

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-398 (Sub-No. 4X)

SAN JOAQUIN VALLEY RAILROAD COMPANY—ABANDONMENT  
EXEMPTION—IN KINGS AND FRESNO COUNTIES, CA

Decided: May 9, 1997

San Joaquin Valley Railroad Company (SJVR) filed a petition for exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon an 18.1-mile segment of its Coalinga Branch (otherwise known as the Hanford Subdivision) extending between milepost 264.1 west of Rossi and the end of the line at milepost 282.0 at Huron, in Kings and Fresno Counties, CA. Protests were filed by Los Gatos Tomato Products (LGTP); Harris Feeding Company (Harris); the California Public Utilities Commission (CPUC), on behalf of LGTP, Harris, and Chemical Waste Management (CWM); and the Fresno County Board of Supervisors.<sup>1</sup> SJVR replied. The United Transportation Union seeks the imposition of labor protective conditions. As explained below, we will deny the petition for exemption.

BACKGROUND

SJVR became a rail carrier in 1992 upon consummating a lease from Southern Pacific Transportation Company (SP) and Visalia Electric Railroad Company for the operation of seven rail lines, including the Coalinga Branch, and assuming trackage rights over a number of other rail lines owned exclusively by SP or jointly by SP and The Atchison, Topeka and Santa Fe Railway Company (Santa Fe). The transaction authorized in *San Joaquin Valley Railroad Co.—Lease and Operation Exemption—Southern Pacific Transportation Company and Visalia Electric Railroad Company*, Finance Docket No. 31993 (ICC served Jan. 23, 1992) (*San Joaquin I*), involved a total of 354.70 miles of rail line in Fresno, Tulare, Kern, and Kings Counties, CA. Subsequently, in *San Joaquin Valley Railroad Co.—Acquisition and Lease Exemption—Southern Pacific Transportation Company*, Finance Docket No. 31993 (Sub-No. 1) (ICC served Oct. 4, 1993) (*San Joaquin II*),<sup>2</sup> SJVR purchased 206.77 miles of track and rail assets

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<sup>1</sup> The Kings County Association of Governments (Kings County) requests that a public use condition be imposed on the right-of-way and that SJVR be prohibited from initiating salvage activities if the abandonment is authorized. It states that the corridor's railroad structures may have considerable value for rail passenger purposes and that the feasibility of using the right-of-way for rail passenger service between Fresno, Kings, and Tulare Counties is currently being studied and has received widespread local support and funding.

Requests to extend public use conditions to track and other rail equipment are denied when the intent is to restore rail service. Exceptions to this policy have been made when the public use concerns mass transit, scenic railroads, and similar public purposes. *See Burlington Northern Railroad Company—Abandonment Exemption—Between Klickitat and Goldendale, WA*, Docket No. AB-6 (Sub-No. 335X), slip op. at 5 (ICC served Feb. 7, 1992). While Kings County's request appears to come under the mass transit exception, it does not comply with the requirements of 49 CFR 1152.28(a)(2). Under this rule, public use requests must be served on the abandoning railroad and must set forth: (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) justification for the time period. In any event, the request is moot in light of our ultimate decision on the merits of the proposed abandonment exemption.

<sup>2</sup> Although the lease exemption in *San Joaquin I* extended to the entire Coalinga Branch, from milepost 240.15 at Goshen Junction to the end of the line at milepost 293.80 near Turk, SJVR leased only the portion of the Coalinga Branch that ended at milepost 282.23 near Huron. *See San*

and leased the underlying right-of-way, for the seven rail lines that it had previously leased in *San Joaquin I*.

In its reply to the protests to its abandonment exemption petition, SJVR explains that no traffic has moved over the line since early 1995 when flooding caused the washout of a 1-mile segment of the line.<sup>3</sup> The line was subsequently embargoed on July 14, 1995 (Embargo Order No. 2-95); the embargo was extended on July 15, 1996 (Embargo Order No. 1-96). SJVR states that, prior to the embargo, it earned a total of \$130,520 in 1995 based on 468 carloads that originated or terminated on the line. According to SJVR, the proposed abandonment potentially will affect five shippers: Harris, LGTP, and CWM at Huron; Holly Sugar at Tracy (Holly); and Puregro Company at Bakersfield. SJVR states that it has offered, and is willing, to rehabilitate the line if it can be guaranteed a minimum of 1,200 carloads per year.<sup>4</sup>

CPUC argues that the line's traffic potential greatly exceeds this 1,200-carload annual minimum. CPUC notes that the Harris and LGTP traffic estimates alone are in the neighborhood of 2,000 carloads per year and that these shippers are willing to help finance the necessary rehabilitation.

