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SERVICE DATE - FEBRUARY 25, 2005

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-512X

SIERRA PACIFIC INDUSTRIES-ABANDONMENT EXEMPTION-
IN AMADOR COUNTY, CA

STB Docket No. AB-880X

SIERRAPINE-DISCONTINUANCE EXEMPTION-IN AMADOR COUNTY, CA

Decided: February 23, 2005

By petition filed on November 12, 2004, Sierra Pacific Industries (SPI) and SierraPine (collectively, petitioners) jointly seek exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903. SPI seeks to abandon, and SierraPine seeks to discontinue service over, a line of railroad extending from milepost 0.0 at Ione to milepost 12.0 at Martell, in Amador County, CA. Notice of the filing was served and published in the Federal Register on December 2, 2004 (69 FR 70169). The Amador County Transportation Commission (ACTC) filed a request for imposition of a public use condition and issuance of a notice of interim trail use (NITU) under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). Protests and comments were filed by ACTC, the Board of Supervisors of the County of Amador, California (County), the California Department of Transportation (Cal DOT), and the Martell Industrial Center, LLC (MIC) (collectively, protestants). Petitioners filed a reply to the protests and comments. We will grant the exemptions, subject to public use, trail use, and environmental conditions.

PRELIMINARY MATTER

On January 10, 2005, petitioners jointly filed a motion for leave to file a reply to the comments received in opposition to their petition for exemption. Petitioners included with their motion the reply itself. None of the other parties replied to petitioners' motion. Similarly, MIC requests that we accept its January 7, 2005 filing, a late-filed protest. We will accept MIC's protest and grant petitioners' motion. These filings provide a more complete record and their acceptance does not prejudice any party. Furthermore, the pleadings were filed in time for us to adequately consider them without jeopardizing our ability to meet our statutory deadline.

BACKGROUND

In 1997, SPI acquired the line, associated tracks, and a mill complex located near the end of the line at Martell. See Sierra Pacific Industries–Acquisition and Operation Exemption–Amador Central Railroad Company, STB Finance Docket No. 33378 (STB served Apr. 9, 1997). All mill operations except for a particle board plant were shut down at that time. According to petitioners, SierraPine bought the particle board plant (also referred to as the Ampine plant) in May 1997. SierraPine then entered into an agreement with SPI to lease and operate the line and associated yard and spur tracks. See SierraPine–Lease and Operation Exemption–Sierra Pacific Industries, STB Finance Docket No. 33679 (STB served Dec. 11, 1998). SierraPine began to operate the line in 1999.

According to petitioners, there have been problems with rail operations as a result of the poor track conditions. In November 2003, the California Public Utilities Commission (CPUC) advised SierraPine that inspections had identified 123 defective track conditions, based on Federal Railroad Administration (FRA) track standards, on 5 miles of the line. SierraPine then met with representatives of CPUC and FRA and proposed a 5-year remediation plan. According to the petitioners, the CPUC and FRA representatives approved this plan and advised that compliance with it would be required for SierraPine to continue operating and avoid civil penalties. Following two major derailments, in February and March of 2004, SierraPine concluded that the risk of future derailments was too high, and it ceased operations on June 3, 2004. On July 7, 2004, SierraPine formally embargoed the line.

While the line was in service, SierraPine primarily served its Ampine plant. Between 1999 and 2004, SierraPine transported approximately 2,100 cars to and from its facility. SierraPine also provided some rail service to a facility near the end of the line at Martell. SierraPine transported 17 inbound cars during 1999 and 2000 to the first owner of the facility, Fiberform. In 2000, Fiberform apparently sold the facility to MIC, which then leased the facility to Landmark Trim USA (Landmark Trim). Between 2000 and June of 2004, SierraPine transported 183 carloads to Landmark Trim.¹ While the line was in service, however, the shippers also used truck transportation to meet their shipping needs, and they now rely on it exclusively. According to SierraPine, before the line was embargoed, most of the transportation needs of its Ampine plant were met by trucks, using two state highways that serve the Martell area.

