

SERVICE DATE - AUGUST 26, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33679

SIERRAPINE-LEASE AND OPERATION
EXEMPTION-SIERRA PACIFIC INDUSTRIES

Decided: August 22, 2002

By petition filed on December 21, 2001, SierraPine seeks reconsideration of our November 27, 2001 decision in this proceeding. In that decision, we denied SierraPine's request that we revoke the authority it previously obtained pursuant to a notice of exemption under 49 CFR 1150.31 to lease and operate approximately 12 miles of rail line owned by Sierra Pacific Industries (SPI) between Ione, CA, and Martell, CA.¹ In the petition to revoke, SierraPine claimed that it does not require regulatory authority to conduct its operations, and it reiterates that claim here. For the reasons outlined below, we will deny the petition for reconsideration.

BACKGROUND

This rail line was first operated in 1906 as the Ione and Eastern Railroad, hauling gold ore and firebricks west from Martell to the yard at Ione for connection with the Central Pacific Railroad. Eastward shipments originating from the Ione yard consisted of passengers, mail, groceries, clothing, and animal feed. Passenger service ended in 1932, but the railroad continued to provide freight service to the public under the name of Amador Central Railroad (ACR). The Amador Lumber Company subsequently acquired control of ACR and established a lumber mill at Martell. Beginning in the mid-1940s, a series of lumber company owners, including the Georgia-Pacific Company (GP), which acquired control of ACR in 1988,² operated ACR as common carriers.

¹ Notice of SierraPine's exemption authority was served and published in the Federal Register (63 FR 68505) on Dec. 11, 1998.

² See Amador Central Railroad Company and Georgia-Pacific Corporation-Exemption from 49 U.S.C. 11343, ICC Finance Docket No. 31266 (ICC served May 23, 1988).

In April 1997, the Board granted SPI, a forest products company and Class III rail carrier, authority to acquire and operate the line pursuant to a notice of exemption, as an adjunct to SPI's purchase of GP's mill and particle board plant at Martell.³ Since the purchase, SPI has performed no rail operations itself over the line.

In 1998, SierraPine, a noncarrier California limited partnership, purchased a particle board manufacturing plant located at Martell. It also entered into an agreement with SPI to lease and operate the 12 miles of track, primarily to transport its own product from the particle board plant in Martell to the junction with the Union Pacific Railroad Company (UP) at Ione. In November 1998, SierraPine filed a notice of exemption under 49 CFR 1150.31 to lease and operate the line as a common carrier. SierraPine began operating on April 5, 1999, transporting 2 to 10 carloads each week from the Martell plant to the UP yard at Ione; on at least one occasion, SierraPine also transported one carload of fiberboard from the UP yard at Ione to another shipper on the line.

On August 10, 1999, SierraPine filed its petition to revoke, which we subsequently denied. That action precipitated the instant petition for reconsideration.

DISCUSSION AND CONCLUSIONS

Under Board precedent, a common carrier cannot extinguish its common carrier obligation by, for example, converting a line of railroad into private track, as SierraPine attempts here, without first obtaining authorization from the Board under 49 U.S.C. 10903 to be relieved of that obligation. A carrier may not escape our jurisdiction over the abandonment of rail lines simply by reducing or terminating common carrier service. See The Atchison, Topeka and Santa Fe Railway Company—Abandonment Exemption—In Lyon County, KS, Docket No. AB-52 (Sub-No. 71X) (ICC served June 17, 1991) (Lyon County) at 4. Here, SierraPine sought and acquired authority via exemption to provide common carrier service over a line that has historically been operated as a regulated line of railroad. Petitioner cannot unilaterally extinguish its common carrier obligation on the basis that it did not in the past, and does not now, require regulatory authority to conduct what it describes as its primarily private carrier, switching operations.

SierraPine argues that its status as a tenant/lessee here mandates that a decisional standard different from Lyon County apply in this case, i.e., the “tenant use” test promulgated in Chevron USA Inc.—Lease and Operation Exemption—Richmond Belt Railway, ICC Finance Docket No. 32352 (ICC

³ See Sierra Pacific Industries—Acquisition and Operation Exemption—Amador Central Railroad Company, STB Finance Docket No. 33378 (STB served Apr. 9, 1997).

served June 12, 1995) (Chevron).⁴ Petitioner further argues that we committed material error in not applying that standard here and in distinguishing the facts of Chevron from the facts in this proceeding.⁵

As in our prior decision, we reject petitioner's argument that Chevron supports its position here. In Chevron, under a series of detailed agreements, Santa Fe and SP⁶ had the legal right and obligation, pursuant to specific lease provisions, to immediately come on to the line and provide service in the event Chevron and the switching contractor failed to do so. Here, however, SierraPine has the exclusive right under the lease to operate on the line and, should SierraPine fail in its obligations to a shipper, the latter would have no evident recourse under the lease to compel the lessor to provide service.⁷ Rather, in the event of default by SierraPine here, SPI (or the Board) could have to go into court to have the lease terminated before SPI or another operator could resume service. Such a legal impediment might result in SPI having to expend both time and money, which costs might be passed on to shippers and the transportation system generally. Finally, we also note that, whereas in Chevron SP and Santa Fe had historically provided service over the line, here SPI, as SierraPine concedes, has never performed common carrier operations over the line. In other words, here we simply do not have the same assurances present in Chevron that there would be no interruption in common carrier service.

We conclude that SierraPine has failed to demonstrate material error on the Board's part. Accordingly, petitioner's request that we reopen this proceeding and revoke its authority will be denied.

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

⁴ In Chevron, at p. 2, our predecessor, the Interstate Commerce Commission (ICC), stated that, in determining whether a lessee is a common carrier, the focus should be on the use made of the track under the terms of the transaction, rather than the character of the track itself. The Board concluded that the lease there did not require agency approval.

⁵ According to petitioner, the lessor here, as in Chevron, has the right to reenter the property to perform any necessary track maintenance if the lessee fails to do so; the lease agreement does not raise any barriers to the lessor's performance of its common carrier obligation, if required; and SPI is an existing rail carrier fully capable of fulfilling its common carrier obligation, either directly or indirectly through an operator.

⁶ Santa Fe is The Atchison, Topeka and Santa Fe Railway Company and SP is the Southern Pacific Transportation Company.

⁷ SierraPine attached a copy of its lease agreement with SPI to its petition to reconsider.

It is ordered:

1. SierraPine's petition to reconsider our November 27, 2001 decision is denied.
2. This decision is effective on the date of service.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams
Secretary