LGTP operates a bulk tomato paste processing facility along an abandoned portion of the Coalinga Branch, about 1 mile west of the end of the line near Huron.<sup>5</sup> Alleging that it located at this site in 1991 to obtain direct rail service, LGTP states that it never used the line because of its poor condition. Instead, it has shipped more than 2,000 truckloads (800 carloads) annually to a Santa Fe railhead at Corcoran some 30 miles away where it must pay another party to load its shipments onto boxcars. Because tomato paste has a low profit margin, LGTP submits that the trucking charges it now incurs reduce its competitiveness. Accordingly, LGTP strongly opposes the abandonment.<sup>6</sup>

Like LGTP, Harris strongly protests the proposed abandonment, stating that it depends on economical and reliable rail service. Harris is located 15 miles northeast of Huron and is assertedly

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*Joaquin II*, slip op. at 1 n.4. The status of the 0.23 miles between the end point specified in *San Joaquin II* (milepost 282.23) and the end point at issue here (milepost 282.00) is unclear.

<sup>3</sup> After the washout, SJVR apparently rehabilitated the line to the extent necessary to permit Holly Sugar to ship 260 final carloads of sugar beets.

<sup>4</sup> In a letter to LGTP, dated April 24, 1996, and attached to the petition for exemption, SJVR offered to rehabilitate to Federal Railroad Administration class 1 safety standards 19 miles of rail line from the railroad station at Rossi to the end of the line just west of the city of Huron and the 1-mile line segment to the LGTP plant for \$1.1 million and \$300,000, respectively. Essentially, it proposed a minimum guarantee of 1,200 carloads annually for a 10-year period, with any revenue deficiency to be made up by the shippers if less than 1,200 carloads moved in any year, and annual reimbursements, not to exceed a total of 80% of rehabilitation costs, if more than 1,200 carloads moved in any year.

<sup>5</sup> We note that SP was granted an exemption to abandon the portion of the Coalinga Branch between milepost 279.973 near Huron and milepost 293.837 near Ora in *Southern Pacific Transportation, Inc.—Abandonment Exemption—In Fresno County, CA*, Docket No. AB-12 (Sub-No. 126X) (ICC served June 18, 1990) (*Southern Pacific*), and SP's system diagram map suggests that the abandonment was consummated. However, in *San Joaquin I and II*, SJVR acquired track between milepost 240.15 at Goshen and milepost 282.23 near Huron. In view of the former abandonment in *Southern Pacific*, SJVR's proposal to abandon what appears to be a previously abandoned portion of the Coalinga Branch, between milepost 279.973 and milepost 282 and/or 282.23, is unclear. It is also unclear when and under what authority or exemption the track leading to the LGTP plant was abandoned.

<sup>6</sup> LGTP apparently negotiated with SJVR for the reinstallation of the 1-mile segment, but the negotiations were not successful.

the largest cattle feeder in California and one of the largest in the country. According to Harris, it receives as much as 2,300 carloads of grain annually, primarily from Nebraska.<sup>7</sup> In its reply to the protests, SJVR states that Harris's grain shipments moved under a rail transportation contract that SJVR inherited from SP in 1992. SJVR delivered to Harris approximately 1,700 carloads in 1994 and approximately 200 carloads in 1995 before the expiration of the contract in February of that year.

On behalf of the shippers, CPUC submits that Harris has expressed a strong interest in restoring rail service at Huron and ultimately seeks to establish an "efficiency train terminal" to receive and quickly unload 75-car grain trains.<sup>8</sup> CPUC also alleges that CWM, which operates California's most advanced waste treatment center at Kettleman Hills, southeast of Coalinga, recently contracted to bring waste and contaminated earth to its Kettleman Hills facility from sites in Northern California. According to CPUC, unit train service would be preferable to reduce transportation costs and ensure greater safety and dependability.<sup>9</sup>

CPUC generally attributes the loss of traffic to the lines' deterioration and the embargo. It states that the line was in poor condition when it was transferred to SJVR in 1992 but that traffic volume was on an upswing, reaching 2,469 cars in 1994.<sup>10</sup> By early 1995, however, the line's condition allegedly had deteriorated to the point that increased operating problems were being experienced, including grain car derailments. In February 1995, Harris ceased using the line; the line was washed out in the spring, and the embargo was issued in July, after the final shipments were moved for Holly.

