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SERVICE DATE - LATE RELEASE MAY 11, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-68 (Sub-No. 3X)

LAKE SUPERIOR & ISHPEMING RAILROAD COMPANY--ABANDONMENT
EXEMPTION--IN MARQUETTE COUNTY, MI

Decided: May 10, 1999

By petition filed January 21, 1999, Lake Superior & Ishpeming Railroad Company (LS&I) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a 3.54-mile line of railroad located wholly within the city and county of Marquette, MI, extending from milepost 50.23, near the Highway 41/Hampton Street intersection, to milepost 53.77, near the Hawley Street crossing. Notice of the institution of an exemption proceeding was published in the Federal Register at 64 FR 6738 on February 10, 1999. The United Transportation Union (UTU) requests imposition of employee protective conditions. We will grant the petition, subject to employee protective conditions.

BACKGROUND

LS&I states that the line has not been used since 1997 and is no longer needed to service shippers. According to LS&I, prior to 1997 it transported propane over the line for only one shipper, All Star Gas (All Star) of Marquette. Petitioner avers that, in 1997, All Star transferred its shipping business to an area trucking company and, consequently, the 3.54-mile stretch of rail fell into disuse. LS&I avers that there has been a steady decline in activity on the line since 1992, that fewer than 20 carloads of propane were shipped during 1996 and 1997, and that no carloads moved in 1998. LS&I also states that there are no reasonable prospects for future traffic on the line.

Petitioner indicates that the line is in poor condition, that the majority of the ties are not salvageable, and that many of the 80-pound jointed rails require replacement. LS&I further indicates that there are significant drainage and overgrowth problems along the line. LS&I estimates the cost of improving the line to Class 1 track to be approximately \$250,000.

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 abandonment process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions and encourage efficient management by relieving LS&I of the costs of owning and maintaining a minimally used line and allowing it to apply its assets more productively elsewhere on its rail system [49 U.S.C. 10101(3), (5), and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Because the only shipper to use the line has transferred its shipping business to an area trucking company, and because neither the shipper nor anyone else opposes the proposed abandonment, 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 decision, we will direct LS&I to serve a copy of this decision on All Star within 5 days of the service date of this decision and to 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.

UTU requests the imposition of employee protective conditions. 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 set forth in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979), as a condition to granting this exemption.

LS&I 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 abandonment. See 49 CFR 1105.11. Our Section of Environmental Analysis (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 March 29, 1999, recommending that no environmental or historic conditions be imposed on the abandonment. No comments were filed in response to the EA. Based on SEA's recommendation, we conclude that the proposed abandonment, if implemented, will not significantly affect either the quality of the human environment or the conservation of energy resources. Although SEA has indicated that the right-of-way may be suitable for public use under 49 U.S.C. 10905, no one has sought a public use condition, and none will be imposed.¹

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 LS&I of the above-described 3.54-mile rail line, subject to the employee protective conditions set forth in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91

¹ Public use requests were due no later than 20 days after publication of the notice of the petition for exemption in the Federal Register, or by March 2, 1999.

(1979).

2. LS&I must serve a copy of this decision on All Star within 5 days after the service date of this decision and certify to the Board that it has done so.

3. An OFA under 49 CFR 1152.27(c)(1)² to allow rail service to continue must be received by the railroad and the Board by May 21, 1999, 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). Each OFA must be accompanied by a \$1,000 filing fee. See 49 CFR 1002.2(f)(25).

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. Provided no OFA has been received, this exemption will be effective on June 10, 1999. Petitions to stay must be filed by May 26, 1999. Petitions to reopen must be filed by June 7, 1999.

6. Pursuant to the provisions of 49 CFR 1152.29(e)(2), LS&I 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 LS&I's filing of a notice of consummation by May 11, 2000, 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 1-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, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams
Secretary

² See Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903, STB Ex Parte No. 537 (STB served Dec. 24, 1996, and June 27, 1997).