

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-501 (Sub-No. 1X)

LONGHORN RAILWAY COMPANY--DISCONTINUANCE  
EXEMPTION--IN BURNET, TX

Decided: August 20, 1997

By petition filed on May 15, 1997, Longhorn Railway Company (LHRR) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to discontinue service over an approximately .25-mile segment of the Burnet City track owned by the City of Austin, TX (Austin),<sup>1</sup> extending between Polk Street and the end of the line at Washington Street in Burnet, TX.<sup>2</sup> Pursuant to 49 U.S.C. 10502(b), the Board served on June 4, 1997, and published in the *Federal Register* [62 FR 30927] on June 5, 1997, a notice instituting an exemption proceeding and directing LHRR to supplement its filing. LHRR supplemented its filing. We will grant the petition, subject to labor protective conditions.

BACKGROUND

LHRR seeks to discontinue service because the only shipper to use the line, Hoover Building Supply, has requested a new rail connection at a location closer to the main line, thus making its current connection unnecessary. Adjacent landowners have agreed to dispose of the right-of-way, which will eliminate a dangerous highway crossing, and free the property for commercial development. LHRR claims that savings from avoiding the expense of maintaining an unused rail line will inure to maintaining the remainder of the railroad and enhance the overall prospect of its remaining a viable freight railroad.

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<sup>1</sup> Austin acquired approximately 162 miles of rail lines, including the Burnet City track, from the Southern Pacific Transportation Company in *City of Austin, TX--Acquisition--Southern Pacific Transportation Company*, Finance Docket No. 30861(A) (ICC served Nov. 4, 1986); Austin Railroad Company, Inc. (ARC) was simultaneously authorized to operate the lines in *Austin Railroad Co., Inc.--Operation--City of Austin, TX*, Finance Docket No. 30861(B) (ICC served Nov. 4, 1986). Thereafter, Austin was exempted from the provisions of 49 U.S.C. Subtitle IV in connection with its acquisition of the involved rail lines in *City of Austin, TX--Exemption--From 49 U.S.C. Subtitle IV*, Finance Docket No. 30861(A) (Sub-No. 1) (ICC served Apr. 23, 1987). LHRR subsequently replaced ARC as the operator of the lines through a transaction exempted from regulation in *Central of Tennessee Railway & Navigation Company Incorporated d/b/a The Longhorn Railway Company--Change of Operator Exemption--The City of Austin, TX*, STB Finance Docket No. 32885 (Sub-No. 1) (STB served Apr. 18, 1996).

<sup>2</sup> LHRR previously filed a petition for discontinuance exemption that was rejected for failure to provide appropriate environmental and historic reports as required by 49 CFR 1105.7 and 1105.8. See *Longhorn Railway Company--Discontinuance Exemption--In Burnet, TX*, STB Docket No. 501X (STB served Apr. 1, 1997), citing *Caldwell County Economic Development Commission--Exemption from 49 U.S.C. Subtitle IV*, Finance Docket No. 32659 (ICC served Aug. 3, 1995), where the ICC said that granting an exemption from Subtitle IV could have the effect of authorizing abandonment or discontinuance, but that the agency would reserve jurisdiction to conduct a full environmental review when an actual abandonment or discontinuance of service was proposed.

## DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail carrier may not discontinue operations without 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 time and expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. Moreover, by allowing LHRR to avoid the costs of maintaining an unused line of railroad and to redeploy its equipment and crews elsewhere on its system, an exemption will promote safe and efficient rail transportation, foster sound economic conditions, and encourage efficient management [49 U.S.C. 10101(3), (5), and (9)]. Other aspects of the rail transportation policy are not affected adversely.

Because the line's only shipper will continue to receive rail service at a new rail connection, we find that regulation is not necessary to protect shippers from an abuse of market power. Nevertheless, to ensure that the shipper is informed of our action, we will require LHRR to serve a copy of this decision on Hoover within 5 days of the service date of this decision and certify to us that it has done so. Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of a statutory obligation to protect the interests of its employees. Accordingly, we will impose the employee protective conditions in *Oregon Short Line R. Co.--Abandonment--Goshen*, 360 I.C.C. 91 (1979), as a condition to granting this exemption.

Because Austin is exempted from the provisions of 49 U.S.C. Subtitle IV, Austin is not required to obtain abandonment authority to abandon and salvage the line; however, it must submit any required environmental and historic data and comply with any conditions imposed in the discontinuance proceeding before consummating abandonment and salvaging the line segment. LHRR and the rail line owners, Austin and Capital Metropolitan Transportation Authority, therefore, filed environmental and historic reports for our Section of Environmental Analysis (SEA) to perform an environmental assessment. SEA has examined the environmental report, verified its data, and analyzed the probable effect of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on July 14, 1997, recommending that no environmental or historic conditions be imposed on the discontinuance. No comments were received in response to the EA. Based on SEA's recommendation, we conclude that the proposed discontinuance, if implemented, will not significantly affect either the quality of the human environment or conservation of energy resources.

Because this is a discontinuance proceeding and not an abandonment, we need not consider trail use and public use of the line.

*It is ordered:*

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903 the discontinuance of service by LHRR over the above-described .25-mile line, subject to the employee protective conditions in *Oregon Short Line R. Co.--Abandonment--Goshen*, 360 I.C.C. 91 (1979).

2. LHRR is directed to serve a copy of this decision on Hoover within 5 days after the service date of this decision and to certify to the Board that it has done so.

3. Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2)<sup>3</sup> to allow rail service to continue must be received by the railroad and the Board by September 12, 1997, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). Each OFA must be accompanied by the filing fee, which currently is set at \$900. The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1).

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. Petitions to stay must be filed by September 17, 1997. Petitions to reopen must be filed by September 29, 1997.

6. Provided no OFA has been received, this exemption will be effective on October 2, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams  
Secretary

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<sup>3</sup> See *Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903*, STB Docket No. 537 (STB served Dec. 24, 1996 and June 27, 1997).