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SERVICE DATE - LATE RELEASE JULY 21, 2000

SURFACE TRANSPORTATION BOARD

DECISION<sup>1</sup>

STB Docket No. AB-559 (Sub-No. 1X)

GAULEY RIVER RAILROAD, LLC—ABANDONMENT  
AND DISCONTINUANCE OF SERVICE—IN WEBSTER  
AND NICHOLAS COUNTIES, WV

STB Docket No. AB-55 (Sub-No. 572X)

CSX TRANSPORTATION, INC.—DISCONTINUANCE  
OF SERVICE—WEBSTER AND NICHOLAS COUNTIES, WV

Decided: July 20, 2000

Gauley Eagle Holdings, Inc. (GEH) has filed a petition to stay the Board's decision served June 23, 2000, which reopened these proceedings and granted exemptions to Gauley River Railroad, LLC (Gauley River) and CSX Transportation, Inc. (CSXT), permitting them to abandon and discontinue service over three rail line segments (collectively, the Lines), totaling 30.7 miles, in Webster and Nicholas Counties, WV. The stay request will be denied.

BACKGROUND

On February 26, 1999, Gauley River and CSXT jointly filed an exemption petition permitting Gauley River to abandon: (1) a 10-mile line of railroad extending between milepost BUE-119 near Cowen, WV, and milepost BUE-129 at Allingdale, WV (Line A); and (2) an 8.3-mile line of railroad extending between milepost BUE-12.4 at Muddlety Falls, WV, and milepost BUE-20.7 at Muddlety, WV (including the McMillon Creek Branch and Delmont Branch) (Line C). Both Gauley River and CSXT sought an exemption to discontinue service over

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<sup>1</sup> A single decision is being issued in the two proceedings for administrative convenience only.

a 12.4-mile line of railroad between milepost BUE-0.0 at Allingdale, WV, and milepost BUE-12.4 at Muddlety Falls, WV (Line B).<sup>2</sup> The line has carried no traffic since 1994.

In a decision served June 16, 1999, the Board denied the contested petition for abandonment chiefly because Gauley River at the time received a \$12,000 monthly subsidy from Pace Carbon Fuels, LLC (Pace Carbon),<sup>3</sup> and the railroad had failed to demonstrate that the costs it incurred from retaining the Lines exceeded the subsidy.

On November 2, 1999, Gauley River and CSXT jointly filed a petition to reopen these proceedings. The petition cited the cessation of the subsidy and a statement from Pace Carbon and another local business, Pardee Resources Company, that they did not object to the abandonment of the Lines, provided that Gauley River would not salvage track until after June 1, 2000.

Based on the petition to reopen, which was not opposed, the Board granted the exemption petitions and permitted Gauley River and CSXT to abandon and discontinue service over the Lines. The Board found that exemption would relieve Gauley River of the costs it is incurring from owning the Lines. The Board noted that the Lines had not been operated since 1994 and that there is no potential for future traffic.

#### DISCUSSION AND CONCLUSIONS

GEH filed a petition to stay the June 23 decision pending consideration by the Board of a petition to reopen the case filed July 13, 2000.<sup>4</sup> Gauley River replied, opposing the stay request.<sup>5</sup>

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<sup>2</sup> Gauley River purchased Lines A and C from CSXT in 1998. See Gauley River Railroad, LLC—Purchase and Operation Exemption—CSX Transportation, Inc., STB Finance Docket No. 33579 (STB served July 14, 1998). Gauley River subleased Line B from CSXT, which in turn leases the line from the Strouds Creek and Muddlety Railroad (SC&M). See CSX Transportation, Inc.—Renewal of Lease Exemption—Strouds Creek and Muddlety Railroad Company, Finance Docket No. 31373 (ICC served Dec. 21, 1988).

<sup>3</sup> The abandonment also was opposed by state and local government agencies, local business interests, GEH, and by Senator Robert C. Byrd, Representative Bob Wise, and Brotherhood of Locomotive Engineers Division 751.

<sup>4</sup> The Board will rule separately on GEH's petition to reopen.

<sup>5</sup> Gauley River claims that the stay request was not filed at the Board on or before July 3, 2000, as required by the June 23 decision and was therefore not timely filed under 49 CFR 1104.6. The Board received the stay request on July 5, and the request is untimely. The petition (continued...)

