

SERVICE DATE - JULY 27, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-103 (Sub-No. 17X)

THE KANSAS CITY SOUTHERN RAILWAY COMPANY—ABANDONMENT
EXEMPTION—IN JACKSON COUNTY, MO

Decided: July 26, 2004

By petition filed on April 8, 2004, The Kansas City Southern Railway Company (KCSR) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon approximately 1.3 miles of rail line known as the Second Street Track in Kansas City, Jackson County, MO. KCSR also seeks exemptions from the statutory provisions and regulations related to offers of financial assistance (OFA), public use, and trail use. Notice of the filing of the petition was served and published in the Federal Register on April 28, 2004 (69 FR 23251). We will grant the exemption from 49 U.S.C. 10903-05, subject to standard employee protective conditions.

BACKGROUND

The Second Street Track consists of two segments. The first segment (Track 500) extends from milepost 0+/-, located in an unused rail yard, to milepost 0+5188'+/-, at the crossing of the Second Street Track and a Union Pacific Railroad Company line. The second segment (Track 741) branches off northwest from Track 500 between Main Street and Grand Avenue at milepost 0-W of that line, and continues west to approximately milepost 0+1518'-W at the east end of railroad bridge B-1-W. The area in which the Second Street Track is located is known as the River Market, an urban redevelopment district that, by way of concentrated public and private investments, is in the process of being revitalized as a residential and commercial adjunct to downtown Kansas City.

According to KCSR, the redevelopment of the River Market has been underway for more than 2 decades. What was once an industrial/warehousing area has been changing to residential and mixed-use retail, along with some light commercial enterprises. There are currently no shippers on the line and there has been no service on the Second Street Track for at least 6 months. Prior to that time, the line was used for a transloading operation that has been relocated to KCSR's Coburg Yard east of Kansas City, and for the movement of a single carload of scrap paper to Republic Fiber, located on a spur that connects to Track 741. Republic Fiber has ceased doing business at that location and has closed its facility. KCSR asserts that there are no realistic prospects for future rail shipments, and no economic basis to justify continued operation of the Second Street Track.

KCSR states that the principal purpose of the proposed abandonment is to facilitate the municipal redevelopment activities of the City of Kansas City (the City). KCSR attached to its petition a letter from the City in support of the abandonment exemption and KCSR's requests for exemption from the OFA, public use, and trail use provisions.

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 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 KCSR from the cost of owning and maintaining a line that is not in use [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be adversely affected.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power because there are no active shippers on the line. Nevertheless, to ensure that the two shippers that most recently used the line are informed of our action, we will require KCSR to serve a copy of this decision on them within 5 days from the service date and certify to the Board that it has done so. Given the market power finding, it is not necessary to 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. Accordingly, as a condition to granting this exemption, we will impose the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

KCSR has submitted a combined environmental report and historic 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. SEA served an environmental assessment (EA) on June 7, 2004. Comments to the EA were requested by July 7, 2004.

In the EA, SEA notes that the Missouri Department of Natural Resources, State Historic Preservation Officer (SHPO) has indicated that the Second Street Track is within the boundaries

of the Old Town Historic District, a property listed in the National Register of Historic Places (National Register), and may be eligible as a contributing property to the Historic District. The Second Street Track is also adjacent to the Town of Kansas Archaeological Site, a property determined to be eligible for inclusion in the National Register. SEA also notes that the SHPO has determined that the abandonment may have an adverse effect on the historic fabric of the Old Town Historic District. Therefore, SEA recommended in the EA that a condition be imposed on any decision granting abandonment authority requiring KCSR 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 (NHPA), 16 U.S.C. 470f.

Comments in response to the EA were received and considered by SEA. Based on additional information provided by KCSR, the SHPO has concluded that the proposed abandonment of the Second Street Track will have no adverse effect on the Old Town Historic District or the Town of Kansas Archaeological Site. SEA concurs with the SHPO's comments. Pursuant to the Advisory Council on Historic Preservation's regulations for implementing the section 106 process of NHPA at 36 CFR 800.4(d)(1) and 36 CFR 800.8, SEA has determined that the proposed abandonment will not affect historic properties listed in or eligible for inclusion in the National Register. Therefore, the section 106 condition previously recommended in the EA is no longer necessary and will not be imposed. We conclude that the proposed abandonment will not significantly affect either the quality of the human environment or the conservation of energy resources.

KCSR has requested exemptions from the OFA requirements of 49 U.S.C. 10904, public use requirements of 49 U.S.C. 10905, and the trail use regulations at 49 CFR 1152.27, to facilitate the City's redevelopment plans. Because trail use/rail banking is voluntary, and can only be implemented if an abandoning railroad agrees to negotiate an agreement, an exemption from the trail use regulations is unnecessary. As to the other exemption requests, the City supports exemptions from the OFA and public use requirements and no one has objected to granting these requests in response to the notice about them in the Federal Register.

Exemptions from 49 U.S.C. 10904-05 have been granted when the right-of-way is needed for a valid public purpose and there is no overriding public need for continued rail service.¹ Here, a valid public purpose has been established by KCSR and the City, and the shippers on the line do not need continued rail service. Accordingly, we will exempt the proposed abandonment from the OFA and public use requirements of 49 U.S.C. 10904-05.

¹ See, e.g., Central Michigan Railway Company–Abandonment Exemption–In Saginaw County, MI, STB Docket No. AB-308 (Sub-No. 3X) (STB served Oct. 31, 2003).

The evidence of record establishes that the proposed exemptions from 49 U.S.C. 10904-05 meet the criteria of 49 U.S.C. 10502. Applying OFA or public use requirements, in this instance, is not necessary to carry out the rail transportation policy. Moreover, allowing the abandonment exemption to become effective expeditiously, without first being subject to these requirements, would minimize the need for Federal regulatory control over the rail transportation system, expedite regulatory decisions, and reduce regulatory barriers to exit [49 U.S.C. 10101(2) and (7)]. We have already determined that regulation is not necessary to protect shippers from an abuse of market power.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903-05 the abandonment by KCSR of the above-described line, subject to the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).
2. KCSR is directed to serve a copy of this decision on the shipper whose point of service been has relocated to KCSR's Coburg Yard and on Republic Fiber within 5 days after the service date of this decision and to certify to the Board that it has done so.
3. This exemption will be effective August 26, 2004. Petitions to stay must be filed by August 11, 2004, and petitions to reopen must be filed by August 23, 2004.
4. Pursuant to the provisions of 49 CFR 1152.29(e)(2), KCSR 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 KCSR's filing of a notice of consummation by July 27, 2005, 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 no later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

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

Vernon A. Williams
Secretary