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SERVICE DATE - LATE RELEASE MAY 4, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-246 (Sub-No. 2X)

YREKA WESTERN RAILROAD COMPANY--
ABANDONMENT EXEMPTION--IN SISKIYOU COUNTY, CA

Decided: May 3, 1999

By petition filed on January 14, 1999, Yreka Western Railroad Company (YW) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon its entire 8.9-mile line of railroad (the Line), extending between milepost 0.0 in Montague and milepost 8.9 near Yreka, in Siskiyou County, CA. Notice of the institution of an exemption proceeding was published in the Federal Register at 64 FR 5343-44 on February 3, 1999. Replies to YW's petition were filed by the City of Montague, the County of Siskiyou, the California Public Utilities Commission (CPUC), and Timber Products Company (Timber). We will grant the petition.

BACKGROUND

The railroad extends from Yreka (population 7,000) eastward to Montague (population 1,300), where it connects with the Central Oregon & Pacific Railroad, Inc. (CO&P). For many years YW has served the lumber industry. According to YW, that industry has been declining in the Pacific Northwest due to expansion of foreign lumber sources, decreased overseas markets, and mill closings and production cutbacks caused by timber shortages from National Forest lands.

YW indicates that four shippers remain on the Line. They are Hi-Ridge Lumber Company (Hi-Ridge), Timber, Suburban Propane Company (located at Yreka) and Noranda Mines (located at Happy Camp).¹ The total traffic for the four shippers amounted to 1,473 carloads for 1997, and 629 carloads for the first 10 months of 1998.² YW claims that that equates to about 13 carloads per month per mile in 1997, and less than 7 carloads per month per mile in 1998, well below the 40 cars per month per mile ordinarily deemed necessary to sustain railroad operations, citing SWKR

¹ YW indicates that Hi-Ridge's and Timber's traffic consists largely of wood chips (class 25), one of the lowest rated commodities that railroads handle.

² YW also provided traffic data showing that it handled 423 carloads in 1993, 282 carloads in 1994, 330 carloads in 1995, and 872 carloads in 1996.

Operating Co.--Abandonment Exemption--In Cochise County, AZ, STB Docket No. AB-441 (Sub-No. 2X) (STB served Feb. 14, 1997).³

In addition to freight service, YW also conducts passenger excursion operations during the summer tourist season. YW has found that the revenues generated by the passenger excursion operations have been insufficient to offset the losses of the railroad's year round freight operations. YW's profit and loss statements for the years 1993 through 1998 indicate an average loss of \$75,000 per year. The more current losses are shown as \$68,177 for 1997 and \$93,276 for the first 10 months of 1998.

The City of Montague has replied that its citizens are concerned about the financial ramifications, as well as the historical loss to their community, if the YW is abandoned. The City states that many local businesses rely solely on the summer trade that the excursion train brings. And the County of Siskiyou has replied that abandonment would economically impact the small businesses that rely on tourists that the Blue Goose Steam Train draws to the communities.

Timber has replied that it invested nearly \$8 million in reliance on continued rail service to its business. Currently, Timber says it ships between 15 and 17 cars of chips per week (or 832 cars per year). According to Timber, its traffic dropped in 1998 because a local buyer of its chips required its shipments by truck. Timber says that it has heard that the "rule of thumb" in the rail industry is that you have to ship 50 cars per mile of track per year to keep a railroad running. Timber states that this equates to 445 cars per year on the Line, and that it alone has shipped more than that number in each of the last 2 years. Timber avers that it will lose approximately \$550,000 in revenue if its traffic is diverted to trucks. No explanation is given for how Timber arrived at this amount. We do not know whether this cost includes only truck movement for several miles to Montague for rail movement on the CO&P or whether this figure represents total truck movements. In any event, we conclude that, even with the increased traffic from Timber, the Line is likely to continue to lose money based on the results from 1997, when almost 1,500 carloads were shipped and the railroad incurred an operating loss of \$68,177.

The CPUC maintains that this matter is not appropriate for processing under 49 U.S.C. 10502, and warrants a full inquiry under 49 U.S.C. 10903. CPUC states that it only became aware

³ YW relies on witness' evidence produced in the cited proceeding as being a "rule of thumb" in support of its claim that the Line has insufficient traffic to sustain operations. In doing so, YW has misrepresented witness Cecil's testimony in that proceeding, i.e., that ordinarily takes about 40 revenue carloads of freight per mile/per year to run a railroad," not 40 cars per month per mile as represented by YW. In any event, YW's submission of its profit and loss statements for the last 6 years is clearly the more reliable evidence as to the Line's viability. We note that losses would be even greater if opportunity costs and maintenance costs were taken into consideration.

of YW's petition for exemption through the Federal Register, and can find no record of receiving notice of YW's plans as required by 49 CFR 1152.50.⁴ The CPUC requests that we deny the petition but does not challenge YW's evidence showing that the Line has sustained operating losses for the last 6 years.

YW maintains that its shareholders simply cannot continue to carry this unproductive line and that it has no alternative other than to seek authority to abandon. YW asserts that the remaining shippers will have rail service available at Montague on the CO&P, just 4 miles away. In addition, truck service also would be an available alternative, as Yreka is located directly on Interstate Highway 5 which runs the entire length of the Pacific Coast.

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 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 application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(2) and (7)]. Moreover, an exemption will foster sound economic conditions and encourage efficient management by relieving YW from the expenses of operating and maintaining a rail line that has operated at a loss for at least 6 years. [49 U.S.C. 10101 (5) and (9)]. Other aspects of the rail transportation policy are not affected adversely.

