

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 414 (Sub-No. 8X)

IOWA INTERSTATE RAILROAD, LTD.—ABANDONMENT EXEMPTION—IN POLK,
JASPER AND MARION COUNTIES, IOWA

Digest:¹ This decision allows Iowa Interstate Railroad, Ltd. (IAIS), to end its responsibility to provide rail service over approximately 30.95 miles of rail line in Polk, Jasper, and Marion Counties, Iowa, subject to conditions that protect the interests of affected employees. The decision also imposes environmental conditions on one segment of the line and requires IAIS to keep the right-of-way and certain structures in place for 180 days to allow IAIS to negotiate with parties interested in acquiring the segment for public use. The decision exempts the rest of the line from the offer of financial assistance and public use processes because it has already been salvaged and the right-of-way largely sold or transferred following other previous grants of abandonment authority that IAIS never lawfully consummated by the filing of the required notice with the Board.

Decided: August 15, 2014

By petition filed on May 2, 2014, Iowa Interstate Railroad, Ltd. (IAIS), seeks an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10903 to abandon approximately 10.75 miles of rail line between milepost 145.75 south of Mitchellville and the current end of the track at milepost 135.0 southeast of Prairie City, in Polk and Jasper Counties, Iowa (the Prairie City segment). IAIS also seeks an exemption from the prior approval requirements of § 10903 to “re-authorize” abandonment of the following two contiguous line segments: (1) between milepost 135.0 near Prairie City and milepost 123.50 near Otley, a distance of approximately 11.5 miles in Jasper and Marion Counties, Iowa (the Otley segment); and (2) between milepost 123.50 near Otley and milepost 114.80 in Pella, a distance of approximately 8.7 miles in Marion County, Iowa (the Pella segment).² IAIS further requests that

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² The Board previously authorized IAIS to abandon the Otley and Pella segments in Iowa Interstate Railroad—Abandonment Exemption—in Marion & Jasper Counties, Iowa, AB 414 (Sub-No. 3X) (STB served Oct. 20, 2000) and Iowa Interstate Railroad—Abandonment Exemption—in Marion County, Iowa, AB 414 (Sub-No. 2X) (STB served Aug. 11, 1998), respectively. Although those segments were subsequently salvaged, IAIS never filed the notices
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the Pella and Otley segments be exempted from the offer of financial assistance (OFA) provisions of 49 U.S.C. § 10904 and the public use provisions of 49 U.S.C. § 10905. Notice of the filing was served and published in the Federal Register on May 22, 2014 (79 Fed. Reg. 29,503).

With respect to the Prairie City segment, the Iowa Natural Heritage Foundation (INHF), on behalf of itself, the Jasper and Polk County Conservation Boards, and the Cities of Prairie City and Mitchellville (collectively, Proponents), filed on May 14, 2014, a request that the Board: (1) impose a 180-day public use condition under § 10905 and the Board's regulations at 49 C.F.R. § 1152.28 barring removal or destruction of potential trail-related structures such as bridges, trestles, culverts, and tunnels; and (2) issue a notice of interim trail use or abandonment (NITU), under the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act), and the Board's regulations at 49 C.F.R. § 1152.29. IAIS responded by letter dated May 30, 2014, stating that it does not agree to the issuance of a NITU for the Prairie City segment, but that it is willing to negotiate for the sale of the right-of-way with any interested party that presents an alternate use of the property. IAIS also stated that it does not believe that a public use condition is necessary or appropriate under these circumstances.

IAIS asserts that no rail shipments have been handled over the Prairie City segment since January 2008 and that the last rail movements over the Otley and Pella segments occurred nearly 15 years ago.³ The Pella segment, according to IAIS, was salvaged in 1999-2000 (following the Board's 1998 authorization of abandonment), and few traces of it are discernible today. As for the Otley segment, a NITU was issued allowing the Marion and Jasper County Conservation Boards, INHF, and the Iowa Trails Council (ITC) to negotiate an interim trail use/rail banking agreement with IAIS for the entire right-of-way. See Iowa Interstate R.R.—Aban. Exemption—in Marion & Jasper Cntys., Iowa, AB 414 (Sub-No. 3X) (STB served Nov. 20, 2000). IAIS states that it ultimately transferred approximately 5.6 miles of the Otley segment right-of-way, between milepost 135.0 and milepost 129.4, to Jasper County “in a transaction plainly intended to be subject to the Trails Act.”⁴ Pet. for Exemption at 5. The remainder of the Otley segment,

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of consummation required by the Board's regulations at 49 C.F.R. § 1152.29(e) to signify that the abandoning railroad has exercised its abandonment authority and fully abandoned the segments. We refer to all three contiguous segments together as “the Line.”