¹ Landmark Trim ceased operating at MIC's facility in October 2004. MIC's facility now houses two new tenants: MidValley Trust (which began operations in June 2004) and Global Molding (which began operations in December 2004).

Petitioners state that the operating, maintenance, and capital costs of the line have far exceeded the revenues generated from operating it. According to petitioners, from 1999 through June 2004, costs have totaled at least \$1,628,649, exceeding total revenues (\$596,881) by \$1,031,768. Petitioners believe that the financial situation will only worsen, given that SierraPine has decided to ship by truck, and that there is no reasonable alternative to discontinuing rail service and abandoning the line. The petitioners estimate that the operating, maintenance, and capital costs incurred between June 2004 and 2010, which would include the costs associated with the CPUC/FRA required remediation plan, would amount to more than \$6 million. They further estimate that, even if SierraPine were to resume shipments by rail during the forecast period (2004-2010), the costs would exceed revenues by more than \$4.8 million.

ACTC opposes the petition for exemption. ACTC contends that the exemption criteria are not met here and that the petitioners should be required to file a formal application. ACTC basically argues that the Board's rail transportation policy requires a more probing examination of the effects of abandoning and discontinuing service over the line. In particular, ACTC would have us require the petitioners to explain the effects of the proposed abandonment and discontinuance on the potential for restoration of passenger service on the line,² one of ACTC's long-term goals. ACTC further argues that the petitioners should be required to explain how the proposed abandonment and discontinuance would affect the Martell Business Park (SPI's proposed business park which was to be served by the line) and why petitioners no longer wish to serve it. ACTC also asserts that the line is important to the economic development of Amador County, and it would have us require the petitioners to explain more fully how the proposed abandonment and discontinuance would affect the area.

MIC also filed a protest. According to MIC, the availability of rail service is important to attracting new business to the undeveloped portions of its facility and keeping current business. It asserts that future tenants could bring increased traffic onto the line. Additionally, MIC points to a letter it sent to SierraPine while Landmark Trim was leasing MIC's plant in which MIC stated that the cessation of rail service substantially hurt Martell's plant and its tenant.

In the same vein, the County opposes the proposed abandonment and discontinuance of service because it believes these actions would hurt the commercial life of Amador County. The County argues that rail service is important to some existing and prospective businesses. Moreover, the County fears that abandonment and discontinuance of service would detrimentally affect a connecting segment of track operated by Union Pacific Railroad Company (UP). The County also suggests that allowing the petitioners to abandon and to discontinue service over the line would increase automobile emissions. Similarly, CalDOT states in its comment that granting the abandonment and discontinuance could hurt Martell's economy and increase truck traffic on state highways.

² Passenger service was provided on the line between 1908 and 1932.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned and service may not be discontinued without our prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from our regulatory requirements 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.

ACTC has not supported its argument that petitioners should be required to file a formal application (rather than proceed through this exemption petition) so that we can more fully examine the effects of this abandonment. The application procedures are designed to develop an evidentiary record to enable us to determine whether the burden on the railroad and on interstate commerce from continued operations on the subject line outweighs any public need for rail service and the adverse impacts (if any) on the community from the loss of rail service. See, e.g., CSX Transportation, Inc.—Abandonment—in Atkinson and Ware Counties, GA, STB Docket No. AB-55 (Sub-No. 640) (STB served Dec. 24, 2003). Here, as detailed more fully below, further evidence is not needed for us to be confident that continued operation of the line would impose a substantial burden on the petitioners, that existing transportation needs do not warrant imposing such a burden on the petitioners, and that the protestants' generalized and speculative prospects for future traffic and their allegations regarding the effect on the Martell Business Park and Amador County from abandonment are also not sufficient to warrant requiring continued rail service.

