and published in the Federal Register on January 19, 2006 (71 FR 3153-54). On January 24, 2006, the Board's Section of Environmental Analysis (SEA) issued an environmental assessment (EA) assessing the proposed abandonment for public review and comment. The exemption was scheduled to become effective on February 18, 2006, unless it was stayed pending reconsideration by the Board or unless a formal expression of intent to file an OFA was received.

On February 6, 2006, Oregon Pacific & Eastern Railroad Company (OP&E) late-filed a notice of intent to file an OFA. OP&E simultaneously requested YILA to provide the following information prescribed at 49 CFR 1152.27(a): (1) copies of the most recent appraisals; (2) title reports; (3) physical condition of the line; (4) estimate of the net liquidation value of the line, with supporting data, including but not limited to all identifications of the parcels of land underlying the rights-of-way which are owned in fee and those which are easement grants; (5) lengths, widths, and weight of rail, and the condition of the relay rail, re-roll and scrap rails, and reusable and scrap ties; and (6) any other information deemed relevant to calculate the net liquidation value of the line and the minimum price that YILA seeks. In response, YILA filed a motion requesting dismissal of the notice of intent because it was not filed by the January 30, 2006 due date and because the filing should have been accompanied by the appropriate filing fee.

## DISCUSSION AND CONCLUSIONS

Notice of intent to file an OFA/request for exemption from the OFA provisions. As indicated, YILA has requested that the abandonment be exempted from the OFA provisions of 49 U.S.C. 10904. In support, YILA states that it intends to transfer the right-of-way to the County, which, in turn, intends either directly to seek funds to complete restoration of the line for rail service and then to contract with an operator under a modified certificate to provide rail service, or to contract with a third-party operator for both completion of restoration and provision of rail service. YILA adds that the line is currently subject to \$764,061 in liens (with interest accruing), the bulk of which are held by the Washington State Department of Transportation (WsDOT). YILA states that WsDOT has indicated that it is unwilling to provide further financing necessary to complete rehabilitation unless the line is owned by a government entity. YILA further states that it is unable to raise further private funding and that it can foresee no scenario in which any private party either could obtain sufficient funding from a lender to restore rail service or could prudently invest its own assets, given the liens already applicable to the property. According to YILA, transfer of the property to the County is the best and only avenue to keep the line intact and to qualify for financing for possible restoration of rail service.

The OFA provisions reflect a Congressional desire to preserve, whenever possible, any prospect for continuing or resuming rail freight service on corridors that would otherwise be abandoned. See Redmond—Issaquah R.R. Pres. Ass'n v. STB, 223 F.3d 1057, 1060-63 (9th Cir. 2000). OP&E's notice of intent presents the possibility of preserving rail service pursuant to the method prescribed by Congress. YILA has failed to show that it has been injured by OP&E's having filed late. Further, YILA does not support its assertion that only government support can restore rail service to this line. Finally, contrary to YILA's position, the fact that the notice of intent was not accompanied by a fee is not grounds for dismissal or rejection. Board regulations do not require a fee for filing a notice of intent to file an OFA, see 49 CFR 1152.27(c)(2)(i), although they do require a fee for filing an OFA, see 49 CFR 1002.2(f). Therefore, the notice will be accepted, thus allowing the OFA process to proceed and postponing the effective date of the exemption.<sup>1</sup> For these same reasons, YILA's request for exemption from the OFA provisions at 49 U.S.C. 10904 will be denied.

YILA and the County have presented a competing proposal to immediately initiate trail use followed in the future by rail service provided by an operator. Therefore, if OP&E files an OFA, it must demonstrate that its OFA to purchase the line is more likely to preserve rail service than the YILA/County proposal. See, e.g., Roaring Fork Railroad Holding Authority—Abandonment Exemption—In Garfield, Eagle and Pitkin Counties, CO, STB Docket No. AB-

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<sup>1</sup> Normally, a notice of intent would have the effect of postponing the effective date of the exemption until February 28, 2006. Under the circumstances present in this proceeding, however, the effective date of the exemption will need to be postponed to a later date as set out in the ordering paragraphs of this decision.

547X, slip op. at 6 n.19 (STB served May 21, 1999), aff'd, Kulmer v. STB, 236 F.3d 1255, 1258 (10th Cir. 2001).

