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SERVICE DATE – LATE RELEASE DECEMBER 10, 2007

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-1000 (Sub-No. 1X)

GEORGIA SOUTHWESTERN RAILROAD, INC.—ABANDONMENT AND
DISCONTINUANCE EXEMPTION—IN HARRIS AND MERIWETHER COUNTIES, GA

Decided: December 10, 2007

By petition filed on August 22, 2007, Georgia Southwestern Railroad, Inc. (GSWR) seeks an exemption under 49 U.S.C. 10502 from the provisions of 49 U.S.C. 10903 to abandon 43 miles of rail line extending between milepost R-12.0 at Florida Rock and milepost R-55.0 at Allie, in Harris and Meriwether Counties, GA, and to discontinue overhead trackage rights over a line owned by Central of Georgia Railroad Company (CGR) between milepost R-2.0 north of Columbus and milepost R-12.0 at Florida Rock, in Harris County, GA. Notice of the filing was served and published in the Federal Register (72 FR 51902-03) on September 11, 2007. On September 26, 2007, Harris County, GA (the County), a local government entity of the State of Georgia, filed a request for imposition of a public use condition and for issuance of a notice of interim trail use (NITU). A protest was filed by the Georgia Department of Transportation (GADOT). GSWR filed a reply to the protest. The Board will grant the exemption, subject to trail use, public use, environmental, and standard employee protective conditions.

BACKGROUND

GSWR obtained the line it seeks to abandon and a total of 12.2 miles of incidental overhead trackage rights from CGR in 2005. See Georgia Southwestern Railroad, Inc.—Acquisition and Operation Exemption—Central of Georgia Railroad Company, STB Finance Docket No. 34699 (STB served May 20, 2005). The trackage rights extend from milepost M-290.3 at South Columbus to milepost M-290.9/P-290.9 at Columbus and from milepost P-291.7/R-1.2 at West Columbus to milepost R-12.0 at Florida Rock, in Harris and Muscogee Counties, GA.

GSWR states that, at the time it acquired the line, it had been out of service for nearly 2 years due to a washed-out bridge that prevented access to Georgia-Pacific (GP), the only active customer on the line. GSWR completed the repair of the bridge by August 2005, at a cost of about \$150,000, and resumed service to GP. GSWR asserts that GP's traffic, which consists of inbound shipments of logs and outbound shipments of plywood and veneer moving to and from the GP plant at Durand, GA, amounted to 100 cars in 2005,¹ 322 cars in 2006, and 134 cars in

¹ Carloads and revenues are for August through December 2005.

2007,² and generated gross revenues of \$26,008, \$85,744, and \$20,100, respectively. GSWR submits that the total gross revenues received to date do not even cover the cost of repairing the bridge. According to GSWR, it has been unable to develop any new rail traffic moving to or from the line and the revenues generated by GP have been inadequate to cover the cost of operations.

GSWR provides detailed revenue and cost data for 2006, the only full year of operations. It states that, because the line is stub-ended and, therefore, not capable of handling overhead traffic, all traffic originated or terminated on the line. GSWR maintains that, in addition to the \$85,744 from GP it generated \$3,250 in other income, mainly from leases along the line in 2006 (for total revenues of \$88,994).

GSWR includes a breakdown of on-branch avoidable costs for 2006 totaling \$437,092. Subtracting the \$88,994 of total revenues, GSWR claims an avoidable loss of \$348,098. This figure assumes \$258,000 of maintenance-of-way structure (MOW) costs. If actual MOW costs are used (estimated to be \$167,270), a substantial loss of \$257,368 would occur.

GSWR states that, from January 1 through June 15, 2007, it handled 134 inbound carloads of logs generating \$20,100 in gross revenues. It further states that no outbound traffic was tendered to GSWR during that time period. According to GSWR, because of the reduced carloads being tendered in 2007, service to the shipper on the line is averaging about 1½ times a week. Based on the number of carloads and the commodities handled on the line between January 1 and June 15, 2007, GSWR estimates that the total carloads for the forecast year will be 295 and the total gross revenues will be \$44,250 (plus \$3,250 in leases for total gross revenues of \$47,500). It estimates total avoidable costs of \$400,702. Accordingly, GSWR concludes that an avoidable loss of \$353,202 would occur in the forecast year.

GSWR states that, in order for it to cover its operating costs and earn its cost of capital, GP would have to make a subsidy payment of \$1,328,199 for the forecast year.

GSWR asserts that GP has direct access to CSX Transportation, Inc. (CSXT), at its Durand facility and utilizes CSXT for the vast majority of its rail-based transportation needs. GSWR explains that, during the time between May 2003 and August 2005, when the line was out of service due to a washout of one of the bridges, most, if not all, of the traffic handled by GSWR's predecessor was shifted to CSXT. GSWR contends that, if the proposed abandonment is granted, most, if not all, of the traffic currently handled by GSWR will likely shift back to CSXT.

GADOT opposes the petition for exemption, claiming that the abandonment will depress the region it serves even further than it is today. GADOT states that GSWR has owned the railroad property for less than 2 years and, subsequently, has had less than 2 years to market rail

² Carloads and revenues are for January 1 through June 15, 2007.

service to existing industries along the line and to potential industries seeking to locate and receive rail service on the line. GADOT maintains that this short period of ownership and service is not enough time to thoroughly market rail service and rail alternatives to existing industries on and near the line, nor does GADOT believe it to be enough time to attract new industries and businesses to the area. While acknowledging the presence of CSXT, GADOT is concerned that an abandonment here would increase truck traffic on Georgia highways.

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 of this transaction 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 would reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption would also foster sound economic conditions and encourage efficient management by relieving GSWR of the out-of-pocket expenses and significant opportunity costs associated with retaining the underutilized line [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy would not be affected adversely.

Regulation of the proposed transaction is not necessary to protect shippers from an abuse of market power because the only shipper is GP and its use of the line has been very limited. Furthermore, GP has direct access to CSXT for rail shipments. Apparently, while the line was previously out of service due to a bridge washout, GP shifted its traffic to CSXT and GP has not filed in opposition to the proposed abandonment. Moreover, all of the traffic moving to and from the line is truck competitive. The communities along the line have an adequate highway network capable of supporting motor carrier transportation. For example, Interstate Highway 185 and U.S. Highway 27 run essentially parallel to the line. To ensure that GP is informed of our action, GSWR will be required to serve a copy of this decision on GP within 5 days of the service date 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 in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

GSWR 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) has examined the environmental report, verified the data it contains, analyzed the probable effects of the proposed action on the quality of the human environment, and served an environmental assessment (EA) on October 19, 2007. Comments to the EA were due by November 19, 2007.

In the EA, SEA notes that the National Geodetic Survey (NGS) has identified 35 geodetic station markers that may be affected by the proposed abandonment. Accordingly, SEA recommends that a condition be imposed requiring GSWR to notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers.

In the EA, SEA also notes that the Georgia Department of Natural Resources' Environmental Protection Division (Georgia EPD) submitted comments stating that the removal of the rail, track material and cross-ties is considered land disturbing activity under both the Georgia Erosion and Sedimentation Act (GESA) and the National Pollution Discharge Elimination System (NPDES) Storm Water General Permit Program. Accordingly, SEA recommends that a condition be imposed requiring GSWR, prior to commencement of any salvage activities, to consult with Harris County, Meriwether County, and the Georgia EPD, to comply with the reasonable requirements of the NPDES Storm Water General Permit Program and the GESA, and to report the results of these consultations in writing to SEA prior to commencement of any salvage activities.

SEA, in the EA, has indicated that it conducted a search of the Native American Consultation Database (Database) at <http://www.nps.gov/nacd/> to identify federally recognized tribes that may have ancestral connections to the project area. The Database indicated that the Muscogee (Creek) Nation of Oklahoma may have knowledge regarding properties of traditional religious and cultural significance within the right-of-way (the Area of Potential Effect) of the proposed abandonment. Accordingly, SEA stated that it would send a copy of the EA to the Muscogee (Creek) Nation of Oklahoma for review and comment.

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

As previously noted, the County filed a request for the issuance of a NITU under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and for imposition of a public use condition under 49 U.S.C. 10905. The County has submitted a statement of willingness to assume financial responsibility for the right-of-way (ROW), and has acknowledged that the use of the ROW is subject to possible future reconstruction and reactivation of the ROW for rail service as required under 49 CFR 1152.29. By letter filed on October 10, 2007, GSWR states that it is willing to negotiate with the County for interim trail use. Because the County's request complies with the requirements of 49 CFR 1152.29, and GSWR is willing to enter into trail use negotiations, we will issue a NITU authorizing the parties to negotiate an agreement for interim

trail use/rail banking during the 180-day period prescribed below. If an agreement is executed, no further Board action is necessary. If no agreement is reached within 180 days, GSWR may fully abandon the line, provided that the conditions imposed below are met. See 49 CFR 1152.29(d)(1). Use of the ROW for trail purposes is subject to restoration for railroad purposes.