ACTC's claim that the possible restoration of passenger service requires a more probing examination is without merit. Even if future passenger rail service were not speculative, there is simply no statutory basis for requiring a freight carrier to retain service on a line in order to facilitate future passenger rail service. In any event, granting these exemptions could actually further the goal of restoring passenger service on the line. It is well settled that, pursuant to the public use conditions of 49 U.S.C. 10905, an entity can negotiate for the institution or restoration of passenger service on a line which has been approved for abandonment. Moreover, petitioners' change of heart in regard to providing service to the Martell Business Park does not warrant greater scrutiny of these transactions. It appears that SierraPine had had a good faith intent to continue operating the line, given that it extended its lease to operate the line an additional 5 years on January 16, 2004. However, as petitioners explain, continued operations became infeasible after the two derailments in the Spring of 2004.

More detailed scrutiny of the proposed abandonment and discontinuance of service under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. The petitioners have offered uncontested evidence indicating that, since 1999, the cost of owning and operating the line has far exceeded the revenues generated by the line. Furthermore, this bleak financial picture apparently will only grow worse in the coming years. Not only would the petitioners

need to incur serious expenses to rehabilitate the line, but the predominant shipper has decided to transport its goods by truck and protestants' suggestions that rail service is otherwise required are generalized, speculative, and unsupported. Therefore, these exemptions will foster sound economic conditions and encourage efficient management by relieving SierraPine from the costs of operating and SPI from the costs of owning and rehabilitating the line. [49 U.S.C. 10101(5) and (9)]. Moreover, by minimizing the administrative expense of the application process, the exemptions will reduce regulatory barriers to exit. [49 U.S.C. 10101(7)]. Other aspects of the rail transportation policy are not adversely affected.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power. As noted above, the predominant shipper on the line, SierraPine, has decided to ship by truck. Furthermore, the two current tenants at MIC's facility have not filed protests in opposition to the abandonment, requested rail service, claimed that they will require rail service in the future, or submitted any evidence showing that the line can be operated profitably in the future. Although the County maintains that some existing businesses will be harmed by the proposed abandonment and discontinuance, this assertion is vague and unsubstantiated by any evidence of a current need for rail service. Moreover, there are clearly transportation alternatives here, and no party has challenged this fact.

The only recent user of rail service outside of SierraPine itself, Landmark Trim, has ceased operations. The petitioners claim that, even when Landmark Trim was operating on the line and had access to rail service, it still used motor carriers to meet most of its transportation needs. Given that MIC has not challenged this claim, its assertion that Landmark Trim and MIC's facility were substantially hurt by the cessation of rail service is unpersuasive.

The mere prospect of future shippers locating at MIC's facility and generating traffic on the line does not justify denying the petition for exemption. Although MIC desires to retain the line to have rail service available to attract future tenants, it has not pointed to any potential shippers who have requested rail service. Even if new customers started operations at MIC's facility and demanded rail service, it is speculative as to how much traffic would move by rail as opposed to by truck. Such speculation about future traffic is not a sound basis upon which to deny an abandonment exemption.

Cal DOT and the County have raised concerns that the proposed abandonment and discontinuance would negatively affect the economic development of Martell and Amador County. However, a railroad cannot be required to continue operating at a loss based on mere hope of economic growth. The County's concern that less traffic will flow over UP's line is unsubstantiated and is undercut by the fact that UP has neither commented nor protested.

The petitioners have submitted an environmental report with their petition and have notified the appropriate Federal, state, and local agencies of the opportunity to submit

information concerning the energy and environmental impacts of the proposed abandonment. See 49 CFR 1105.11. SEA has examined the environmental report, verified the data it contains, analyzed the probable effects of the proposed action on the quality of the human environment, and issued an environmental assessment (EA) on January 11, 2005.

As explained in the EA, the National Geodetic Survey (NGS) has advised SEA that one geodetic station marker has been identified that may be affected by the proposed abandonment. Therefore, SEA recommends that SPI notify NGS 90 days prior to conducting salvage activities to plan for its possible relocation by NGS.

