

31572  
EB

SERVICE DATE - FEBRUARY 26, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 148X)

UNION PACIFIC RAILROAD COMPANY – ABANDONMENT EXEMPTION –  
IN COOS COUNTY, OR

STB Docket No. AB-515 (Sub-No. 1X)

CENTRAL OREGON & PACIFIC RAILROAD, INC.  
– DISCONTINUANCE EXEMPTION – IN COOS COUNTY, OR

Decided: February 22, 2001

By decision served October 30, 2000, the Board granted an exemption<sup>1</sup> under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 for Union Pacific Railroad Company (UP) to abandon, and for Central Oregon & Pacific Railroad, Inc. (CORP) to discontinue service over, a 1-mile line of railroad in Coos County, OR.<sup>2</sup> On December 18, 2000, Ron La Franchi, dba Ron's Oil (Ron's Oil), filed a petition to reopen and reconsider the matter.<sup>3</sup> CORP replied.

DISCUSSION AND CONCLUSIONS

A petition to reopen an abandonment and discontinuance proceeding must state in detail the respects in which the proceeding involves material error, new evidence, or substantially changed circumstances. 49 CFR 1152.25(e)(4). Ron's Oil's petition does not provide any new evidence or demonstrate any changed circumstances. Rather, petitioner seeks to reopen this proceeding on grounds that the Board's decision contains five material errors. As discussed below, we conclude that Ron's Oil has failed to show that reopening this proceeding is warranted.

---

<sup>1</sup> The exemption was granted subject to standard employee protective conditions and two environmental conditions.

<sup>2</sup> The line extends from milepost 785.50 to milepost 786.50 in Coquille, OR. UP owns the line and leases it to CORP.

<sup>3</sup> Ron's Oil and Western Helicopter Services, Inc. (Western Helicopter), the two shippers on the line, filed letter comments protesting the abandonment and discontinuance. Western Helicopter did not file a petition to reopen.

First, Ron's Oil contends that the cost of repairing the line was overstated. In reply, CORP argues that the Board accepted its undisputed evidence that the cost of repairing the bridge would be a minimum of \$54,240. Moreover, CORP notes, Ron's Oil acknowledged in its protest letter that the cost of restoring the bridge would be \$55,000. CORP also argues that Ron's Oil has not submitted any new or alternative evidence demonstrating that the cost of repairing the bridge was overstated, nor has it challenged the Board's conclusion that operating the line would be unprofitable if CORP were required to repair the bridge. We find that there is no evidence on the record demonstrating that the bridge repair costs were overstated. Thus, we reject petitioner's claim of material error in this regard.

Second, Ron's Oil contends that the Board did not consider its offer to repair the bridge. CORP responds that the offer was never communicated to anyone at the railroad, and notes that Ron's Oil merely stated in its protest that it was "ready, willing, and able to contribute to the restoration of the trestle." Moreover, CORP argues, if Ron's Oil had been serious about subsidizing continued rail transportation on the line, it could have made an offer of financial assistance under 49 CFR 1152.27(c)(1), but did not. We find no merit in petitioner's argument. Because Ron's Oil has never provided CORP or the Board with a formal, specific offer of subsidy, there was nothing for us to consider in our prior decision.

Third, petitioner argues that CORP never shared with Ron's Oil information regarding a sinkhole. In reply, CORP asserts that it was not aware of the sinkhole until after it filed its petition, that it was not obligated to report the sinkhole to petitioner, and that, in any event, the Board did not consider the cost of repairing the sinkhole determinative in reaching its decision. We agree and emphasize that we gave no weight to the existence of and cost for repairing the sinkhole in reaching our conclusion in the underlying decision.<sup>4</sup> Hence, petitioner's arguments related to the sinkhole are irrelevant and clearly not grounds for a finding of material error here.

Fourth, Ron's Oil asserts that "no consideration was given to the alternate location at the west end of the former trestle or at the alternate site for shipment for Ron's Oil . . . ." CORP replies that, after the bridge fire, it specifically offered Ron's Oil other nearby locations for transloading its shipments. However, according to the railroad, Ron's Oil has never responded to its offer. Moreover, in our prior decision, we specifically found that reasonably suitable alternatives to continued rail service over the line exist, and that CORP had adequately addressed shippers' transportation concerns. As such, petitioner's argument provides no grounds for finding material error.

Fifth, petitioner argues that the cost of transportation and storage of its propane will be competitive only if it is able to receive rail service at Coquille, rather than moving its operations

---

<sup>4</sup> We merely noted CORP's assertions regarding the sinkhole in a footnote. Of course, substantiation of those assertions would bolster CORP's position that maintaining the line is uneconomical.

to Coos Bay. CORP replies that Ron's Oil fails to submit any evidence to substantiate this argument, and states that this argument is belied by the fact that, since the bridge fire in August 1998, Ron's Oil has continued to operate by using trucks. Moreover, CORP points out that, even prior to the fire damage, petitioner's rail traffic was declining.<sup>5</sup> Again, we find that petitioner has not proven its allegations and, therefore, they cannot serve as a basis for a finding of material error.<sup>6</sup>

In sum, Ron's Oil has not demonstrated any material error in our decision, nor has it presented any new evidence or changed circumstances that would warrant our reopening this proceeding under 49 CFR 1152.25(e)(4). Therefore, the petition to reopen will be denied.<sup>7</sup>

This action will not significantly affect either the quality of the human environment or conservation of energy resources.

It is ordered:

1. The petition to reopen is denied.
2. This decision is effective on the date of service.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams  
Secretary

---

<sup>5</sup> The total number of Ron's Oil's carloads moving on the line from 1996 through August 1998, are as follows: 1996 – 30, 1997 – 23, 1998 – 8.

<sup>6</sup> We also note that this argument is inconsistent with the previous one made by Ron's Oil, i.e., petitioner cannot argue both that alternate sites were not considered and that no alternate site will meet its transportation needs.

<sup>7</sup> As we are denying the petition to reopen, there is no need to discuss whether petitioner has met the requirements for revocation of the exemption granted to UP and CORP, as raised in CORP's reply.