

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-347 (Sub-No. 3X)

FLORIDA WEST COAST RAILROAD COMPANY, INC. – ABANDONMENT
EXEMPTION – IN ALACHUA AND GILCHRIST COUNTIES, FL

Decided: June 14, 2004

By petition filed on February 25, 2004, Florida West Coast Railroad Company, Inc. (FWCR), seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon an approximately 13-mile line of railroad extending from milepost 734.0, in Trenton, to milepost 721.0, in Newberry, in Alachua and Gilchrist Counties, FL (the line). Notice of the petition was served and published in the Federal Register (69 FR 12392) on March 16, 2004. The petition is unopposed, although a request for imposition of a public use condition and issuance of a notice of interim trail use (NITU) was filed by the Florida Department of Environmental Protection, Office of Greenways and Trails (FDEP). We will grant the exemption, subject to public use, environmental, and standard employee protective conditions.

BACKGROUND

FWCR acquired the line from CSX Transportation, Inc. (CSXT), in 1987. There are currently two shippers located on the line: Southern States Coop, Inc. (SSC), a receiver of fertilizer, and GroMore Farm Service, Inc. (GMFS), a receiver of feed. FWCR states that traffic volume for both SSC and GMFS is minimal as shown by the following carload figures. SSC received 27 carloads in 2003, and 7 carloads from January 1, 2004, to February 24, 2004. GMFS received 6 carloads in 2003, and 2 carloads from January 1, 2004, to February 24, 2004. FWCR forecasts similar carload levels for the remainder of 2004 and 2005. FWCR states that numerous motor carriers serve the affected area using a network of state and federal highways, and that CSXT operates a system of rail lines serving northwest Florida.

According to FWCR, it is losing money on the line. FWCR states that there is neither enough traffic on the line nor the likelihood of future traffic growth to justify continued operation of the line in light of the operating deficit and capital and maintenance costs incurred. FWCR submits that a grant of this exemption will enable it to salvage the track, ties, and other railroad appurtenances, thereby reducing its 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 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 and encourage efficient management by relieving FWCR of the costs of owning and maintaining the line and by allowing FWCR to use its assets more productively elsewhere [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. SSC and GMFS make minimal use of the line, and apparently have viable transportation alternatives. Nevertheless, to ensure that SSC and GMFS are informed of our action, we will require FWCR to serve a copy of this decision on these shippers within 5 days of the service date and certify to the Board 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).

FWCR has submitted environmental and historic reports 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) reviewed and investigated the record in this proceeding, and served an environmental assessment (EA) on April 23, 2004. Comments to the EA were requested by May 24, 2004.

In the EA, SEA notes that the National Geodetic Survey (NGS) has identified eight geodetic station markers that may be affected by the proposed abandonment. Therefore, SEA recommends that a condition be imposed requiring FWCR to provide NGS with at least 90 days' notice prior to initiation of any salvage operations that may disturb or destroy the markers so that plans can be made for their relocation.

No comments to the EA were received by the due date. Accordingly, the condition recommended by SEA in the EA will be imposed. The proposed abandonment, as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

As indicated, FDEP filed a request for the issuance of a NITU under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act) and a request for public use under 49 U.S.C. 10905. However, FWCR states that it is not willing to negotiate with the City for interim trail use. Because the Trails Act permits only voluntary interim trail use, a NITU cannot be issued. See Rail Abandonments—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 598 (1986) (Trails).

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. 10905. See Trails, 2 I.C.C.2d at 609. SEA has indicated in the EA that, if abandonment and salvage of the line does take place, the right-of-way may be suitable for other public use. FDEP states that the line, if converted to a public trail, would serve as an extension of the existing Nature Coast State Trail, which was formerly a rail line and is now managed by FDEP. FDEP requests imposition of a 180-day public use condition to commence negotiations with FWCR. Specifically, FDEP requests that FWCR be precluded for 180 days from: (1) disposing of the corridor, other than the tracks, ties, and signal equipment, except for public use on reasonable terms; and (2) removing or destroying potential trail-related structures such as bridges, trestles, culverts, and tunnels.

FDEP has met the public use criteria prescribed at 49 CFR 1152.28(a)(2) by specifying: (1) the condition sought; (2) the public importance of the condition; (3) the period of time for which the condition would be effective; and (4) justification for the period of time requested. Accordingly, a 180-day public use condition will be imposed on the rail line to be abandoned, commencing from the effective date of this decision, to enable any state or local government agency or other interested person to negotiate the acquisition of the line for public use. A public use condition is not imposed for the benefit of any one potential purchaser. Rather, it provides an opportunity for any interested person to acquire a right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, FWCR is not required to deal exclusively with FDEP, but may engage in negotiations with other interested persons.

The parties should note that operation of the public use procedures could be delayed, or even foreclosed, by the financial assistance process under 49 U.S.C. 10904. As stated in Trails, 2 I.C.C.2d at 608, an offer of financial assistance (OFA) to acquire a rail line for continued rail service or to subsidize rail operations takes priority over public use. Accordingly, if an OFA is timely filed under 49 CFR 1152.27(c)(1), the effective date of this decision will be postponed beyond the effective date indicated here. See 49 CFR 1152.27(e)(2). In addition, the effective date may be further postponed at later stages in the OFA process. See 49 CFR 1152.27(f). Finally, if the line is sold under the OFA procedures, the petition for abandonment exemption

will be dismissed and public use precluded. Alternatively, if a sale under the OFA procedures does not occur, the public use process may proceed.

It is ordered:

1. Under 49 U.S.C. 10502, an exemption from the prior approval requirements of 49 U.S.C. 10903 for the abandonment by FWCR of the above-described line is granted, 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 conditions that FWCR shall: (1) leave intact all of the right-of-way, including bridges, trestles, culverts, and tunnels (but not track, ties, and signal equipment) for a period of 180 days from the effective date of this decision, to enable any state or local government agency or any other interested person to negotiate the acquisition of the line for public use; and (2) provide NGS with at least 90 days' notice prior to initiation of any salvage activities that may disturb or destroy any geodetic station markers so that plans can be made for their relocation.

2. FWCR is directed to serve a copy of this decision and notice on SSC and GMFS within 5 days after the service date of this decision and to certify to the Board that it has done so.

3. 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 June 24, 2004, 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 \$1,100. 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 July 14, 2004. Petitions to stay must be filed by June 29, 2004; petitions to reopen must be filed by July 9, 2004.

6. Pursuant to the provisions of 49 CFR 1152.29(e)(2), FWCR 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 FWCR's filing of a notice of consummation by June 14, 2005, 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, Chairman Nober, Commissioner Buttrey, and Commissioner Mulvey.

Vernon A. Williams
Secretary