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SERVICE DATE - LATE RELEASE JULY 23, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-531X

PIONEER VALLEY RAILROAD COMPANY, INC.—ABANDONMENT
EXEMPTION—IN HAMPDEN COUNTY, MA

Decided: July 22, 1998

By petition filed April 2, 1998,¹ Pioneer Valley Railroad Company, Inc. (PVRR), seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a 1.9-mile line of railroad known as the Westfield Branch extending from milepost 0.0 to the end of the line at milepost 1.9, in Westfield, Hampden County, MA. We will grant the exemption subject to standard employee protective conditions.

BACKGROUND

The Westfield Branch is a single-track, stub-ended branch line, extending from a connection with another PVRR line in the City of Westfield across the double-track Boston-Albany main line of Consolidated Rail Corporation (Conrail) to a point south of the City. PVRR indicates that the line has been embargoed since July 3, 1997, due to a truck accident that severely damaged the Thomas Street overpass in Westfield.

Prior to the embargo, the Westfield Branch was classified as Federal Railroad Administration (FRA) excepted track, and PVRR provided service on an as-needed basis to the only active shipper on the line, Commercial Distributing Company, Inc. (Commercial). The only other shipper to use the line during the last three years was Lumber Center (Lumber). Both shippers are located south of the damaged Thomas Street overpass.

PVRR provides the following carload data:

¹ Notice of the filing was served and published in the Federal Register on April 22, 1998 (63 FR 20000).

	1995	1996	1997 ²	Commodity
Commercial	59	57	34	Beer
Lumber	1	2	0	Lumber
Total	60	59	34	

It also provides gross revenue and cost figures,³ as follows:

	1995	1996	1997 ⁴
Gross revenues	\$22,988	\$22,425	\$12,750
Costs	\$36,035	\$52,076	\$14,265

Since the embargo, rail shipments for Commercial have been spotted at the warehouse distribution center of a PVRR affiliate in Westfield and trucked the remaining distance to Commercial's facility. PVRR states that it has obtained a new through rate from Norfolk Southern Railway Company for beer shipments between Eden, NC, and Commercial's Westfield facility, which includes the warehouse and trucking charges. PVRR believes that these arrangements are satisfactory with Commercial. Although Lumber has not received a rail shipment over the Westfield Branch for nearly two years, PVRR argues that, should Lumber require rail service in the future, those transportation needs can be adequately met by using PVRR's transload facility at the Westfield Yard, which is located just over one mile from Lumber's facility. Moreover, PVRR submits that there is extensive motor carrier service in the area. PVRR has served a copy of the petition on both shippers.

PVRR estimates that it would cost approximately \$325,000 to repair and reopen the Thomas Street overpass. According to PVRR, except for the 107-pound rail which is suitable for relay elsewhere, the track on the line is in poor condition and would require extensive tie replacement and other repair. Thus, PVRR submits that the overall cost to rehabilitate the Westfield Branch to

² Through July 3, 1997.

³ PVRR states that, in addition to the normal operating costs associated with the branch line, it is responsible for 50% of the maintenance expense of the two crossing diamonds where the Westfield Branch intersects Conrail's Boston-Albany main line. Although these diamonds typically carry 73,000,000 gross tons of traffic per year, PVRR states that only a fraction of this tonnage is attributable to PVRR.

⁴ Through July 3, 1997.

minimum FRA Class 1 standards is approximately \$500,000. On the other hand, PVRR argues that abandonment would relieve it of the burden of rehabilitating a line that is not economically feasible to operate and permit it to realize the net liquidation value (NLV) of the line by selling it.⁵

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without prior Board 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 PVRR of the costs of rehabilitating and maintaining the line and allowing it to apply its assets more productively elsewhere on its rail system [49 U.S.C. 10101(5), and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation is not necessary to protect shippers from the abuse of market power.⁶ Apparently, acceptable arrangements have been made to reroute the traffic of Commercial, the only active shipper on the line at the time of the embargo, and Lumber, a shipper that has not used the line in almost two years, can be served from a nearby transload facility at PVRR's Westfield Yard, should it require service in the future. Nevertheless, to ensure that the shippers are informed of our action, we will require that PVRR serve a copy of this decision on them within 5 days of the service date of this decision and 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).

PVRR 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

⁵ PVRR's NLV of \$511,070 appears to be in error. The figures it provides to compute NLV are \$94,160 for rail, \$16,960 for other track materials, \$0 for ties, and \$400,000 for land, which adds up to \$511,120.

⁶ Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

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 its data, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on June 1, 1998, recommending that no environmental or historic conditions be imposed on the abandonment.

No comments to the EA were filed by the June 30, 1998 due date. Based on SEA's recommendation, we conclude that the proposed abandonment, if implemented, 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 suitable 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.

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 the employee protective conditions in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

2. PVRP must serve a copy of this decision on Commercial and Lumber 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) to allow rail service to continue must be received by the railroad and the Board by July 31, 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 \$1,000 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.”**

5. Provided no OFA has been received, this exemption will be effective on August 22, 1998. Petitions to stay must be filed by August 7, 1998, and petitions to reopen must be filed by August 17, 1998.

6. Pursuant to the provisions of 49 CFR 1152.29(e)(2), PVRP 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 PVRP's filing of a notice of consummation by July 23, 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 one-year period, the notice of consummation must be filed not later than 60

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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