³ IAIS asserts that the abandonment of the Line would qualify for the two-year out-of-service class exemption under 49 C.F.R. § 1152.50 but that it is filing a petition for exemption because of its request to exempt the Pella and Otley segments from the OFA and public use provisions.

⁴ In a letter filed on May 27, 2014, the Jasper County Conservation Board (Jasper County) states that the 5.6 miles of right-of-way was transferred from IAIS to Jasper County at a meeting of the Jasper County Board of Supervisors on August 26, 2001. Jasper County requests that if the Board grants the requested reauthorizations it “recognize the NITU for that portion of the line between MP 135.0 near Prairie City and 129.4 in Monroe and the subsequent transfer under the Trails Act.” Subsequently, in a letter filed on June 26, 2014, in Docket No. AB 414 (Sub-No. 3X) (the original Otley segment abandonment), Jasper County requested a change in

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according to IAIS, was transferred or sold outside of the Trails Act and salvage of the track and track materials was completed by early 2002.

IAIS states that it is seeking abandonment reauthorization for the Otley and Pella segments in this petition because notices of consummation were not filed with the Board in the earlier abandonment proceedings for those segments and those authorities have expired.⁵ As part of its request for abandonment reauthorization for the Otley and Pella segments, IAIS requests that these segments be exempted from the OFA and public use provisions of §§ 10904 and 10905, respectively. No one has objected to the proposed abandonment of any of the three segments of the Line.

For the reasons discussed below, the Board will grant the abandonment exemption, subject to standard employee protective conditions and, as to the Prairie City segment, public use and environmental conditions. We also will exempt the Otley and Pella segments from the OFA and public use provisions.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 10903, a rail line may not be abandoned without prior approval from the Board. 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 (RTP); 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 IAIS's abandonment proposal under § 10903 is not necessary here to carry out the RTP. There is no freight rail traffic currently on the Line, and there has been none on the Prairie City segment for more than six years nor on the Otley and Pella segments for nearly 15 years. An exemption would therefore meet the RTP requirements to minimize the need for Federal regulatory control over the rail transportation system, expedite regulatory decisions, and reduce regulatory barriers to exit, in accordance with 49 U.S.C. §§ 10101(2) and (7). An exemption would also foster sound economic conditions and encourage efficient management by permitting the rationalization of an unnecessary common carrier rail line,

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trail sponsor for the 5.6 miles of right-of-way and submitted a Statement of Willingness to Assume Financial Responsibility under 49 C.F.R. § 1152.29(f). A decision granting that request is being served today in Docket No. AB 414 (Sub-No. 3X).

⁵ Under 49 C.F.R. § 1152.29(e)(2), abandonment authority automatically expires one year after the service date of the decision permitting abandonment if a notice of consummation has not been filed and there are no legal or regulatory barriers to consummation (such as the imposition of a Trails Act condition). The original abandonment authority granted in Docket No. AB 414 (Sub-No. 3X) remains in effect for the portion of the Otley segment between milepost 135.0 and milepost 129.4 because interim trail use/rail banking under the Trails Act is a barrier to consummation. See id.

consistent with 49 U.S.C. §§ 10101(5) and (9). Other aspects of RTP would not be adversely affected.

Moreover, because there are no active shippers on the Line and no freight traffic has moved over the Prairie City segment for more than six years nor over the Otley and Pella segments for nearly 15 years, regulation of the proposed transaction is not necessary to protect shippers from an abuse of market power.⁶ Therefore, the proposed abandonment is exempt from the prior approval requirements of § 10903.

Exemption of the Otley and Pella segments from 49 U.S.C. §§ 10904 and 10905. Under § 10904, a financially responsible person may offer to purchase, or subsidize continued rail operations over, a rail line sought to be abandoned. Under § 10905, the Board may prohibit the disposal of rail line sought to be abandoned for a negotiating period of up to 180 days if it determines that the involved rail properties are appropriate for public purposes. Here, however, IAIS seeks to exempt the Otley and Pella segments from both the OFA process of § 10904 and the public use provisions of § 10905. In support of its request, IAIS states that there is no rail line for an OFA party to acquire or subsidize and that it would be pointless to impose a 180-day public use negotiating period because the Otley and Pella segments were salvaged more than a decade ago and their rights-of-way have been largely sold or transferred.

