

OCT 16 1996

SURFACE TRANSPORTATION BOARD¹

DECISION

STB Finance Docket No. 32908

ORMET RAILROAD CORPORATION--
EXEMPTION FROM 49 U.S.C. SUBTITLE IV

Decided: October 7, 1996

Ormet Railroad Corporation (ORC), by petition filed April 22, 1996, requests exemption under 49 U.S.C. 10502 and 49 CFR Part 1121 from all common carrier obligations under 49 U.S.C. Subtitle IV that arise in connection with its acquisition of a line of railroad from Consolidated Rail Corporation (Conrail). The line, known as the Omal Secondary Track, extends from milepost 60.5 at Powhatten Point to the end of the line, milepost 72.7 at Omal, a distance of 12.2 miles in Monroe County, OH.

BACKGROUND

ORC became a carrier by acquiring the Omal Secondary Track from Conrail.² While ORC has assumed the ownership and common carrier obligations of the line, Conrail continues to operate the line pursuant to a private contractual arrangement, on behalf of and for the account of ORC.

ORC is a wholly owned subsidiary of Ormet Corporation (Ormet), of Wheeling, WV. Ormet Primary Aluminum Corporation and Ormet Aluminum Mill Products Corporation, the only shippers on the line, are also wholly owned subsidiaries of Ormet. The line was built in the 1950s, primarily to serve those shippers' facilities. No other shipper has located on the line since it was built. According to ORC, the two shippers tender and receive little railroad traffic, and the line was an obvious candidate for abandonment had not ORC purchased the line and contracted with Conrail to operate it. ORC does not anticipate that any shippers other than its affiliates will require service over the line.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10502, we must exempt a transaction or service when we find that: (1) 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 needed to protect shippers from the abuse of market power.

Regulation of ORC is not necessary to carry out the rail transportation policy. Granting the exemption will minimize the need for Federal regulatory control over rail transportation,

¹ The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This decision relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10502.

² A notice of exemption covering the transaction was served and published in Ormet Railroad Corporation--Acquisition and Operation Exemption--Consolidated Rail Corporation, STB Finance Docket No. 32907 (STB served May 17, 1996) (61 FR 25012).

expedite regulatory decisions, and reduce barriers to exit and entry [49 U.S.C. 10101(2) and (7)]; ensure the continuation of a sound rail system [49 U.S.C. 10101(4)]; and foster sound economic conditions in transportation [10101(5)]. Other aspects of the rail transportation policy are not affected adversely.

Regulation is not necessary to protect shippers from the abuse of market power. The only two shippers on the line since its construction are both affiliates of ORC. Moreover, their facilities are adjacent to the Ohio River on one side and Ohio State Highway No. 7 on the other, making large numbers of barges and trucks available as alternative methods of transportation. The shippers clearly do not require the Board's regulation of ORC to protect them from an abuse of market power by ORC.

Because we have found that regulation is not needed to protect shippers, we need not decide whether the transaction is of limited scope. We note, however, that the subject line is stub-ended and extends only 12.2 miles in a single county.

Because Conrail is providing, and will continue to provide, service over the line under contract, such service is not subject to our jurisdiction. Nor do such operations give rise to any common carrier obligation on Conrail's part. Upon sale of the line to ORC, ownership thereof passed to ORC and Conrail's common carrier obligation was discharged. See, e.g., Consolidated Rail Corp.-Petition for Declaratory Order, 1 I.C.C.2d 284 (1984). In any event, we see no need to impose a common carrier obligation on Conrail here. The shippers on the line require only contract service, have expressed no need for common carriage, and have voiced no objection to Conrail's offering service only under contract.

ORC, as owner of the line, assumed the common carrier obligations associated with the line when petitioner acquired it from Conrail. ORC seeks an exemption from Subtitle IV. In sum, we see no legal or policy reasons why the exemption sought here should not be granted. Accordingly, we will do so. Should it be necessary, we can and will revoke the exemption in order to reimpose a common carrier obligation on ORC.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a rail carrier of its statutory obligation to protect employee interests as required by Subtitle IV. We see no reason to impose labor protective conditions in a situation in which a noncarrier has acquired a line of railroad and either intends to operate the line itself or, as here, provide for its operation by another. Compare Caldwell County Economic Development Commission--Exemption from 49 U.S.C. Subtitle IV, Finance Docket No. 32659 (ICC served Aug. 3, 1995). If ORC subsequently engages in a transaction subject to 49 U.S.C. 10903 or 11326, affected employees may ask us to impose appropriate conditions. Id.

Exemption from the requirements of 49 U.S.C. Subtitle IV will not result in significant changes in railroad operations or in the disposition or alteration of properties subject to Board jurisdiction that are 50 years old or older. Therefore, no environmental documentation or historic report is required.

To the extent that our exemption could have the effect of authorizing abandonment or discontinuance of service over the line, Board analysis of the potential environmental impacts of abandonment or discontinuance of service is required. Instead of attempting now to assess the potential environmental impacts of a speculative future abandonment or discontinuance of service, we will grant the requested exemption but reserve jurisdiction to

conduct a full environmental review contemporaneously with any abandonment or discontinuance of service.

As conditioned, this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt Ormet Railroad Corporation from the requirements of 49 U.S.C. Subtitle IV pertaining to its ownership of the 12.2-mile line described above, subject to the condition that Ormet: (1) notify the Board in advance of any proposed abandonment or discontinuance of service on the line; (2) submit any environmental or historic data that may be required to permit the Board to conduct an environmental review of the abandonment or discontinuance; and (3) comply with any conditions that might be found to be required prior to consummation of the abandonment or discontinuance.

2. Notice will be published in the Federal Register on October 16, 1996.

3. Petitions to reopen must be filed by November 12, 1996. Petitions to stay must be filed by October 31, 1996.

4. This decision will be effective on November 15, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams
Secretary

SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423-0001

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