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SERVICE DATE - JANUARY 12, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-493 (Sub-No. 1X)

TRACK TECH, INC.--ABANDONMENT EXEMPTION--
IN WHITESIDE COUNTY, IL

Decided: January 7, 1998

By petition filed on September 24, 1997, 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 Denrock, IL (milepost 25.15) and Lyndon, IL (milepost 28.35), a distance of 3.20 miles in Whiteside County, IL.¹ We will grant the exemption, subject to an environmental condition and standard employee protective conditions.

BACKGROUND

The line proposed for abandonment was formerly owned by Burlington Northern Railroad Company (BN) and was acquired by petitioner on or about November 27, 1996.² According to Track Tech, BN had ceased operating the line in the first quarter of 1996 and the line has been out of service since that time. Petitioner has never operated trains over the line.

Petitioner states that there is only one shipper on the line, Whiteside Farm Service (Whiteside), located at Lyndon. Whiteside, according to Track Tech, has used the line only sporadically in recent years, having received no rail traffic in 1994, two cars of fertilizer in 1995, and four cars of fertilizer in the first quarter of 1996. There is no overhead traffic on the line because it ends at Lyndon. Track Tech asserts that there is no possibility that operations over this line could be viable for local service needs because only a small amount of traffic, if any, could reasonably be expected on the line in the future.

Petitioner states that alternative transportation service is available through area trucking companies and other rail carriers, including BN's east-west main line which traverses Denrock,

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

² 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. 2X, 3X, 4X, 5X, and 6X).

Union Pacific Railroad Company's east-west main line approximately 7 miles north of Lyndon, and Iowa Interstate Railroad's east-west main line approximately 23 miles south of Lyndon. In addition, petitioner avers that there are numerous barge carriers operating on the Mississippi River servicing the Clinton, IA and Fulton, IL areas approximately 10 miles east of Lyndon.

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 from 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. The sole shipper on the line has used the line only sporadically, receiving a total of 6 cars in 1995 and 1996, and Whiteside has alternative transportation available.³ Nevertheless, to ensure that the shipper is informed of our action, we will require Track Tech to serve a copy of this decision on Whiteside within 5 days of the service date of this decision and to 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 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 Natural Resources Conservation Service (NRCS) has determined that 10 of the 11 soil types along

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

the section of track between mileposts 25.15 and 28.35 are considered prime farm land. NRCS has also identified two small wetland areas located along the right-of-way. Accordingly, SEA recommends a condition that, before conducting salvage activities on this line, Track Tech shall consult with NRCS in Morrison, IL, to ensure that prime farmlands and wetland areas previously identified are not damaged.

No comments to the EA were received by the December 23, 1997 due date. We will impose the condition as recommended. 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.

This decision 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 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, before conducting salvage activities, Track Tech shall consult with NRCS to ensure that prime farmlands and wetland areas previously identified are not damaged.

2. Track Tech must serve a copy of this decision on Whiteside 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)⁴ 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."**

⁴ 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