IAIS has justified exempting the Otley and Pella segments from the OFA and public use processes. Following the previous grants of abandonment authority for those segments, IAIS salvaged the track and sold or transferred much of the rights-of-way, notwithstanding that it inadvertently failed to consummate the abandonments by filing the notice required by 49 C.F.R. § 1152.29(e). Subjecting the Otley and Pella segments to the OFA process and to public use conditions would unreasonably prejudice those who acquired portions of the rights-of-way after the Board authorized the segments' abandonment and who thus could have reasonably believed that the properties were no longer subject to this agency's jurisdiction. Moreover, in those earlier proceedings, public use conditions were imposed and OFAs were permitted, but none were filed. We therefore conclude that applying the OFA and public use provisions to the Otley and Pella segments in this situation is not necessary to carry out the RTP.

Expediting the abandonment by exempting the Otley and Pella segments from the OFA and public use processes would minimize federal regulatory control over the rail system, expedite regulatory decisions, and reduce regulatory barriers to exit. 49 U.S.C. § 10101(2) and (7). Other aspects of the RTP would not be adversely affected. And, because there have been no shippers on the Otley and Pella segments for many years, application of § 10904 and § 10905 is not necessary to protect shippers from an abuse of market power. Exempting the transaction from § 10904 and § 10905 therefore is warranted.

Employee Protection. Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees.

⁶ Because regulation is unnecessary to protect shippers from the abuse of market power, we need not determine whether the proposed transaction is of limited scope.

Accordingly, as a condition to granting this exemption, the Board will impose the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho (Oregon Short Line), 360 I.C.C. 91 (1979).

Environmental Review. IAIS has submitted a combined environmental and historic report and has notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the environmental impacts of the proposed abandonment. See 49 C.F.R. §§ 1105.7, 1105.8, and 1105.11. The Board's Office of Environmental Analysis (OEA) examined the environmental and historic report, verified IAIS's data, and analyzed the probable effects of the proposed abandonment on the quality of the human environment.

OEA issued an Environmental Assessment (EA) on July 1, 2014, recommending that three conditions be imposed on any decision granting abandonment authority. In the EA, OEA states that the Iowa Department of Natural Resources (IDNR) recommends that best management practices be used during salvage operations and states that its Conservation and Recreation Division (CRD) notes that approvals from other IDNR offices, such as the Environmental Services Division, may be required prior to salvage operations. Therefore, OEA recommends a condition that would require IAIS to consult with IDNR prior to conducting salvage operations to determine what, if any, approvals or permits are needed to: (1) protect any rare species or significant natural communities and streams and other flowing water bodies, and (2) provide best management practices. If approvals or permits are needed, OEA recommends that IAIS be required to comply with the reasonable requirements of IDNR.

OEA also states in the EA that the National Geodetic Survey (NGS) identified approximately six geodetic station markers that may be affected by the proposed abandonment. OEA therefore recommends that IAIS be required to notify NGS at least 90 days before beginning salvage operations that would disturb or destroy these geodetic station markers.

OEA further states in the EA that IAIS's historic report indicates that the Prairie City segment contains a 20-foot long single-span timber bridge that is 50 years old or older and that the State Historical Society of Iowa (State Historic Preservation Office or SHPO) had commented that it would need more information as well as the required archaeological site background check before it can continue its review. OEA therefore recommends in the EA that a historic preservation condition under § 106 of the National Historic Preservation Act, 16 U.S.C. § 470f (NHPA), be imposed.

Comments on the EA were due on July 31, 2014. In its Final EA, dated August 5, 2014, OEA states that it received two comments, both from the SHPO. In comments dated May 8, 2014, the SHPO: (1) states that the bridge and track structures do not meet any of the eligibility criteria for listing in the National Register of Historic Places (National Register); and (2) recommends that IAIS contact the Office of the State Archaeologist at the University of Iowa regarding archaeological resources. The Final EA indicates that IAIS made that contact, and in comments dated July 31, 2014, the SHPO concluded that the proposed abandonment and associated salvage of the rail line would have no effect on archaeological resources because two nearby archaeological sites are outside the railroad right-of-way. In the Final EA, OEA

concludes, pursuant to the § 106 regulations of NHPA and based on a review of the railroad's historic report, all relevant correspondence, the EA, and the Final EA, that no historic properties listed in or eligible for listing in the National Register would be affected by the proposed abandonment and thus no longer recommends imposition of a historic preservation condition under § 106 of NHPA.

Based on OEA's recommendations, we conclude that the proposed abandonment, if implemented and conditioned as described above, will not significantly affect either the quality of the human environment or the conservation of energy resources.