SEA indicated in its EA that, following abandonment and salvage of the line, the ROW may be suitable for other public use. The County requests imposition of a 180-day public use condition prohibiting GSWR 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. The County states that the rail corridor has considerable value for recreational trail use. According to the County, the 180-day period is needed to assemble a consortium of interested parties and to pursue negotiations with GSWR.

We have determined that persons who file under the Trails Act may also file for public use under 49 U.S.C. 10905. See Rail Abandonments–Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 609 (1986) (Trails). When the need for both conditions is established, it is our policy to impose them concurrently, subject to the execution of a trail use agreement. The County 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 and notice, to enable any state or local government agency or other interested person to negotiate the acquisition of the line for public use. If a trail use agreement is reached on a portion of the ROW, GSWR must keep the remaining ROW intact for the remainder of the 180-day period to permit public use negotiations. Also, we note that 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 negotiate to acquire the ROW that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, GSWR is not required to deal exclusively with the County, but may engage in negotiations with other interested persons.

The parties should note that operation of the trail use and 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, offers of financial assistance (OFA) to acquire rail lines for continued rail service or to subsidize rail operations take priority over interim trail use/rail banking. Accordingly, if an OFA is timely filed under 49 CFR 1152.27(c)(1), the effective date of this decision and notice 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 trail use precluded. Alternatively, if a sale under the OFA procedures does not occur, the trail use process may proceed.

On October 22, 2007, Kern Valley Railroad Company (KVRC) filed a formal expression of intent to file an OFA to purchase the line. In the filing, KVRC, pursuant to 49 CFR 1152.27(a), requested that GSWR provide it with copies of the most recent report on the physical condition of the line, GSWR's estimate of the net liquidation value of the line, with supporting data, including, but not limited to, identification of the parcels of land comprising the right-of-way which are owned in fee and those which are easement grants, the lengths, weight, date, and condition of the relay, reroll and scrap rails and other track materials, the number of reusable, landscaping and scrap ties, and any other information deemed relevant to enable KVRC to calculate the net liquidation value of the line, and the minimum purchase price GSWR seeks for the property. No further filing by either party has been made with reference to an OFA.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt GSWR from the prior approval requirements of 49 U.S.C. 10903 for the abandonment and discontinuance of the above-described line, subject to the employee protective conditions in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979), and subject to the conditions that GSWR shall: (1) leave intact the ROW, including bridges, trestles, culverts, and tunnels (except tracks, ties and signal equipment) for a period of 180 days from the effective date of this decision and notice, to enable any State or local government agency, or other interested person, to negotiate the acquisition of the line for public use; (2) comply with the interim trail use/rail banking procedures set forth below; (3) notify NGS at least 90 days prior to beginning salvage activities that will potentially disturb or destroy any geodetic station markers; and (4) prior to commencement of any salvage activities, consult with Harris County, Meriwether County, and the Georgia EPD, comply with the reasonable requirements of the NPDES Storm Water General Permit Program and the GESA, and report the results of these consultations in writing to the SEA prior to commencement of any salvage activities.

2. GSWR must serve a copy of this decision on GP within 5 days after the service date of this decision and certify to the Board that it has done so.

3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, 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 the payment of any and all taxes that may be levied or assessed against, the ROW.

4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the ROW.

5. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

6. If an agreement for interim trail use/rail banking is reached by the 180th day after the effective date of this decision and notice, interim trail use may be implemented. If no agreement is reached by that time, GSWR may fully abandon the line, provided the conditions imposed above are met.

7. 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 20, 2007, 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 of \$1,300. See 49 CFR 1002.2(f)(25).

8. 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.”**

9. Provided no OFA has been received, this exemption will be effective on January 9, 2008. Petitions to stay must be filed by December 26, 2007, and petitions to reopen must be filed by January 4, 2008.

10. Pursuant to the provisions of 49 CFR 1152.29(e)(2), GSWR 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 GSWR’s filing of a notice of consummation by December 10, 2008, 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 Nottingham, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams
Secretary