SEA also notes that, although SPI has not proposed the discharge of dredged or fill material in waters of the United States, the United State Army Corps of Engineers, Sacramento District (USACE), had not responded to the environmental report at the time the EA was prepared. Accordingly, in order to determine whether a USACE permit under section 404 of the Clean Water Act (33 U.S.C. 1344) would be required, SEA recommends that SPI consult with USACE prior to commencement of any salvage activities.

The United States Fish and Wildlife Service (FWS) has provided a list of Federally threatened and endangered species that may be present in the area of the planned project. However, SEA notes that more information is needed to determine whether any of these species occur in the project area. To facilitate a review of the possible effects of this project on endangered or threatened species or on areas designated as critical habitat, FWS has recommended to SEA that the petitioners contact the California Natural Diversity Database (CNDDDB) for a records search. Accordingly, SEA recommends a condition requiring petitioners to consult with the CNDDDB, as well as FWS, regarding the possible impacts on Federally listed threatened and endangered species that may occur in the vicinity of the line proposed for abandonment. SEA further recommends that SPI report the results of these consultation efforts to SEA prior to the onset of salvage operations.

Petitioners' consultants conducted an investigation to identify potential contamination. SEA notes that the California Department of Toxic Substances Control (CDTSC) expressed some concern that the investigation did not include the entire right-of-way. Accordingly, SEA recommends that, prior to any salvage activities, SPI shall consult with CDTSC to ensure that any concerns regarding potential contamination of the right-of-way are addressed. SEA further recommends that SPI report the results of these consultation efforts to SEA prior to the onset of salvage operations.

The United States Environmental Protection Agency (EPA), Region 9, has expressed concerns regarding the presence of unmitigated spills, hazardous materials, or other liquid storage containers such as fuels, solvents, and oils. In the absence of these materials, the EPA does not believe there are any Clean Water Act implications. However, the EPA advised that a project involving earth-moving equipment and removal of rail line would likely require coverage

under a section 402 stormwater construction permit. Consequently, SEA recommends that SPI consult with EPA to ensure that any concerns regarding potential contamination of the right-of-way and the need for a section 402 stormwater construction permit are addressed. SEA further recommends that SPI report the results of the consultation efforts to it prior to the onset of salvage activities.

SPI has also submitted a historic report, and has served the report on the California Office of Historic Preservation (the State Historic Preservation Officer or SHPO). See 49 CFR 1105.8. The SHPO has not yet completed its evaluation of the potential impact of the proposed abandonment. Therefore, SEA recommends in its EA that, pending completion of the SHPO's review, a condition be imposed requiring SPI to retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

No comments to the EA were filed by the February 10, 2005 due date. However, upon further analysis regarding EPA's concerns, SEA asks that, prior to commencement of any salvage activities, SPI be required to comply with the requirements imposed pursuant to section 402 of the Clean Water Act. We agree with this change and above analysis and will impose the conditions recommended by SEA in the EA as modified. Accordingly, we conclude that the proposed abandonment, as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

Concerning the fear of increased truck traffic and air emissions, SEA calculated the number of additional trucks that would be added to area roads. Using the base-year of 2003, SEA found that the 561 rail carloads would equate to approximately 19 trucks per day being added to area roads. This amount of increase in truck traffic is below the Board's threshold requiring environmental analysis of air emissions. See 49 CFR 1105.7(e)(5)(i)(C). The environmental report contained a similar analysis of the additional expected truck traffic, and was served on EPA Region 9 as well as on California's environmental protection agency. In addition, the EA, with its recalculation of additional truck traffic (described above) was served on EPA Region 9. Neither agency has expressed concerns about increases in air emissions because of the added truck traffic, we find that this limited additional amount of truck traffic does not warrant denying the petition.

