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SERVICE DATE - JANUARY 12, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-493 (Sub-No. 2X)

TRACK TECH, INC.--ABANDONMENT EXEMPTION--  
IN FRANKLIN AND WEBSTER COUNTIES, NE

Decided: January 7, 1998

By petition filed on September 24, 1997,<sup>1</sup> Track Tech, Inc. (Track Tech) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a line of railroad located generally between Bladen, NE (milepost 96.30) and Hildreth, NE (milepost 119.34), a distance of 23.04 miles in Franklin and Webster Counties, NE. We will grant the exemption, subject to an historic preservation condition and standard employee protective conditions.

BACKGROUND

The line proposed for abandonment was formerly owned by Burlington Northern Railroad Company (BN).<sup>2</sup> According to petitioner, BN had only limited operations on the line which has been out of service since the end of the second quarter of 1996. Petitioner states that it acquired the line on or about November 27, 1996, but has never operated trains over it.

Petitioner avers that there are six shippers on the line who have used the line only sporadically since 1994. Continental Grain at Campbell, NE, shipped 51 shipments of grain in 1994, 10 in 1995, and none in 1996; Koch Agri Services at Upland, NE, received 12 carloads of fertilizer in 1994, 5 in 1995, and none in 1996; Four Seasons Farm Supply, Trico Farm Service, US Midwest, and Farmers Coop Grain and Supply, all at Hildreth, NE, had no outbound shipments of grain in 1994, 1995, and 1996. They received 18 carloads of fertilizer in 1994, 20 in 1995, and 10 in 1996. There is no overhead traffic on the line as it ends at Hildreth. Petitioner avers that the line is not economically viable based on its present average of 45 cars per year (less than 2 carloads per mile per year). It adds that only a minimal amount of traffic, if any, could reasonably be expected to

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<sup>1</sup> Notice of the filing was served and published in the Federal Register on October 16, 1997 (62 FR 53876).

<sup>2</sup> Petitioner also acquired 5 other lines from BN in November 1996. Petitioner is seeking to abandon the other lines via exemption in STB Docket No. AB-493 (Sub-Nos. 1X, 3X, 4X, 5X, and 6X).

be generated in the future.

Petitioner states that alternative transportation service is available through other area rail carriers, including BN's east-west main line (Hastings Subdivision) 17 miles north of Hildreth; BN's north-south rail line (Lester Subdivision) which traverses the area at Bladen, NE, and Union Pacific Railroad Company's east-west main line, approximately 25 miles north of Hildreth. In addition, petitioner states that there are numerous trucking companies that haul grain and fertilizer in the area of the line.

#### 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 foster sound economic conditions and encourage efficient management by relieving Track Tech of the costs of owning and maintaining the line [49 U.S.C. 10101(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. Four of the shippers on the line have received only 48 carloads of fertilizer since 1994 and have not had any outbound shipments for those 3 years; the other two shippers had only 15 shipments in 1995, and none in 1996, down from a total of 63 shipments in 1994. In addition, the shippers have alternative transportation available.<sup>3</sup> Nevertheless, to ensure that the shippers are informed of our action, we will require Track Tech to serve a copy of this decision on the 6 shippers within 5 days of the service date of this decision 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. 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).

Track Tech 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

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<sup>3</sup> Given our market power finding, we need not determine whether the proposed abandonment is limited in scope.

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 November 24, 1997, in which it noted that the Nebraska Historical Society has not completed its review of potentially historic sites and structures that may be affected by the abandonment. Therefore, SEA recommends that an historic preservation condition be imposed on the abandonment as recommended by the Nebraska Historical Society until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

No comments to the EA were filed by the December 23, 1997 due date. We will impose the historic preservation condition. 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.

SEA states that, following the line's abandonment, the right-of-way may be appropriate for other public use under 49 U.S.C. 10905. We note that 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 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 Track Tech shall retain its interest in and take no steps to alter the historic integrity of all sites and structures on the line until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

2. Track Tech must serve a copy of this decision on the line's 6 shippers within 5 days after the service date of this decision and certify to the Board that it has done so.

3. An offer of financial assistance (OFA) under 49 CFR 1152.27(c)(1)<sup>4</sup> to allow rail service to continue must be received by the railroad and the Board by January 22, 1998, 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 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."**

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<sup>4</sup> 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).

5. Provided no OFA has been received, this exemption will be effective on February 11, 1998. Petitions to stay must be filed by January 27, 1998, and petitions to reopen must be filed by February 6, 1998.

6. Pursuant to the provisions of 49 CFR 1152.29(e)(2), Track Tech 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 Track Tech's filing of a notice of consummation by January 12, 1999, 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 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