

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-318 (Sub-No. 4X)

LOUISIANA & DELTA RAILROAD, INC.--ABANDONMENT
EXEMPTION--IN LAFOURCHE AND ASSUMPTION PARISHES, LA

Decided: August 20, 1997

By petition filed May 8, 1997, Louisiana & Delta Railroad, Inc. (L&D) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903¹ to abandon a line of railroad, the Napoleonville Branch, extending from milepost 1.0 near Thibodaux, Lafourche Parish, LA, to milepost 15.28 near Supreme, Assumption Parish, LA, a distance of 14.28 miles. The line traverses U.S. Postal Zip Codes 70301, 70302, 70372, and 70390. We instituted an exemption proceeding pursuant to 49 U.S.C. 10502(b) by notice published in the *Federal Register* on May 28, 1997 at 62 *FR* 28918. We will grant the exemption, subject to a public use condition, an environmental condition, and labor protective conditions.

BACKGROUND

According to L&D, regular service has not been provided on the line proposed for abandonment since November 1995.² Prior to November 1995, the line was used by Supreme Sugars for the operation of a sugar plant located at milepost 14.8. Supreme Sugars closed its plant in December 1995 and was bought by Tate & Lowe, which liquidated the plant. There were no other shippers on the line for three or four years prior to 1995.

L&D avers that there are no active shippers on the line and, therefore, no need or prospects for future service. The line is stub-ended and cannot handle overhead traffic. The line includes over 100 wooden box culverts and several bridges that were constructed in the late 1800's and is in deteriorating condition. L&D contends that, because of the absence of traffic, there is no justification for it to continue to incur the costs necessary to maintain and operate the line.

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 time and expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. By allowing L&D to avoid the costly maintenance expenses of this line and to apply its assets more productively elsewhere on its system, an exemption will promote a safe and efficient rail transportation system, foster sound economic conditions in transportation, and encourage efficient management [49 U.S.C. 10101(3), (5), and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

¹ While L&D's petition recites that exemption is sought from the provisions of section 10904, as well as section 10903, the petition offers no basis for an exemption from the offer of financial assistance provisions of section 10904. Consequently, we will not exempt petitioner from those provisions.

² A special shipment was, however, made over the line on January 11, 1997, to dismantle the line's last remaining facility at milepost 14.8.

Regulation of the proposed transaction is not necessary to protect shippers from an abuse of market power because the sole shipper on the line ceased to operate in December 1995 and its plant has been purchased and liquidated by the purchaser, Tate & Lowe. Consequently, there are now no active shippers on the line. Nevertheless, to ensure that Tate & Lowe is notified of our action, we will direct L&D to serve a copy of this decision on Tate & Lowe within 5 days of the service date of this decision and to certify to us that it has done so. Given our finding regarding the probable effect of the transaction on market power, we need not determine whether the transaction is limited in scope.

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 set forth in *Oregon Short Line R. Co.--Abandonment--Goshen*, 360 I.C.C. 91 (1979).

L&D 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 effect of the proposed action on the quality of the human environment. In an environmental assessment (EA) served July 9, 1997, SEA preliminarily concluded (subject to comment) that the proposed abandonment would not affect the quality of the human environment and, as such, that the environmental impact statement process was unnecessary. Comments on the EA were due on August 5, 1997, and none was received.

The Louisiana Department of Environmental Quality, Office of Solid and Hazardous Waste, asks that any creosoted materials removed be recycled or disposed of properly in accordance with appropriate state regulations. SEA recommends that a condition to that effect be imposed and we will do so. SEA further recommends that we impose no other environmental or historic conditions on the proposed abandonment. Accordingly, based on SEA's recommendations, 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 also indicates that the right-of-way may be suitable for other public use following abandonment. By petition filed April 8, 1997, the City of Thibodaux, LA (City) filed a request for the issuance of a notice of interim trail use/rail banking (NITU) pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and a 180-day public use condition, so that it could negotiate with L&D for acquisition of the right-of-way for a trail.³

By letter filed July 8, 1997, L&D states that it is not willing to negotiate with the City for interim trail use. L&D asserts that it has entered into an agreement to sell to a contractor all of its rights to the line,⁴ including materials and land. Because 16 U.S.C. 1247(d) permits only voluntary interim trail use, the Board cannot issue a NITU in this proceeding. *See Rail Abandonment--Use of Rights-of-Way as Trails*, 2 I.C.C.2d 591 (1986)(*Trails*). Accordingly, we will not do so.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. 10905. *See Trails*, 2 I.C.C.2d at 609. To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the time period requested. *See* 49 CFR 1152.28(a)(2). The City has satisfied those requirements here. A 180-day public use condition will, therefore, be imposed to control disposal of the rail properties being abandoned. L&D may remove the tracks, ties, and signal equipment on the right-of-way, but is required to leave bridges, culverts, and tunnels intact during

³ In a letter filed April 28, 1997, Louisiana Governor M.J. Foster, Jr. lends his support to the request.

⁴ The railroad adds, however, that the City has been informed that the contractor would be willing to listen to proposals from the City regarding the subject property.

that period. A public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found appropriate for public purposes.

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 by L&D of the above-described rail line subject to: (1) the employee protective conditions in *Oregon Short Line R. Co.--Abandonment--Goshen*, 360 I.C.C. 91 (1979); (2) the condition that L&D leave intact all of the right-of-way underlying the tracks, including bridges, culverts and tunnels (but not track or other rail assets) for a period of 180 days from the effective date of the exemption to enable any state or local government agency or other interested persons to negotiate the line's acquisition for public use; and (3) the condition that any creosoted materials removed be recycled or disposed of properly in accordance with appropriate Louisiana state regulations.

2. The request for issuance of a notice of interim trail use is denied.

3. L&D must serve a copy of this decision on Tate & Lowe within 5 days after service of this decision and certify to us that it has done so.

4. Provided no offer of financial assistance (OFA) has been received, this exemption is effective September 25, 1997.

5. Petitions to stay must be filed by September 10, 1997; petitions to reopen must be filed by September 22, 1997.

6. An OFA to allow rail service to continue must be received by the railroad and the Board by September 5, 1997, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). Each OFA must be accompanied by a filing fee, which is currently set at \$900. The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1).

7. 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."**

8. Pursuant to the provisions of 49 CFR 1152.29(e)(2), L&D 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 L&D's filing of a notice of consummation by August 26, 1998, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If any 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 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