Given our market power finding, we need not determine whether the proposed transaction is limited in scope. We do note that 49 U.S.C. 10904 provides a mechanism for those who want to continue rail service that the Board has authorized to be discontinued or abandoned. Under section 10904, any financially responsible person may file an offer of financial assistance (OFA) (we note that all government agencies are deemed to be financially responsible).³ MIC

³ 49 CFR 1152.27(c)(1)(ii)(B).

has already expressed an interest in filing an OFA. Should MIC, the County, or ACTC wish to retain the line for freight rail service, it may acquire the line or subsidize continued operation of the line by the petitioners under the OFA procedures contained in 49 U.S.C. 10904 and 49 CFR 1152.27. We expect petitioners to timely comply with their obligation to provide relevant information upon request by those who may be considering such an offer.

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. However, it is well settled that employee protective conditions will not be imposed when a carrier abandons or discontinues service over its entire common carrier system unless the evidence shows the existence of: (1) a corporate affiliate that will continue substantially similar rail operations; or (2) a corporate parent that will realize substantial financial benefits (over and above relief from the burden of deficit operations by its subsidiary railroad). See Wellsville, Addison & Galetton R. Corp.–Abandonment, 354 I.C.C. 744 (1978); Northampton and Bath R. Co.–Abandonment, 354 I.C.C. 784 (1978) (Northampton); and Almono LP–Abandonment Exemption–in Allegheny County, PA, STB Docket No. AB-842X (STB served Jan. 12, 2003) (no labor protection where the carrier’s only remaining operations would be in private carriage). Here, the petitioners state that SPI will continue to conduct other rail operations in California, but these operations are private carriage. Specifically, SPI operates over 3 miles of track in Plumas County, CA, to serve an SPI lumber mill in Quincy, CA, and over 25 miles of track, leased from UP, between Susanville and Wendel in Lassen County, CA, to serve an SPI mill and another shipper’s millwork plant in Susanville. The latter track was abandoned by UP’s predecessor in 1985,⁴ and SPI has never sought authority or held itself out to provide common carrier service on the line. Thus, as noted in the Federal Register notice, the line to be abandoned and discontinued constitutes the only line of SierraPine and the only common carrier line of SPI. Because there is no evidence that either of the Northampton exceptions apply here, we will not impose labor protective conditions.

As previously noted, ACTC filed a request for the issuance of a NITU under the Trails Act, and for imposition of a public use condition under 49 U.S.C. 10905. ACTC has submitted a statement of willingness to assume financial responsibility for the right-of-way, and has acknowledged that use of the right-of-way would be subject to possible future reconstruction and reactivation of the right-of-way for rail service, as required under 49 CFR 1152.29. By letter filed on January 10, 2005, SPI states that it is willing to negotiate with ACTC for interim trail use. Because ACTC’s request complies with the requirements of 49 CFR 1152.29, and SPI is willing to enter into trail use negotiations, we will issue a NITU for the subject line. The parties may negotiate an agreement during the 180-day period prescribed below. If an agreement is executed, no further Board action is necessary. If no agreement is reached within 180 days (and

⁴ Southern Pacific Transportation Company–Abandonment–in Lassen County, CA, Docket No. AB-12 (Sub-No. 92) (ICC served Oct. 15, 1985).

if the line is not purchased or subsidized pursuant to an OFA), SPI may fully abandon the line, subject to the conditions imposed below. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

SEA has indicated in its EA that, following abandonment and salvage of the line, the right-of-way may be suitable for other public use. ACTC requests imposition of a 180-day public use condition prohibiting SPI from: (1) disposing of the corridor, other than the tracks, ties, and signal equipment, except for public use on reasonable terms; and (2) removing or destroying potential trail-related structures such as bridges, trestles, culverts, and tunnels. ACTC believes that the rail corridor would make an excellent trail and that the preservation of the rail right-of-way is consistent with local plans. ACTC notes that not only does the corridor pass through an historic region, but it also provides an important wildlife habitat. ACTC further explains that the length of the requested condition, 180 days, would allow it to review title information and negotiate with the carrier.

Persons who request a Trails Act condition may also request a public use condition under 49 U.S.C. 10905. See Rail Abandonments–Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 609 (1986) (Trails). When both conditions are appropriate, it is our policy to impose them concurrently, subject to the execution of a trail use agreement. ACTC has met the public use criteria prescribed at 49 CFR 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) justification for the period of time requested. Accordingly, a 180-day public use condition, commencing from the effective date of this decision and notice, will be imposed on the rail line to be abandoned to enable any state or local government agency or other interested person to negotiate the acquisition of the line for public use. If a trail use agreement is reached on a portion of the right-of-way, SPI must keep the remaining right-of-way intact for the remainder of the 180-day period to permit public use negotiations. Also, we note that 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 the right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, SPI is not required to deal exclusively with ACTC, but may engage in negotiations with other interested persons.

The parties should note that operation of the trail use and public use procedures could be delayed, or even foreclosed, by the financial assistance process under 49 U.S.C. 10904. As stated in Trails, 2 I.C.C.2d at 608, OFAs to acquire rail lines for continued rail service or to subsidize rail operations take priority over interim trail use/rail banking and public use. Accordingly, if an OFA is timely filed under 49 CFR 1152.27(c)(1), the effective date of this decision and notice will be postponed beyond the effective date indicated here. See 49 CFR 1152.27(e)(2). In addition, the effective date may be further postponed at later stages in the OFA process. See 49 CFR 1152.27(f). Finally, if the line is sold under the OFA procedures, the petition for abandonment exemption will be dismissed and trail use and public use precluded.

Alternatively, if a sale under the OFA procedures does not occur, the trail use and public use processes 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 discontinuance of service over the above-described line by SierraPine.

2. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903 the abandonment of the above-described line, subject to the conditions that SPI shall: (1) leave intact all of the right-of-way, including bridges, trestles, culverts, and tunnels (except track, ties, and signal equipment) for a period of 180 days from the effective date of this decision and notice to enable any state or local government agency or any other interested person to negotiate the acquisition of the line for public use; (2) comply with the terms and conditions for implementing trail use/rail banking as set forth below; (3) notify NGS 90 days prior to conducting salvage activities to plan for the one identified geodetic station marker's possible relocation by NGS; (4) prior to commencement of any salvage activities, consult with USACE to determine whether a USACE permit under section 404 of the Clean Water Act (33 U.S.C. 1344) is required; (5) consult with CNDDDB and with FWS regarding the possible impacts on Federally listed threatened or endangered species and report the results of the consultations to SEA prior to the onset of salvage operations; (6) consult with CDTSC to ensure that any concerns regarding potential contamination of the right-of-way are addressed and report the results of these consultations to SEA prior to the onset of salvage operations; (7) consult with EPA to address concerns regarding potential contamination of the right-of-way, comply with requirements imposed pursuant to section 402 of the Clean Water Act, and report the outcome of these consultations to SEA prior to the commencement of any salvage activities; (8) retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way that are 50 years or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for the management of, any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.

4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.

5. If interim trail use is implemented and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

6. In the absence of an OFA that leads to the purchase or subsidy of the line under 49 U.S.C. 10904, if an agreement for interim trail use/rail banking is reached by the 180th day after service of this decision and notice, interim trail use may be implemented, and if no trail-use agreement is reached by that time, SPI may fully abandon the line, provided the conditions imposed above are met.

7. An OFA under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by SPI, SierraPine, and the Board by March 7, 2005, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). An OFA must be accompanied by the filing fee, which currently is set at \$1,200. See 49 CFR 1002.2(f)(25).

8. 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.”**

9. Provided no OFA has been received, this exemption will be effective on March 27, 2005. Petitions to stay must be filed by March 7, 2005; and petitions to reopen must be filed by March 17, 2005.

10. In the absence of a successful OFA or an agreement under the Trails Act, pursuant to the provisions of 49 CFR 1152.29(e)(2), SPI 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 SPI’s filing of a notice of consummation by February 25, 2006, 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 1-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 Nober, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams
Secretary