

SURFACE TRANSPORTATION BOARD¹

DECISION

Docket No. AB-433X

IDAHO NORTHERN & PACIFIC RAILROAD COMPANY--ABANDONMENT EXEMPTION-
-IN WALLOWA AND UNION COUNTIES, OR

Decided: April 15, 1997

By decision served March 12, 1997, the Board granted a petition filed by Idaho Northern & Pacific Railroad Company (IN&P) for an exemption under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 10903-04 to abandon a 60.58-mile portion of its Joseph Branch between milepost 23.0 near Elgin and milepost 83.58 at Joseph, in Wallowa and Union Counties, OR (the line). The grant was made subject to standard labor protective conditions and environmental conditions. The decision provided that the exemption would become effective on April 17, 1997.

On April 2, 1997, Wallowa Forest Products, LLC (Wallowa), filed a petition asking that we reopen the proceeding and stay our prior decision.² IN&P filed a reply on April 7, 1997. The request to reopen will be denied and, thus, the request to stay becomes moot.

DISCUSSION AND CONCLUSIONS

Wallowa contends that we erred in the March 12 decision by rejecting the shippers' traffic projections as too speculative in nature to justify denying the abandonment. Moreover, Wallowa argues that our findings on future traffic are arbitrary and capricious in disregard of the existing record. Citing *Southern Pacific Transp. Co.-Abandonment*, 354 I.C.C. 752 (1978), Wallowa submits that, as a matter of policy, we should take a liberal approach when trying to ascertain the foreseeability of future traffic and, accordingly, should be very reluctant to approve an abandonment in the face of claims of increased traffic.

In addition to this argument, Wallowa includes a verified statement from Les Bridges, its Production Manager, providing updated traffic figures and future projections. According to Mr. Bridges, between May 6, 1996, and March 24, 1997, Wallowa actually produced the equivalent of

¹ The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (the ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the ICCTA provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the ICCTA. This decision relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10903. Therefore, this decision applies the law in effect prior to the ICCTA, and citations are to the former sections of the statute, unless otherwise indicated.

² By letter filed April 9, 1997, petitioner clarifies its petition by stating that it does not seek stay or reopening as to the 23.48-mile segment of the line beyond Wallowa to Joseph, OR. It contends, however, that the remaining portion of the line between Elgin and Joseph, OR, can be operated profitably. Letters in support of Wallowa's position were filed by Congressman Robert F. Smith, Oregon State Senator David Nelson, and Oregon State Representative Mark Simmons. In addition, the Oregon Parks and Recreation Department filed a petition on April 7, 1997, requesting a public use condition as well as an interim trail use condition. A decision addressing those requests will be issued at a later date.

416 carloads of lumber (95% of which he claims have historically moved by rail) and the equivalent of 477 carloads of wood chips (all of which he claims moves to Tacoma, WA, by rail). Annually this amounts to a total of 989 carloads. Mr. Bridges claims this amount will actually increase with use of the sawmill's bandsaw, which resumed on March 24, 1997.³ Based upon use of the bandsaw, he projects a total of 2,102 carloads annually. Wallowa argues that using any of these amounts will show that the traffic figures that we used to project future traffic were too low and that the line can be profitable.

In reply, IN&P does not specifically refute Wallowa's traffic claims but contends that there is no evidence that any of this projected traffic will actually move by rail. The railroad argues that, because Wallowa currently uses truck service to deliver its product, we should not expect that the shipper would use rail service. Moreover, IN&P contends that timber industry shippers have traditionally shipped wood chips by truck. Finally, IN&P alleges that throughout numerous dealings with Wallowa, it "has resisted any traffic guarantees tied to its estimates, and it continues to object to the charges that IN&P proposes to assess for the future service it would provide."

As we noted in our prior decision, this proceeding has had a long and contentious history. In part because of the vigorous opposition, we required the parties to file additional evidence, which we considered under the more rigorous statutory standard governing abandonment applications, in addition to analyzing the evidence under the exemption criteria. Thus, we considered whether the present or future public convenience and necessity permit the proposed abandonment. In doing so, we balanced the potential harm to shippers against the present and future burden that continued operations could impose on the railroad and interstate commerce.

Wallowa's argument that we failed to properly apply agency policy is not persuasive. Each abandonment stands on its own merits, and we must weigh the evidence accordingly. Here, we weighed the evidence on future traffic and found it to be speculative. Even considering the updated traffic figures and projections provided on reopening in the verified statement of Wallowa's production manager, the shipper has not demonstrated that any traffic will actually move by rail. Wallowa currently uses truck service, and has not demonstrated any injury due to the lack of rail service. Nor has it shown any attempt to negotiate with IN&P to guarantee the movement of a specific amount of traffic by rail at a specified rate. Accordingly, we have no grounds for reopening our prior decision and will not do so. To reiterate, all of Wallowa's figures deal with the production potential of its sawmill. While we have no reason to doubt those figures, Wallowa fails otherwise to address the question of probable future rail traffic, which is the relevant issue in determining whether to permit an abandonment of rail service. Finally, because our abandonment approval is permissive in nature, the railroad is not required to abandon the line, and thus the parties may try to reach an agreement to continue service until IN&P actually consummates the abandonment.

Wallowa seeks a stay here in order to allow us to have an opportunity to consider its petition to reopen before the abandonment becomes final. Our action here in ruling on the petition to reopen moots the stay request and it need not be discussed further.

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

³ The bandsaw has been shutdown while the sawmill was being refurbished.

It is ordered.

1. The petition to reopen is denied and the petition to stay is moot.
2. This decision is effective on its service date.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary