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SERVICE DATE - LATE RELEASE MAY 14, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-503 (Sub-No. 1X)

BOOTHEEL RAIL PROPERTIES, INC.--ABANDONMENT EXEMPTION--  
IN PEMISCOT AND DUNKLIN COUNTIES, MO

STB Docket No. AB-502 (Sub-No. 1X)

BOOTHEEL REGIONAL RAIL CORPORATION--DISCONTINUANCE EXEMPTION--  
IN PEMISCOT AND DUNKLIN COUNTIES, MO

Decided: May 12, 1998

By petition filed January 23, 1998, Bootheel Rail Properties, Inc. (BRP) and Bootheel Regional Rail Corporation (BRRC) (collectively, petitioners) jointly seek an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to permit BRP to abandon, and BRRC to discontinue service over, a 17.27-mile line of railroad known as the Hayti-Kennett Branch, extending from milepost 212.73, near Hayti, MO, to milepost 230.00, near Kennett, MO, in Pemiscot and Dunklin Counties, MO.<sup>1</sup> We will grant the exemption, subject to an historic preservation condition and a National Geodetic Survey (NGS) consultation condition.

BACKGROUND

In May 1996, BRP acquired the line from Burlington Northern Santa Fe Corporation (BNSF), and BRRC became the operator of the line.<sup>2</sup> Local traffic moving to and from the line in the past several years consisted of inbound shipments of building materials and fertilizer, and outbound shipments of cotton seed oil. Because the line is stub-ended, no overhead traffic has moved over the line. In 1994 and 1995, there was an average of less than 300 carloads of traffic moving to and from the line annually. In 1996, the volume of traffic decreased to 78 carloads, 33 of which were handled by BNSF prior to BRRC becoming the operator. Only 45 carloads of traffic moved over the line during BRRC's first 6 months of operations (from May through October 1996), and no traffic has moved over the line since October 31, 1996.

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<sup>1</sup> Notice of the filing was served and published in the Federal Register on February 12, 1998 (63 FR 7192-93).

<sup>2</sup> See Bootheel Regional Rail Corporation and Bootheel Rail Properties, Inc.--Acquisition and Operation Exemption--Burlington Northern Santa Fe Corporation, STB Finance Docket No. 32938 (STB served May 22, 1996).

There are four shippers on the line. All are located at Kennett. They are Osceola Products Company (Osceola), Riggs Supply Company (Riggs Supply), Kennett Fertilizer, and ARI Industries, Inc. (ARI). According to BRRC, since May 1996, Osceola shipped 40 carloads of cotton seed oil, Kennett Fertilizer received 1 carload of fertilizer, and Riggs Supply and ARI each received 2 carloads of building materials.

BRRC states that, after it became the operator of the line, its officials met with the shippers to discuss the low level of traffic on the line. BRRC states that, to make the line economically viable, the shippers were asked to substantially increase the level of their rail shipments, to guarantee BRRC minimum volumes, or to pay surcharges on their rail traffic. According to BRRC, all of the shippers refused. Thereafter, Osceola, the largest shipper on the line, informed BRRC that it would no longer be shipping by rail and has subsequently diverted all of its traffic to trucks. The other shippers also notified BRRC that they were satisfied with their current truck service and that they had no plans for future rail service. BRRC states that, upon BRP abandoning the line, it will discontinue service and go out of business.

BRRC's data show an avoidable loss from operations of \$77,180 (\$21,210 in revenues and \$98,390 in costs) during the last eight months of 1996. BRRC estimates the cost of rehabilitating the line to FRA Class 1 standards at \$950,695 and normalized maintenance costs at \$51,810.

According to petitioners, alternative transportation service is available over an extensive highway network in the area. The City of Kennett is located on U.S. Highway 412 and State Highways 84 and 25, and Interstate Highways 55 and 155 are nearby. Truck and barge transportation services are also available.

#### DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned and operations may not be discontinued 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 an 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 expense of an abandonment and discontinuance application, 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 BRP of the costs of owning and maintaining the line [49 U.S.C. 10101(5), and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation of the transaction is not necessary to protect shippers from an abuse of market power. The four shippers on the line have not objected to the proposed abandonment and

discontinuance, have not used rail service since October 1996, and appear to have adequate transportation alternatives available to them.<sup>3</sup> Nevertheless, to ensure that the shippers are informed of our decision, we will require petitioners to serve a copy of this decision on each shipper within 5 days after the service date of this decision, and to certify to the Board that they have done so.

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, we do not normally impose employee protective conditions when, as here, a carrier abandons its entire line 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); and Northampton and Bath R. Co.--Abandonment, 354 I.C.C. 784 (1978) (Northampton). BRP has no rail employees or other rail assets, and BRRC proposes to discontinue service over the entire line and go out of business. Neither petitioner appears to have any corporate affiliate or parent that could benefit from the proposed abandonment and discontinuance. And no one has attempted to show that the situation under Northampton exists for imposing labor protection in entire line abandonments. Under the circumstances, we will not impose labor protective conditions in this case.

Petitioners have submitted a combined 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 action. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified the data it contains, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on March 27, 1998.

In the EA, SEA indicated that: (1) the Missouri State Historic Preservation Office has not completed its evaluation of the potential impact that the proposed abandonment/discontinuance will have on historic resources; and (2) NGS has identified two geodetic station markers along the rail line and requests 90 days' notice to plan relocation of any markers that may be disturbed or destroyed.

SEA, therefore, recommended that the following conditions be imposed on any decision granting abandonment/discontinuance authority: (1) BRP and BRRC shall retain their 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; and (2) BRP and BRRC shall consult with NGS and provide it with 90 days' notice prior to disturbing or destroying any geodetic markers.

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<sup>3</sup> Given our market power finding, we need not determine whether the proposed abandonment and discontinuance is limited in scope.

No comments to the EA were filed by the April 24, 1998 due date. We will impose the conditions recommended by SEA. Based on SEA's recommendations, we conclude that the proposed abandonment and discontinuance, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

SEA states that, following the abandonment/discontinuance, the right-of-way may not be suitable for other public use under 49 U.S.C. 10905. We note that no one has sought a public use condition, and none will be imposed.

This decision 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 the abandonment of BRP's entire line described above, and the discontinuance of service thereover by BRRC, from the prior approval requirements of 49 U.S.C. 10903, subject to the conditions that BRP and BRRC: (1) shall retain their 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; and (2) shall consult with the National Geodetic Survey (NGS) and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic markers.

2. Petitioners must serve a copy of this decision on the line's shippers within 5 days after the service date of this decision, and certify to the Board that they have done so.

3. An offer of financial assistance (OFA) under 49 CFR 1152.27(c)(1)<sup>4</sup> to allow rail service to continue must be received by petitioners and the Board by May 26, 1998, 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 13, 1998. Petitions to stay must be filed by May 29, 1998, and petitions to reopen must be filed by June 8, 1998.

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<sup>4</sup> 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).

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6. Pursuant to the provisions of 49 CFR 1152.29(e)(2), BRP 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 BRP's filing of a notice of consummation by May 14, 1999, 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 not later than 60 days after satisfaction, expiration or removal of the legal or regulatory barrier.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams  
Secretary