Interim Trail Use. As noted above, the portion of the Otley segment between milepost 129.4 and milepost 135.0 is in interim trail use/rail banking under the Trails Act as a result of earlier proceedings in Docket No. AB 414 (Sub-No. 3X). Here, requests for a NITU under the Trails Act for the remaining portions of the Line were due by June 11, 2014. Proponents timely filed a request for a NITU for the Prairie City segment, but IAIS indicated it does not consent to negotiate for interim trail use. Under the Trails Act, the trails use program is voluntary and consensual between the railroad and the trail sponsor. See 49 C.F.R. § 1152.29; Citizens Against Rails to Trails v. STB, 267 F.3d 1144 (D.C. Cir. 2001); Nat'l Wildlife Fed'n v. ICC, 850 F.2d 694, 699-702 (D.C. Cir. 1988); Rail Abans.—Use of Rights-of-Way as Trails (Rail Abandonments), 2 I.C.C. 2d 591, 598 (1986). Because IAIS does not consent to negotiate for interim trail use, the Board cannot issue a NITU for the Prairie City segment, and Proponents' request for a NITU for that segment will be denied.

Public use. Imposing a public use condition does not require the rail carrier's consent. In the EA, OEA found that following abandonment and salvage, the Prairie City segment's right-of-way may be suitable for other public use. In support of public use here, Proponents assert that the Prairie City segment connects to the portion of the Otley segment that Jasper County previously acquired from IAIS for trail purposes between milepost 135.0 and milepost 129.4 and that the acquisition of the Prairie City segment would help to extend the Central Iowa Trail System, a regional network of nearly 700 miles of trails, to the Neal Smith National Wildlife Refuge.

Proponents' submission meets the public use criteria prescribed at 49 C.F.R. § 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) the justification for the period of time requested. Accordingly, a 180-day public use condition will be imposed with respect to the Prairie City segment, commencing from the effective date of this decision and notice, to enable any state or local government agency or other interested person to negotiate its acquisition for public use. 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 a right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, IAIS is not required to deal exclusively with one or more of the Proponents but may engage in negotiations with other interested persons.

The parties should note that operation of the public use procedures regarding the Prairie City segment could be delayed, or even foreclosed, by the OFA process under § 10904. As stated in Rail Abandonments, 2 I.C.C. 2d at 608, an OFA to acquire rail lines for continued rail service or to subsidize rail operations takes priority over interim trail use/rail banking (which is not at issue here) and public use. Accordingly, if an OFA is timely filed under 49 C.F.R. § 1152.27(c)(1), the effective date of this decision will be postponed beyond the effective date indicated here. See 49 C.F.R. § 1152.27(e)(2). In addition, the effective date may be further postponed at later stages in the OFA process. See 49 C.F.R. § 1152.27(f). Finally, if the Prairie City segment is sold under the OFA procedures, the petition for abandonment exemption will be dismissed as to that segment and public use will be precluded. Alternatively, if a sale under the OFA procedures does not occur, the public use process may proceed.

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 by IAIS of the Line (except for the previously exempted and railbanked portion of the Otley segment between milepost 135.0 and milepost 129.4, as to which no new abandonment authority is required), subject to the employee protective conditions set forth in Oregon Short Line.
2. With respect to the Prairie City segment, this abandonment authorization is also subject to the conditions that IAIS: (a) leave intact all of the right-of-way, including all potential trail-related structures such as bridges, trestles, culverts, and tunnels, for the 180-day period from August 18, 2014, until February 14, 2015, to enable any state or local government agency, or any other interested persons, to negotiate the acquisition of the Prairie City segment for public use; (b) consult with IDNR prior to conducting salvage operations to determine what, if any, approvals or permits are needed to protect any rare species or significant natural communities and streams and other flowing water bodies and to provide best management practices; if approvals or permits are needed, IAIS is required to comply with the reasonable requirements of IDNR; and (c) consult with and notify NGS at least 90 days before beginning salvage operations that would disturb or destroy geodetic station markers.
3. Proponents' request for a rail banking/trail use condition for the Prairie City segment of the Line is denied.
4. Under 49 U.S.C. § 10502, the Otley and Pella segments of the Line are exempted from the OFA provisions of 49 U.S.C. § 10904 and the public use provisions of 49 U.S.C. § 10905.
5. An OFA under 49 C.F.R. § 1152.27(c)(1) to allow rail service to continue over the Prairie City segment must be received by the railroad and the Board by August 28, 2014, subject to time extensions authorized under 49 C.F.R. § 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27(c)(1). Each OFA must be accompanied by the filing fee of \$1,600. See 49 C.F.R. § 1002.2 (f)(25).

6. 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.”

7. Provided no OFA has been received for the Prairie City segment of the Line, the exemption from 49 U.S.C. § 10903 will be effective on September 17, 2014. Petitions to stay must be filed by August 28, 2014. Petitions to reopen must be filed by September 8, 2014.

8. Pursuant to the provisions of 49 C.F.R. § 1152.29(e)(2), IAIS 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 IAIS’s filing of a notice of consummation by August 18, 2015, 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 no later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.