

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-398 (Sub-No. 8X)

SAN JOAQUIN VALLEY RAILROAD COMPANY—
ABANDONMENT EXEMPTION—IN TULARE COUNTY, CA

Decided: June 6, 2008

By petition filed on February 28, 2008, the San Joaquin Valley Railroad Company (SJVR) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a 9.20-mile portion of its South Exeter Branch (the Branch) extending between milepost 259.40, near Exeter, and milepost 268.60, near Strathmore, in Tulare County, CA (the Line).¹ Notice of the filing was served and published in the Federal Register (73 FR 14874) on March 19, 2008 (March 19, 2008 notice). Protests to the request for abandonment authority were filed by Tulare County Economic Development Corporation (EDC) and Tulare County Association of Governments (TCAG) (jointly referred to as Tulare County)² on April 4, 2008,³ and jointly by Tulare Frozen Foods, LLC (TFF) and the City of Lindsay, California (the City), on April 8, 2008 (where appropriate, referred to collectively as Protestants). The April 4, 2008 filing by Tulare County also included a request for issuance of a notice of interim trail use (NITU) to provide time to negotiate for rail banking/interim trail use under the National Trails System Act, 16 U.S.C. 1247(d).⁴

¹ On February 19, 2008, SJVR filed a petition for exemption in STB Docket No. AB-398 (Sub-No. 7X) to abandon an adjoining 30.57-mile portion of the Branch located south of the subject line between milepost 268.60 at Strathmore and milepost 299.17 at Jovista. Notice instituting that proceeding was served and published in the Federal Register on March 10, 2008 (73 FR 12796). In a decision being served concurrently with this decision, we are granting SJVR's petition for exemption in STB Docket No. 398 (Sub-No. 7X), which no shippers opposed.

² EDC is a non-profit public-private regional economic development organization and TCAG is a metropolitan planning agency comprised of the County of Tulare and eight incorporated cities.

³ By separate pleading filed on April 3, 2008, The Tulare County Board of Supervisors joined the protest of Tulare County.

⁴ TCAG stated that it also intended to seek a public use condition under 49 U.S.C. 10905 and 49 CFR 1152.28 if this abandonment is authorized. However, the March 19, 2008 notice stated that such requests were due to be filed by April 8, 2008. In any event, our decision in this proceeding makes any request for a public use condition moot.

As explained below, the record is not adequate for us to grant the petition for exemption.

BACKGROUND

PETITION

SJVR states that it became a rail carrier in 1992 upon consummating a lease from the Southern Pacific Transportation Company (SP), a predecessor of the Union Pacific Railroad Company (UP), and Visalia Electric Railroad Company for the operation of seven rail lines and assumption of trackage rights over a number of other rail lines owned exclusively by SP or jointly by SP and The Atchison, Topeka and Santa Fe Railway Company, covering a total of 354.70 miles of rail line in Fresno, Tulare, Kern, and Kings Counties, CA.⁵ SJVR also subsequently purchased 206.77 miles of track and rail assets and leased the underlying rights-of-way for the seven rail lines that it had previously leased.⁶ SP's successor, Union Pacific Railroad Company (UP) has continued to own the underlying real estate.

TRAFFIC AND REVENUE

SJVR states that TFF, successor in interest to Lindsay Foods as of January 2008, is the only active shipper located on the Line. According to SJVR, TFF/Lindsay shipped 39 carloads of frozen vegetables in 2005 generating revenues of \$15,384, 67 carloads in 2006 generating revenues of \$27,380, and 79 carloads in 2007 generating revenues of \$32,745.

OPERATING AND REHABILITATION COSTS

Although SJVR states that no rehabilitation is required on the Line, it asserts that there is not a sufficient volume of traffic available to justify the costs of maintaining and operating the Line, much less to cover its opportunity costs. SJVR also states that making a capital investment in the Line would not be a prudent use of carrier resources, and that alternative transportation service is available. According to SJVR, the Line runs parallel to California Highway 65 for its entire length, providing readily available motor carrier alternatives to rail transportation. Therefore, SJVR contends that the burden of continued operations on SJVR outweighs the burden of loss of service on shippers and local communities and that abandonment authority would permit it to rationalize its system, avoid maintenance costs, and dispose of the Line.

⁵ See San Joaquin Valley Railroad Co.—Lease and Operation Exemption—Southern Pacific Transportation Company and Visalia Electric Railroad Company, Finance Docket No. 31993 (ICC served Jan. 23, 1992).

⁶ See San Joaquin Valley Railroad Co.—Acquisition and Lease Exemption—Southern Pacific Transportation Company, Finance Docket No. 31993 (Sub-No. 1) (ICC served Oct. 4, 1993).

SJVR states that, upon abandonment, it would salvage track and materials. Because UP continues to own the underlying real estate, UP would be responsible for disposition of the right-of-way.

To support its assertion that continued operations over the Line would be unprofitable, SJVR submitted verified statements of the Director of Finance of RailAmerica, Inc., a shortline railroad holding company that controls SJVR,⁷ and of the Chief Engineer for all of the subsidiary railroads of RailAmerica, Inc.⁸ The Director of Finance states that, as a Class III railroad, SJVR does not maintain the sophisticated revenue and cost data required by the Board of large Class I railroads. Accordingly, he has taken the 2007 traffic generated by Lindsay Foods in 2007 as “forecast year” traffic for TFF. Using that traffic, he developed “forecast year” costs.⁹

As previously stated, Lindsay Foods, in 2007, shipped 79 carloads of frozen vegetables generating \$32,745 in revenue for SJVR. The Director of Finance states that each carload shipment for TFF requires one trip for a loaded car and another trip for an empty car. Each train consists of a two-man crew and switching takes an hour. According to SJVR, this traffic incurred costs totaling \$65,073 (operating costs of \$12,123¹⁰ and maintenance-of-way costs of \$52,950¹¹), resulting in an avoidable loss of \$32,328. The Chief Engineer estimates a net liquidation value (NLV) of \$760,896.¹² He states that the Line can be operated as Federal Railroad Administration Class 1 track, and that no rehabilitation of the Line is required at this time.

SHIPPER AND COMMUNITY INTERESTS

TFF is a manufacturer and distributor of frozen foods located at Lindsay, CA, milepost 264.1 on the Line. According to TFF, approximately 65% of its frozen foods are transported by rail. TFF states that SJVR’s own evidence shows that TFF’s rail traffic has increased in the past 3 years (39 carloads in 2005, 67 carloads in 2006, and 79 carloads in 2007). TFF states that rail

⁷ Mr. Robert M. Frelich, Jr.

⁸ Mr. Mark D. Garvin.

⁹ In an abandonment application under section 10903, 2007 traffic would actually be considered the base year.

¹⁰ This calculation is based on crew costs of \$9,753, locomotive fuel cost of \$945, and locomotive rental cost of \$1,425.

¹¹ These costs consist of vegetation control costs of \$3,744, crossing maintenance costs of \$29,087, and track inspection and maintenance costs of \$20,119.

¹² The NLV consists only of the net salvage value of the track and related materials because SJVR does not own the underlying real estate.

traffic is expected to increase to 150 carloads in 2008, and that its plan to build a 10-million-pound freezer storage facility at Lindsay will enable it to ship 200 carloads per year by 2009-2010.

TFF asserts that it is highly dependent on rail transportation for delivery of frozen spinach and greens to distant markets on the East Coast and in the Midwest and South, and that this traffic constitutes a substantial portion of TFF's overall business. TFF states that truck transportation would be cost-prohibitive, and is not an economically feasible alternative to rail transportation. Its lowest cost alternative would be truck-rail service with transloading at a freezer storage facility at Fresno, CA, approximately 60 highway miles from Lindsay. TFF claims that switching to this alternative would add significant costs: approximately \$250 per truckload for trucking to Fresno, and approximately \$330 per truckload to transload at Fresno, totaling an additional \$580 per truckload. TFF states that, at three truckloads per rail carload, the total added costs of truck-rail transportation would therefore be \$1,740 per rail carload. According to TFF, for 79 rail carloads as shipped in 2007, the total added annual cost would be \$137,460, and for the 150 carloads estimated to be shipped in 2008, the total added annual cost would be \$261,000. Thus, TFF asserts, the proposed abandonment would have a severe adverse impact on TFF's overall financial condition.