SJVR argues that the abandonment exemption should be granted because the shippers have not come forward with the necessary freight and revenue commitments to warrant rehabilitation. It notes that the 1994 traffic figure reflected the movement of 1,700 carloads of grain for Harris pursuant to a contract with SP that expired in February 1995 and 769 carloads of sugar beets for Holly, which, like the Harris traffic, will not recur.<sup>11</sup> Further, SJVR notes that since it acquired the line LGTP never tendered any traffic and that CWM ceased using the line after 1992. SJVR submits that it has made a number of efforts to obtain commitments from Harris and LGTP but that no agreement could be reached. If the line is abandoned, SJVR asserts that railroad service will continue to be available in the immediate vicinity at such points as Rossi, Hanford, and Goshen.

#### 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.

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<sup>7</sup> Harris purchases between 1,000 and 2,000 carloads of grain from Nebraska, which requires rail delivery; the remainder is purchased locally.

<sup>8</sup> Currently, CPUC states that Harris has increased its use of trucks and is using more distant railheads such as the one Santa Fe operates at Hanford.

<sup>9</sup> CPUC states that, until as recently as 1992, shipments of hazardous waste, hazardous substances, and contaminated earth were shipped via the Coalinga Branch and trucked the final distance to CWM's facility.

<sup>10</sup> According to CPUC, the only effort made by SJVR to keep the line serviceable after the heavy traffic volume of 1994 was to install low-grade used ties, but without tamping this proved ineffective.

<sup>11</sup> Apparently, Holly acquired Spreckels Sugar and now trucks its beets from Huron north to the Holly/Spreckels Mill at Mendota, a point on SJVR's West Side Branch. Harris trucks its shipments to other rail stations.

The exemption process is designed to minimize regulatory burdens. However, it is used when the information provided is sufficient for us to reach an informed decision. Typically, the type of abandonment transactions that are exempted are those where the shippers do not contest the abandonment or if they do contest it, revenue from their traffic is clearly marginal compared to the cost of operating the line. *See Boston and Maine Corporation—Abandonment Exemption—In Hartford and New Haven Counties, CT*, STB Docket No. AB-32 (Sub-No. 75X) *et al.* (STB served Dec. 31, 1996), slip op. at 5 (*Boston and Maine*); and *Tulare Valley Railroad Company—Abandonment and Discontinuance Exemption—In Tulare and Kern Counties, CA*, STB Docket No. AB-397 (Sub-No. 5X) (STB served Feb. 21, 1997), slip op. at 5-6. Where there is an inadequate record on which to grant an abandonment petition for exemption, the petition will be denied outright. *See Boston and Maine*, slip op. at 6.

In this case there is clearly insufficient information for us to make an informed decision on the merits of the proposed abandonment exemption. SJVR has not provided a breakdown of operating revenues and costs (with supporting detail) for the \$130,520 in revenues generated in 1995. Although SJVR states that it is willing to rehabilitate the line, it has not presented track inspection reports or other documentation to demonstrate that the entire 18.1-mile segment must be rehabilitated or to support the \$1.1 million rehabilitation estimate. From the letters attached to its petition, we know only that by April 24, 1996, SJVR had lowered its estimated rehabilitation cost to \$1.1 million and that the shippers are considering two outside rehabilitation estimates. Nor has SJVR submitted cost and revenue information to support the 1,200-carload annual minimum level commitment that it seeks.

The shippers, on the other hand, want the line restored, appear willing to help finance the rehabilitation, and assert that their collective traffic would exceed the 1,200-carload annual minimum set by SJVR.

Accordingly, upon review of the record before us, we conclude that SJVR has failed to establish (nor are we able to find) that continued regulation of the proposed abandonment is not necessary to carry out the rail transportation policy and either that it is not necessary to protect shippers from the abuse of market power or that the transaction is limited in scope. *See Boston and Maine*, slip op. at 5. As in *Boston and Maine*, we believe that the shippers' concerns warrant a more thorough review and, therefore, conclude that the petition for exemption should be denied. *Id.*

Our denial of SJVR's request to abandon moots labor protection issues and environmental issues, including Kings County's request for a public use condition. Denial of this petition is without prejudice to SJVR's refiling an appropriate abandonment application or petition for exemption that cures the defects found in the current proposal. Any new filing must be under a new docket sub-number accompanied by a new filing fee.

*It is ordered:*

1. The petition for exemption is denied.
2. This decision is effective on the date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams  
Secretary