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SERVICE DATE – JULY 24, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-1030 (Sub-No. 1X)

HURON & EASTERN RAILWAY COMPANY, INC.—ABANDONMENT EXEMPTION—IN
SHIAWASSEE COUNTY, MI

Decided: July 22, 2009

By petition filed on April 7, 2009, Huron & Eastern Railway Company, Inc. (HESR), seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a 2.5-mile rail line between milepost 0.0, at Owosso, and milepost 2.5, the end of the line, in Shiawassee County, MI (the line). Notice of the filing was served and published in the Federal Register on April 27, 2009 (74 FR 19112). We will grant the petition for exemption, subject to environmental and standard employee protective conditions.

BACKGROUND

HESR acquired the line from Central Michigan Railway Company in 2004. The only shipper on the line, Airgas Specialty Products (ASG), is located at the end of the line and receives shipments of anhydrous ammonia on an as-needed basis. HESR transported 21 carloads to ASG in 2005, 17 carloads in 2006, 14 carloads in 2007, 9 carloads in 2008, and none to date in 2009. HESR predicts that, in a forecast year, it would transport 9 carloads, earning revenues of \$6,723.

HESR states that the line is currently in Federal Railroad Administration (FRA) Class 1 condition, but that it has deferred maintenance of the line. Thus, HESR estimates that rehabilitation costs that are necessary to retain minimum FRA Class 1 track safety standards would amount to approximately \$243,600.¹ In the forecast year, HESR predicts that maintenance costs would amount to \$14,944, and that operating costs would be about \$8,817 for a total avoidable cost of \$23,761. Thus, there would be a forecast year operating loss of \$17,038 (\$23,761 - \$6,723). HESR calculates the net salvage value of the line to be \$230,239, and the value of the underlying real estate to be \$150,000, for a net liquidation value of \$380,239. Finally, HESR estimates that the opportunity costs of maintaining the line are \$65,721. HESR thus concludes that there is insufficient demand for rail service to justify the costs of owning, operating, and maintaining the line.

¹ This figure consists of \$153,600 to install and replace ties plus \$90,000 to repair road crossings.

According to HESR, the area surrounding the line is served by Michigan Routes 21, 52, and 71, as well as local roads. HESR claims that the decline in rail traffic demonstrates that ASG has found and used alternate methods of transportation.

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 the application process, an exemption will expedite the regulatory process and reduce regulatory barriers to exit [49 U.S.C. 10101(2) and (7)]. The only shipper on the line does not generate enough traffic to cover the costs of operating the line, resulting in operating losses and significant opportunity costs. Thus, an exemption will foster sound economic conditions and encourage efficient management [49 U.S.C. 10101(5), and (9)]. Other aspects of the rail transportation policy will not be adversely affected.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power. No traffic has moved over the line to date in 2009, and ASG, the only shipper that has used the line in the recent past, has not protested the abandonment petition. The area is served by three state highways. Finally, according to HESR, there is no local opportunity to increase traffic on the line. Nevertheless, to ensure that the shipper is informed of our action, we will require HESR to serve a copy of this decision on ASG so that it is received by ASG within 3 days from the service date of the decision 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 set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

HESR has submitted a combined environmental and historic 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 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 June 5, 2009, requesting comments by July 5, 2009. In the EA, SEA recommends that two conditions be imposed on any decision granting abandonment authority.

In the EA, SEA stated that the U.S. Department of Commerce, National Geodetic Survey (NGS), has advised that three geodetic station markers are located in the area of the proposed abandonment. Therefore, SEA recommends that HESR be required to notify the NGS at least 90 days prior to beginning salvage activities that will disturb any geodetic station markers.

SEA also stated that it has not received a response from the Michigan Department of History, Arts and Libraries, Michigan Historical Center (SHPO) and therefore has not been able to consider the SHPO's opinion before determining if the line may be potentially eligible for listing in the National Register of Historic Places (National Register). Accordingly, SEA recommended that HESR retain its interest in and take no steps to alter the historic integrity of sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register until the Section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA), has been completed. SEA also recommended that HESR be required to report back to SEA regarding any consultations with the SHPO and any other section 106 consulting parties, and that HESR be prohibited from filing its consummation notice or initiating any salvage activities related to abandonment (including removal of track and ties) until the section 106 process has been completed and the Board has removed this condition.

One comment on the EA was received by the July 5, 2009 due date. By letter dated May 7, 2009, the SHPO informed SEA that the proposed abandonment would have no adverse effect on historic properties. Therefore, SEA now recommends that no historic preservation condition be included.

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.

Although SEA indicates in the EA that the right-of-way may be suitable for 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 HESR of the above-described line, subject to the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979), and subject to the condition that HESR shall be required to notify the NGS at least 90 days prior to beginning salvage activities that will disturb any geodetic station markers.

2. HESR is directed to serve a copy of this decision on ASG so that it is received by ASG within 3 days from the service date of the decision and to certify to the Board that it has done so.

3. An Offer of Financial Assistance (OFA) under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by August 3, 2009, 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 the filing fee, which currently is set at \$1,500. 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 August 23, 2009. Petitions to stay must be filed by August 10, 2009, and petitions to reopen must be filed by August 18, 2009.

6. Pursuant to the provisions of 49 CFR 1152.29(e)(2), HESR 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 HESR’s filing of a notice of consummation by July 24, 2010, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory barrier to consummation exists at the end of the 1-year period, the notice of consummation must be filed no later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Acting Chairman Mulvey, and Vice Chairman Nottingham.

Anne K. Quinlan
Acting Secretary