The City supports TFF's assertions that the proposed abandonment would severely harm TFF, one of the City's largest employers. It states further that the proposed abandonment would prevent vital future economic development, which is dependent on continued rail service. The City, Tulare County, and the Board of Supervisors also assert that the proposed abandonment would adversely affect the ability of communities within Tulare County, which already has some of the highest unemployment and worst poverty in the nation, to compete economically. The Board of Supervisors also expresses concern that the proposed abandonment would preclude other potential rail uses of the right-of-way, such as commuter rail service.

Protestants assert that the petition fails to provide sufficient and/or accurate information to permit the Board to adequately assess the Line's future financial viability or the burden that continued operation of the Line would impose on the carrier. They argue that SJVR's evidence falls short of establishing that revenues from traffic on the line are minimal compared to the cost of operating the line. They note that there is a pronounced upward trend in revenues on the Line and that the evidence shows that traffic and revenues will continue to increase. In particular, Protestants state that the construction of a large freezer storage facility by TFF would increase rail traffic by an additional 90% to 153%. Tulare County also claims that track just south of TFF has become the site of some 200 stored UP boxcars that SJVR failed to mention in its petition as the potential source of additional revenue or reduced opportunity costs.¹³ Tulare County

¹³ Tulare County notes that boxcar storage is a traditional source of revenue for shortline railroads and has typically generated a minimum of \$100 per day per car plus switching charges in the range of \$125 to \$150.

contends that, if the value of the boxcar storage use had been added to SJVR's revenues, that compensation could have offset avoidable costs and demonstrated that the Line could more than break even financially.

Protestants assert that SJVR's maintenance costs have been substantially overstated because an unknown number of the 17 crossing signals, much of the vegetation, a portion of the track inspection and some of the maintenance repairs are located south of TFF's plant at Lindsay on which there is no traffic. They challenge various locomotive and train crew costs offered by SJVR as being unsupported and/or inaccurate. Finally, Protestants contend that the opportunity cost calculation supplied by SJVR is unsupported.

Tulare County argues that the petition fails to adequately address the environmental impacts of the proposed abandonment and the increase in truck traffic that will follow. It states that the county is now in "severe nonattainment" for ozone and in "nonattainment" for particulate matter, largely due to on-road truck fleet. As a result, the San Joaquin Valley Air Pollution Control District, together with affected nearby cities and other governmental entities, have expended some \$14.2 million to replace about 47 miles of rail in 2002-2003, along with two miles of siding, 50,000 wooden ties and 50,000 tons of ballast on adjoining portions of the SJVR, as well as upgrading 30 switches, 40 crossings and 8 bridges, and resurfacing the rail corridor to handle heavier freight cars. Tulare County states that the county cannot develop economically without air quality-friendly rail transportation service.

Finally, Protestants question the apparent segmentation of the South Exeter Branch into two separate abandonment exemption proceedings (Sub-No. 7X and Sub-No. 8X). Tulare County contends that the filings should have been combined because SJVR had used the same equipment and personnel on both segments, and effectively operated the Branch as a unit.¹⁴

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without our prior approval. In considering whether to approve an abandonment proposal under section 10903, the Board balances the interests of affected shippers, the community, the carrier, and interstate commerce generally.¹⁵ The Board will examine both the current and likely future need for rail service on the line, as well as the burden on the carrier (of continuing to maintain and operate the line) and

¹⁴ It asserts further that there is significant potential traffic on the southern segment of the Branch at issue in the Sub-No 7X proceeding which, if developed, could substantially improve the economics of its entire operation, but that shippers have been dissuaded from using that segment because of the \$950 surcharge that SJVR had placed on shippers south of Lindsay to generate revenue necessary to cover its operational costs.

¹⁵ Purcell v. United States, 315 U.S. 381, 384 (1942).

on interstate commerce (through tying up valuable resources in less productive uses).¹⁶ The railroad has the burden of demonstrating that the continued operation of the line it proposes to abandon would be an unjustified burden on the carrier and on interstate commerce.¹⁷

Under 49 U.S.C. 10502, we must exempt a transaction or service from the regulatory procedures and requirements of 49 U.S.C. 10903 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 is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Use of the exemption process is designed to minimize regulatory burdens. But in any abandonment case, whether authority is sought by application or petition for exemption, the railroad must demonstrate that the line in question is a burden on interstate commerce. Typically, in an attempt to make that showing, the carrier submits evidence to show that the costs incurred by the railroad to operate and maintain the line exceed the revenues attributable to it. The exemption process is normally relied upon where the shippers do not contest the abandonment, or, if they do contest it, where there is sufficient evidence that revenue from their traffic is marginal compared to the cost of the operation of the line. In short, the exemption process is appropriate when the record is clear enough to demonstrate that full regulatory review is not necessary to carry out the national rail transportation policy. Where there is an inadequate record on which to grant a petition for exemption in an abandonment case, the petition will be denied outright.¹⁸ In this case, there is insufficient information for us to grant the petition for exemption.

