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SERVICE DATE - JANUARY 6, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-487 (Sub-No. 1X)

PITTSBURG & SHAWMUT RAILROAD, INC.--ABANDONMENT EXEMPTION--  
IN JEFFERSON COUNTY, PA

Decided: January 2, 1998

By petition filed September 18, 1997,<sup>1</sup> Pittsburg & Shawmut Railroad, Inc. (PSRR), seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a line of railroad known as the Brockway to Brookville Branch, extending from railroad milepost 2.0 located at or near Brockway to milepost 19.0 located at or near Brookville, a distance of 17 miles, in Jefferson County, PA. A request for issuance of a notice of interim trail use (NITU) and imposition of a public use condition was filed by the Headwaters Charitable Trust (Headwaters). We will grant the exemption, subject to public use, environmental and standard employee protective conditions.

BACKGROUND

PSRR currently owns approximately 216 miles of rail lines in Pennsylvania. It purchased the line proposed for abandonment from the Pittsburg & Shawmut Railroad Company in April 1996, and has not provided service on the line since February 1997, when the Brownlee Lumber Company shipped a boxcar of hardwood lumber. In addition, PSRR states that only three carloads either originated or terminated on the line during 1995 and 1996. It does not expect any future need for service because there are currently no active shippers on the line.

According to PSRR, the line, including the rail, ties, roadbed and approximately nine railroad bridges constructed in the early 1900s, is in generally fair condition. However, PSRR states that because of the absence of traffic, there is no justification for it to continue to incur the costs necessary to maintain and operate the line.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without our prior 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

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<sup>1</sup> Notice of the filing was served and published in the Federal Register on October 8, 1997 (62 FR 52618).

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 expense of the application 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 PSRR from the costs of maintaining the line which has been used minimally and allow PSRR's assets to be used more productively elsewhere on its system [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 as there have been no active shippers on the line since February 1997.<sup>2</sup> Nevertheless, to ensure that the former shippers are informed of our decision, we will require PSRR to serve a copy of this decision on them within 5 days of the service date of this decision and certify to us that it has 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. Accordingly, as a condition to granting this exemption, we will impose the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979).

PSRR 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 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, and served an environmental assessment (EA) on November 21, 1997. In the EA, SEA indicated that the U.S. Department of Commerce, National Geodetic Survey (NGS), has identified 10 geodetic station markers that could be affected by the proposed abandonment. Accordingly, SEA recommends that a condition be placed on any decision granting abandonment authority requiring PSRR to notify NGS at least 90 days prior to commencement of salvage operations if the following geodetic station markers may be disturbed or destroyed by such operations: MA1037 P 92, MA1038 N 92, MA0444 L 92, MA0445 K 92, MA0446 J 92, MA0447 H 92, MA0380 A 338, MA0448 G 92, MA0450 F 92 and MA0451 E 92.

No comments to the EA were filed by the December 17, 1997 due date. Based on SEA's recommendation, 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.

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<sup>2</sup> Given our market power finding, we need not determine whether the proposed abandonment is limited in scope.

Headwaters requests issuance of a NINTU under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and has submitted a statement of willingness to assume financial responsibility for the right-of-way and acknowledged that the use of the right-of-way is 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 December 19, 1997, PARR states that, at this time, it is not willing to negotiate with Headwaters for interim trail use. Because 16 U.S.C. 1247(d) permits only voluntary interim trail use, the Board cannot issue a NITU in this proceeding. See Rail Abandonments--Use of Rights-of-Way as Trails, 2 I.C.C.2d 591 (1986) (Trails). Accordingly, we will not do so.

SEA has indicated in its EA that the right-of-way may be suitable for other public use after abandonment. Headwaters also requests imposition of a 180-day public use condition precluding PARR from disposing of trail-related structures (e.g., bridges, trestles, culverts and tunnels, but not tracks, ties and signal equipment) on the right-of-way that are suitable for trail use. Headwaters states that the corridor would make an excellent recreational trail and conversion of the property to trail use is in accordance with local and county plans. It also states that the corridor provides important wildlife habitat and green space, and its preservation as a recreational trail is consistent with that end.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use under 49 U.S.C. 10905. See Trails, 2 I.C.C.2d at 609. Headwaters has met the criteria for imposing a public use condition as set forth 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 will be imposed. We note that a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire a right-of-way that has been found suitable for public purposes. Therefore, PARR is not required to deal exclusively with Headwaters, but may engage in negotiations with other interested persons.

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 of the above-described line, subject to the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979), and the conditions that: (1) PARR notify N.S. at least 90 days prior to commencement of salvage operations if the following geodetic station markers may be disturbed or destroyed by such operations, MA1037 P 92, MA1038 N 92, MA0444 L 92, MA0445 K 92, MA0446 J 92, MA0447 H 92, MA0380 A 338, MA0448 G 92, MA0450 F 92 and MA0451 E 92; and (2) PARR shall leave intact all of the right-of-way underlying the track, including bridges, trestles, culverts, and tunnels (but not track or track materials), for a period of 180 days from the effective date of this decision, to enable any state or

local government agency or any other interested person to negotiate the acquisition of the line for public use.

2. The request for issuance of a notice of interim trail use is denied.

3. PARR must serve a copy of this decision on the former shippers on the line within 5 days after the service date of this decision and certify to the Board that it has done so.

4. An offer of financial assistance (OFA) under 49 CFR 1152.27(c)(1)<sup>3</sup> to allow rail service to continue must be received by the railroad and the Board by January 16, 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 \$900 filing fee. See 49 CFR 1002.2(f)(25).

5. 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.**”

6. Provided no OFA has been received, this exemption will be effective on February 5, 1998. Petitions to stay must be filed by January 21, 1998, and petitions to reopen must be filed by February 2, 1998.

7. Pursuant to the provisions of 49 CFR 1152.29(e)(2), PARR 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 PARR’s filing of a notice of consummation by January 6, 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

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<sup>3</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).