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SERVICE DATE – DECEMBER 1, 2008

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-1019X

TRANSIT AMERICA, LLC—ABANDONMENT EXEMPTION—
IN BUCHANAN COUNTY, MO

Decided: November 21, 2008

By petition filed on August 13, 2008, Transit America, LLC (TA) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon approximately 2 miles of a rail line known as the Missouri Branch Line, approximately between milepost 200.4 and milepost 198.4, in St. Joseph, Buchanan County, MO. Notice of the filing was served and published in the Federal Register on September 2, 2008 (73 FR 51342-43). We will grant the exemption, subject to environmental and standard employee protective conditions.

BACKGROUND

The segment of rail line proposed for abandonment is part of a 2.6-mile rail line in which TA acquired the right, title and interest from its affiliate, Herzog Contracting Corp. (HCC). TA was granted authority to operate over that line in TransitAmerica, LLC—Operation Exemption—Line in Buchanan County, MO, STB Finance Docket No. 34253 (STB served Oct. 17, 2002). Petitioner states that, since acquiring the operating authority, it has used the line to provide common carrier service to its only customer, HCC. TA further states that, upon obtaining abandonment authority, it intends to convey the trackage and right-of-way to HCC, which will use the trackage to undertake non-common carrier switching service to continue and expand operations at its shop facilities.

According to TA, no other shippers are located on the line and no other freight service has been provided over the line for more than 15 years. Petitioner states that it will continue to serve HCC's facility on the portion of the line that will not be abandoned.

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 reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions in transportation, require fair and expeditious regulatory decisions, provide for the expeditious handling and resolution of all proceedings, and encourage efficient management by relieving TA from the expense of maintaining and operating a line that is extremely unlikely to be used for future common carrier service, and by allowing TA to apply its assets more productively elsewhere on its rail system [49 U.S.C. 10101(2), (5), (9), and (15)]. 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. There are no shippers on the line except HCC, which will benefit from the abandonment and continue to be served by petitioner on the portion of the line that will not be abandoned. Given our market power finding, we need not determine whether the proposed abandonment is limited in scope.

TA has submitted an 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. The Board's Section of Environmental Analysis (SEA) has examined the report, verified the data it contains, and analyzed the probable effects of the proposed action on the quality of the human environment.¹

SEA issued an environmental assessment (EA), which was served on October 10, 2008, requesting comments by November 12, 2008. In the EA, SEA states that the U.S. Army Corps of Engineers (Corps) commented that it has jurisdiction over all waters of the United States, and that discharges of dredged or fill materials into these waters, including wetlands, requires prior authorization from the Corps under section 404 of the Clean Water Act, 33 U.S.C. 1344. The Corps stated that a permit may be required for the proposed abandonment, should it result in such discharges. Although SEA notes TA's statement that it does not intend to salvage the segment of rail line proposed for abandonment, SEA recommends a condition requiring prior TA consultation with the Corps in the event TA decides to salvage the line.

SEA also states that the Missouri Department of Natural Resources, State Historic Preservation Office (SHPO) has submitted comments stating that it needs additional information to complete its review to determine possible effects on any known archaeological sites or historic properties listed in or eligible for inclusion in the National Register of Historic Places (National Register). Therefore, SEA recommends a condition requiring TA to retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings,

¹ TA has indicated that, in preparing consultation letters for its environmental and historic reports, it inadvertently reported the boundaries of the segment of rail line to be abandoned as milepost 200.4 to milepost 196.4, rather than the correct boundaries of milepost 200.4 to milepost 198.4, as filed. That error is harmless, however, because TA's environmental and historic report identified the correct boundaries.

structures, and objects within the project right-of-way (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, has been completed. The condition also requires TA to report to SEA regarding any consultations with the SHPO and the public, and prohibits TA from filing its consummation notice or initiating any salvage activities (including removal of tracks and ties) until the section 106 process has been completed and the Board has removed the condition.²

Comments to the EA were due by November 12, 2008. No comments to the EA were filed. Accordingly, we will impose the conditions recommended by SEA in the EA. Based on SEA's recommendations, 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 indicated 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.³

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 of 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).

It is ordered:

1. Under 49 U.S.C. 10502, the Board exempts from the requirements of 49 U.S.C. 10903 the abandonment by TA 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 the conditions that TA: (1) prior to conducting any salvage activities, shall consult with the Corps for potential impacts to waters of the United States, including wetlands, and shall comply with the reasonable requirements of the Corps; and (2) shall retain its interest in and take

² SEA states in the EA that it conducted a search of the Native American Consultation Database to identify Federally recognized tribes that may have ancestral connections to the project area. The database identified the Iowa Tribe of Kansas & Nebraska, the Iowa Tribe of Oklahoma, the Omaha Tribal Council, the Otoe-Missouria Tribe of Indians, the Sac and Fox Nation of Missouri, the Sac and Fox Nation of Oklahoma, and the Sac and Fox Tribe of the Mississippi in Iowa as having connections to Buchanan County. SEA states that it sent a copy of the EA to the tribes for review and comment.

SEA also states in the EA that it has not yet received responses from several Federal, state, and local agencies regarding potential environmental impacts from the proposed abandonment. Therefore, SEA states that it is sending a copy of the EA to the following agencies for review and comment: the U.S. Environmental Protection Agency; the National Park Service; the U.S. Fish and Wildlife Service; the Missouri Department of Natural Resources; the Missouri Department of Economic Development; the Missouri Department of Conservation; and the Buchanan County Commission.

³ Public use requests were due no later than 20 days after publication of the notice in the Federal Register, or by September 22, 2008.

no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way (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, has been completed. TA shall report to SEA regarding any consultations with the SHPO and the public. TA may not file its consummation notice or initiate any salvage activities (including removal of tracks and ties) until the section 106 process has been completed and the Board has removed the condition.

2. An OFA under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by December 11, 2008, 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 is currently set at \$1,500. See 49 CFR 1002.2(f)(25).

3. 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.”**

4. Provided no OFA has been received, this exemption will be effective on December 31, 2008. Petitions to stay must be filed by December 11, 2008, and petitions to reopen must be filed by December 22, 2008.

5. Pursuant to the provisions of 49 CFR 1152.29(e)(2), TA 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 TA’s filing of a notice of consummation by December 1, 2009, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or statutory 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, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Anne K. Quinlan
Acting Secretary