Because the four shippers on the Line will have access to rail service via the CO&P, as well as alternative motor carrier service, we find that regulation is not necessary to protect shippers from an abuse of market power. Nevertheless, to ensure that the four shippers are informed of our decision, we will direct YW to serve a copy of this decision on them 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.

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

⁴ YW certified that a copy of its petition was served on the Federal and state agencies consulted in the preparation of the environmental report and stated that no copies were returned as undeliverable.

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). YW proposes to abandon service over its entire operation and go out of business. YW does not appear to have a 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 this proceeding. Under the circumstances, we will not impose labor protective conditions in this case.

YW 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 15, 1999, indicating that the California Department of Parks and Recreation, State Historic Preservation Office has not completed its evaluation of the potential impact of this project on historic resources. Therefore, SEA preliminarily recommended that the following condition be imposed on any decision granting abandonment authority: YW shall retain its 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.

Comments to the EA were filed by the CPUC on April 14, 1999, and late-filed by YW. On April 26, 1999, the CPUC filed a motion to strike the late-filed comments of YW. The CPUC states that accepting the late-filed comments would offer the railroad an unfair advantage, would set a poor precedent and undermine Board procedures. Procedures employed in compiling an environmental record are less formal than those used in developing the record on the merits of the case. As CPUC notes, YW's reason for filing late is weak, but absent a showing that CPUC has been prejudiced, we will not strike the late-filed comments. The record does not show that CPUC has been harmed by the comments. Nor will accepting them delay the proceeding. Accepting YW's filing has not actually harmed anyone and ensures that we have a complete record. Accordingly, we will not strike the railroad's comments.

The CPUC expresses concerns regarding highway safety, the future safety of a bridge over the Shasta River, and the adverse impacts to historical sites and structures. SEA has performed an analysis of the comments and has modified its previous recommendation as follows:

(1) Highway safety. The CPUC is concerned that highway safety will be compromised if the abandonment results in the diversion of rail traffic to trucks. Using projected traffic data

furnished by Timber of 195 to 228 truckloads of wood chips plus an unspecified number of truckloads of veneer moving monthly from Timber's plant, and assuming that the traffic would move 5 days per week, SEA calculated that the daily average number of trucks would range from about 10 to 12 trucks plus an unspecified number of truckloads of veneer over an approximately 9-mile highway segment. SEA notes that the threshold under 49 CFR 1105.7(e) for purposes of air quality and energy consumption analysis is an increase of truck traffic by more than 10% of the average daily vehicle traffic or 50 vehicles per day on a given road segment. On the other hand, YW has presented data for actual carloads handled of 1,473 in 1997 and 629 in the first ten months of 1998, which produce a weekly average of 28 for 1997 and 15 for the first ten months of 1998 (approximately 43 weeks). Again assuming a five-day work week, SEA calculated that the daily average number of railcars would be 5.6 for 1997 and 3.0 for 1998. The CPUC assumed that each railcar equals 3 truckloads. Thus, multiplying 3 truckloads times the daily average of loaded railcars results in an average of 16.8 trucks per day in 1997, and 9 trucks per day in the first 10 months of 1998. In any event, SEA concludes that both estimates represent minor increases of truck traffic over State Highway 3 and that no mitigation is warranted. YW states in its comments that the highway is built to modern standards for a two-lane highway and can handle the added traffic. YW also notes that the traffic will move west for only 2 miles to a connection with Interstate 5 and then north on I-5 to a mill near Corvallis, OR, rather than going to Montague as asserted by CPUC.

(2) Railroad Bridge over Shasta River. The CPUC notes that the YW bridge over the Shasta River must be maintained or removed if it is not to deteriorate over time and collapse into the river. SEA indicates that no Federal or other state agency has raised this issue. Moreover, YW states that the bridge is in sound condition and that YW has no plans to demolish it. SEA notes that Board decisions in abandonment cases, if favorable, are permissive only, and that the actual abandonment and disposition of physical assets take place at the discretion of the railroad.

(3) Impact on Historical Sites. The CPUC asserts that various YW facilities are of historical significance. SEA states that the comments were moot when written because the EA recommended a historic preservation condition requiring YW to retain its 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. However, the section 106 process has now been completed with the State Historic Preservation Officer's determination that the proposed abandonment will have no effect on historic properties. Therefore, SEA no longer recommends imposition of a historic preservation condition.

Based on its analysis of the comments to the EA, SEA recommends that no conditions be imposed on any authorized abandonment. Based on SEA's recommendation, which we adopt, we conclude that the proposed abandonment will not significantly affect either the quality of the human environment or conservation of energy resources.

We note that 49 U.S.C. 10904 provides a mechanism for those who want to continue rail service that the Board has authorized to be discontinued or abandoned. Under section 10904, any financially responsible person (and all government agencies are deemed to be financially responsible) may file an offer of financial assistance (OFA) to acquire a line or subsidize the losses of the existing operator. Should area shippers or any other interested party determine that continued rail service over the line is in their best interest, they may avail themselves of the section 10904 procedures.

It is ordered:

1. CPUC's motion to strike YW's late-filed comments to the EA is denied.
2. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903 the abandonment by YW of its entire 8.9-mile rail line.
3. YW must serve a copy of this decision on the four shippers within 5 days after the service date of this decision and certify to the Board that it has done so.
4. An OFA under 49 CFR 1152.27(c)(1)⁵ to allow rail service to continue must be received by the railroad and the Board by May 14, 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).
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 June 3, 1999. Petitions to stay must be filed by May 19, 1999. Petitions to reopen must be filed by June 1, 1999.
7. Pursuant to the provisions of 49 CFR 1152.29(e)(2), YW shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully

⁵ 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).

abandoned the Line. If consummation has not been effected by YW's filing of a notice of consummation by May 4, 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