Trail use. As indicated, the County submitted a request for issuance of a NITU for the subject line under the Trails Act and 49 CFR 1152.29, in order to negotiate with YILA for acquisition of the right-of-way for interim trail use. The County has submitted a statement of willingness to assume financial responsibility for the management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for payment of any and all taxes that may be levied or assessed against, the right-of-way, as required by 49 CFR 1152.29, and has acknowledged that use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation for rail service (rail banking). YILA consents to negotiate with the County for interim trail use.

The County has satisfied the requirements for a NITU and, therefore, imposition of a NITU would be appropriate commencing with the effective date of the exemption. Given our denial of the request for an exemption from the OFA provisions, it would be inappropriate to issue a NITU before the OFA process has been completed. If there is a forced sale or subsidy of the line under 49 U.S.C. 10904, a trail use condition would be unnecessary and unavailable. If there is no acquisition under the OFA provisions, we will address the NITU request at that time.

Environmental conditions. In the event that OP&E does not acquire the line through an OFA and there is no interim trail use under the Trails Act, YILA will need to comply with environmental conditions before it can salvage the line. In the EA, which was issued for public review and comment on January 24, 2006, SEA recommended seven environmental conditions and found that, if these conditions were imposed, there would be no significant environmental impacts.

SEA received comments on the EA from YILA requesting that the conditions recommended in the EA be amended to make it clear that they will apply only if the line is salvaged. In response, SEA has recommended that the previously imposed conditions should remain unchanged. All of the recommended conditions apply only to salvage or to the abandonment itself. Moreover, none of the recommended conditions would be triggered if an OFA acquisition is approved or for the duration of any interim trail use under the Trails Act.

After carefully reviewing the EA and the entire environmental record, we adopt and agree with all of SEA's analysis and conclusions in the EA, and will impose on this abandonment the seven environmental conditions recommended in the EA.

As conditioned, this decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. OP&E's late-filed notice of intent to file an OFA is accepted, YILA's motion to dismiss the notice is denied, and the effective date of the exemption is postponed as provided below.
3. YILA's request for exemption from the OFA requirements of 49 U.S.C. 10904 is denied.
4. YILA is directed to provide OP&E with the requested information to enable OP&E to file an OFA and to advise the Board when it has done so. The deadline for OP&E to file its OFA will be 10 days after YILA provides OP&E with the requested information and has advised the Board that it has done so. The effective date of the exemption is postponed until 10 days after the due date for OP&E's OFA.
5. The request for issuance of a NITU is held in abeyance pending completion of the OFA process.
6. The following environmental conditions are imposed on the abandonment of the line described above: (a) prior to commencement of any salvage activities, YILA shall consult with the National Geodetic Survey (NGS) to determine if any geodetic station markers may be affected by the proposed abandonment. In the event any station markers are identified, YILA shall notify NGS 90 days prior to the onset of salvage activities in order to plan for possible relocation of the station markers by NGS, and YILA shall report the results of these findings in writing to SEA; (b) prior to commencement of any salvage activities, YILA shall consult with the Washington State Department of Ecology to ensure that any concerns are addressed regarding potential contamination of the right-of-way and the need for a section 402 stormwater permit, and YILA shall report the results of these consultations to SEA; (c) prior to commencement of any salvage activities, YILA shall consult with the U.S. Fish and Wildlife Service regarding potential impacts from salvage activities to Federally listed threatened or endangered species that may occur in the vicinity of the line, and YILA shall report the results of these consultations in writing to SEA; (d) prior to commencement of any salvage activities, YILA shall consult with the National Park Service to determine if there will be any impacts to wildlife sanctuaries, refuges, national parks or forests, and YILA shall report the results of these findings to SEA; (e) prior to commencement of any salvage activities, YILA shall consult with the U.S. Army Corps of Engineers (USACE) to determine whether a USACE permit under section 404 of the Clean Water Act, 33 U.S.C. 1344, is needed, and YILA shall report the results of these findings to SEA; (f) YILA shall retain its interest in and take no further steps to alter the historic integrity of all sites and structures on the right-of-way that are eligible for listing or are listed in the National Register of Historic Places until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470(f); and (g) in the event that any

archaeological sites, human remains, funerary items or associated artifacts are discovered during salvage activities, YILA shall immediately cease all work and notify SEA, interested Federally recognized tribes, and the Washington Department of Archaeology & Historic Preservation (SHPO). SEA shall then consult with the SHPO, interested Federally recognized tribes, and YILA to determine whether any mitigation measures are necessary.

7. This decision is effective on its service date.

By the Board, Chairman Buttrey and Vice Chairman Mulvey.

Vernon A. Williams  
Secretary