The standards governing a stay request are: (1) whether petitioner is likely to prevail on the merits of the appeal; (2) whether petitioner will be irreparably harmed in the absence of a stay; (3) whether issuance of a stay would substantially harm other parties; and (4) whether issuance of a stay is in the public interest. Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841 (D.C. Cir. 1977) (WMATA); Virginia Petroleum Jobbers Ass'n v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958) (Virginia Petroleum Jobbers). GEH did not address these standards in its stay request.

GEH is not likely to succeed on the merits. In its petition to reopen, GEH does not dispute the Board's finding that Gauley River is incurring costs on the idle Lines, nor does it claim that the railroad earns any revenue on the Lines. Rather, GEH states that the costs have not been documented or itemized, nor has the total cost been established. GEH says that it approached the railroad about tendering traffic in 1998 but was quoted an excessive rate. Finally, GEH claims that Gauley River never intended to operate the line, but acquired the line at the behest of CSXT. GEH notes that Gauley River is affiliated with a CSXT contractor.

GEH would not likely prevail in seeking to reopen this proceeding. The Board's regulations state that "a petition to reopen must state the respects in which the proceeding involves material error, new evidence, or substantially changed circumstances." See 49 CFR 1115.4 (1999). GEH claims that the Board committed material error by "not requiring the petitioners . . . to provide financial documentation detailing the financial burden each has purportedly incurred . . ." However, GEH has not pointed to any requirements for such documentation, nor can it. No such requirements exist for a petition for exemption. It is only required that the Board's decision be supported by substantial evidence on the record. GEH has not addressed that standard, nor has it shown that the Board's decision is unsupported.

It is not disputed that Gauley River incurs costs from owning the Lines, including \$96,000 in interest on outstanding debt (as of April 30, 1999). On June 11, 1999, Gauley River filed a Valuation Study of the Lines, which was prepared by Mail Line Management Services, Inc. The study estimated the net liquidation value of the Lines at \$2,347,000, consisting of \$190,000 for land and \$2,157,000 in net salvage value for track materials. The study is sufficient to support the Board's findings in the June 23, 2000 decision that:

an exemption will foster sound economic conditions and encourage efficient management by allowing Gauley River and CSXT to avoid operating and maintaining an uneconomic rail line and to use their assets more productively elsewhere [49 U.S.C. 10101(5) and (9)]. Exemption will relieve Gauley River of the costs it is incurring from owning the Lines, although the exact amount of those costs is not shown on the record. Also the Lines are

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<sup>5</sup>(...continued)

will nevertheless be considered on its merits. Because the petition for stay is being denied, Gauley River will not be prejudiced by consideration of this late-filed petition.

not generating revenues to offset costs incurred by Gauley River since the subsidy payments stopped.

GEH has not shown that the Board committed any error, material or otherwise, in making these findings.

GEH claims that lack of a competitive rate is the reason that the Lines are not in service. GEH has offered no support for its assertion that the rate it was offered was excessive, except to say that it was higher than a prior rate. Because GEH offers no evidence about the prior rate, this statement proves nothing. Moreover, GEH has not discussed service with Gauley River since October 1998. GEH is apparently using trucks to meet its transportation needs.

Finally, GEH's comments about the motives of Gauley River and CSXT when Gauley River acquired the Lines are speculation and have not been shown to be relevant to the Board's determination.

GEH will not suffer irreparable harm in the absence of a stay. GEH has not demonstrated that it would suffer irreparable harm in the absence of a stay. GEH asserts that its investment in the mineral lands served by the Lines would be jeopardized if the Lines were abandoned. However, evidence in the record indicates that GEH never used rail service and is currently using trucks to transport coal to rail loading locations.

A stay will adversely impact other parties. GEH has not addressed this criterion. A stay would adversely impact Gauley River because the carrier would be required to continue incurring costs from holding lines that are no longer in operation and from which it is not receiving any revenues.

The public interest favors denying a stay. GEH has not shown that a stay is in the public interest. No traffic has moved over the Lines since 1994 and no shipper has tendered or guaranteed traffic. The subsidy payments to Gauley River from Pace Carbon ended a year ago, yet Gauley River continues to incur expenses by owning the Lines. The railroad receives no revenue to offset these costs. On the other hand, there is no evidence in the record indicating that the cessation of service over the Lines would adversely impact the community. None of the community interests that initially protested the carriers' exemption petition have opposed the carriers' request to reopen this proceeding. On balance, the public interest weighs in favor of denying the stay.

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

It is ordered:

1. GEH's stay request is denied.

STB Docket No. AB-559 (Sub-No. 1X), et al.

2. This decision is effective on the date served.

By the Board, Linda J. Morgan, Chairman.

Vernon A. Williams  
Secretary