Unlike many cases where petitions for exemption are filed, active rail service on the Line continues. Indeed, as shown by SJVR's own evidence, TFF's traffic on the Line has increased dramatically (from 39 carloads to 79 carloads) since 2005. In addition, TFF provided evidence that there would be a substantial increase in traffic to a total of 150 carloads in 2008 and an increase to 200 carloads by 2009-2010, once its new storage facility is completed. Thus, it appears that TFF's traffic levels and the resulting revenues for SJVR are increasing and that they may continue to increase in the future. Moreover, it may be that boxcars stored for UP on the Line south of TFF's facility should be included as revenue in assessing the burden that continued operation of the Line would place on SJVR.

¹⁶ Colorado v. United States, 271 U.S. 153, 168-69 (1926).

¹⁷ Illinois v. United States, 666 F.2d 1066, 1070 (7th Cir. 1981).

¹⁸ See San Joaquin Valley Railroad Company—Abandonment Exemption—In Kings and Fresno Counties, CA, STB Docket No. AB-398 (Sub-No. 4X), slip op. at 3 (STB served Mar. 5, 1999); Boston and Maine Corp.—Abandonment Exemption—In Hartford and New Haven Counties, CT, STB Docket No. AB-32 (Sub-No. 75X) et al., slip op. at 5 (STB served Dec. 31, 1996).

Additionally, Protestants point out that certain cost figures presented by SJVR appear to be either unsubstantiated or incorrect. For instance, we cannot verify SJVR's NLV figure, as there is a discrepancy in its evidence concerning the quantities of road crossings and signals. We have also identified one cost inaccuracy not mentioned by Protestants. SJVR understated its fuel cost by failing to include the amount of gallons per hour in the locomotive fuel cost equation, which increases the total avoidable costs to \$71,504.¹⁹ Although that particular error runs in favor of SJVR, it is a further indication that we cannot rely altogether on the presentation made by SJVR in this proceeding and that a more searching examination would be in order.

In sum, a shipper and other parties have sufficiently challenged the presentation made by SJVR and there remain enough unresolved questions to make reliance on the exemption process inappropriate on this record. We conclude that SJVR has failed to establish that continued regulation is not necessary to carry out the rail transportation policy, and we therefore are denying SJVR's petition for exemption.²⁰ Although we cannot grant the petition based on the record before us, denial of this petition is without prejudice to SJVR filing a new petition for exemption for abandonment authority (under a new docket sub-number) if it can cure the noted problems. Alternatively, it may file a formal application for abandonment in accordance with 49 U.S.C. 10903.

Finally, as we found in our decision in Sub-No. 7X, we are satisfied that SJVR has properly filed two separate petitions for abandonment authority. The end points selected in each petition appear to be logical termini because no traffic has moved for two years over the portion of the Branch addressed in Sub-No. 7X, whereas an active shipper remains on the portion of the Branch addressed in this proceeding, and strongly opposes the proposed abandonment of the Line. Therefore, while we lack the information necessary to grant the petition for exemption here, there is no reason to delay our authorization of abandonment of the portion of the Branch addressed in STB Docket No. AB-398 (Sub-No. 7X).

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. SJVR's petition for exemption is denied.
2. SJVR's request for a procedural schedule is denied.

¹⁹ Protestants also point out that SJVR incorrectly calculated operations from the south via Strathmore rather than from the north via Exeter. When mileage is rounded off, the total hours per trip would be the same, and there is no overall impact on operating costs.

²⁰ Our denial of SJVR's petition for exemption moots labor protection issues, environmental issues, and Tulare County's request for issuance of a NITU.

3. This decision is effective on the date of service.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Anne K. Quinlan
Acting Secretary