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SERVICE DATE - AUGUST 6, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-561X

RIO VALLEY RAILROAD, INC.--ABANDONMENT EXEMPTION--IN CAMERON
COUNTY, TX

STB Docket No. AB-562X

RIO VALLEY SWITCHING COMPANY--DISCONTINUANCE OF SERVICE
EXEMPTION--IN CAMERON COUNTY, TX

Decided: August 2, 1999

By a joint petition filed on April 14, 1999,¹ Rio Valley Railroad, Inc. (RVRI), and Rio Valley Switching Company (RVSC) (collectively, petitioners) seek exemptions under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 for RVRI to abandon, and RVSC to discontinue service over, an 8.808-mile line of railroad known as the Rio Hondo Line,² extending from milepost 0.316 near San Benito to milepost 9.19 at Rio Hondo, in Cameron County, TX (the line). We will grant the exemption, subject to standard employee protective conditions.

BACKGROUND

The Rio Hondo Line was formerly a branch line of Missouri Pacific Railroad Company (MP)³ that extended from San Benito, a point on MP's main line between Houston and Brownsville, TX. Petitioners state that they have served only one shipper on the line, located at Rio Hondo, Wilbur-Ellis Company (WEC), but that WEC no longer uses rail service and does not oppose the abandonment and discontinuance of service.⁴ According to petitioners, rail service will continue to be available via RVSC or UP at nearby San Benito or Harlingen, TX, in addition to motor carrier service which is readily available in the area.

¹ Notice of the filing was served and published in the Federal Register on May 4, 1999 (64 FR 23898).

² The beginning of the Rio Hondo Line, from milepost 0.066 at San Benito to milepost 0.316, is not included within the abandonment and discontinuance proposal.

³ MP was merged into Union Pacific Railroad Company (UP) on January 1, 1997.

⁴ In 1997, WEC received 67 carloads of fertilizer, generating \$52,032 in revenue, and, in 1998, 57 carloads of fertilizer, generating \$44,196 in revenue.

Despite efforts to attract shippers to the line, petitioners submit that no new source of rail revenue is likely to offset significant expenses that will be incurred if the line is not abandoned and service is not discontinued. According to petitioners, RVSC would incur an operating loss of approximately \$2,500 per year in non-discretionary maintenance expenses resulting from such activities as grade-crossing maintenance and weed and brush control. In addition, RVSC would incur a cost of \$563,825 for track and bridge rehabilitation in the forecast year. Petitioners estimate RVRI's opportunity costs to be \$68,000.⁵ They submit that the combination of operating losses, rehabilitation expenses, and opportunity costs is seriously harmful to small companies like RVRI and RVSC.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned or service discontinued 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 RVRI of the costs of owning, and RVSC of the costs of maintaining and operating, a line that is no longer used, and allowing RVRI to apply its assets 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 the abuse of market power because no shippers currently use the line, the only former shipper on the line no longer requires rail service and does not object to the proposed abandonment and discontinuance of service, and adequate transportation alternatives are available.⁶ Nevertheless, to ensure that the former shipper is informed of our decision, we will require petitioners to serve a copy of this decision on WEC within 5 days of the service date and certify to us that it has done so.

⁵ Petitioners have applied a pre-tax cost-of-capital rate of 17% per year to a net salvage value for track materials of approximately \$400,000, to arrive at opportunity costs. A value for the land in the right-of-way was not included because the extent to which RVRI has marketable title has not been determined.

⁶ 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. 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).

Petitioners have submitted an environmental report with their petition and have 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 effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on June 11, 1999, recommending that no environmental or historic conditions be imposed on any decision granting abandonment authority.

No comments to the EA were filed by the July 12, 1999 due date. Based on SEA's recommendation, we conclude that the proposal, if implemented, will not significantly affect either the quality of the human environment or the conservation of energy resources.

SEA states that, following the line's abandonment, the right-of-way may be suitable for other public use under 49 U.S.C. 10905. We note that no one has sought a public use condition, and none will be imposed.⁷

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 and discontinuance of service by RVRI and RVSC, respectively, 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. Petitioners are directed to serve a copy of this decision on WEC within 5 days after the service date of this decision and to certify to the Board that it has done so.

3. An offer of financial assistance (OFA) under 49 CFR 1152.27(c)(l) to allow rail service to continue must be received by the railroads and the Board by August 16, 1999, subject to time extensions authorized under 49 CFR 1152.27(c)(l)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(l). Each OFA must be accompanied by a \$1,000 filing fee. See 49 CFR 1002.2(f)(25).

⁷ Public use requests were due no later than 20 days after publication of the notice of the petition in the Federal Register, or by May 24, 1999.

4. 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.”**

5. Provided no OFA has been received, this exemption will be effective on September 5, 1999. Petitions to stay must be filed by August 23, 1999, and petitions to reopen must be filed by August 31, 1999.

6. Pursuant to the provisions of 49 CFR 1152.29(e)(2), RVRI 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 RVRI's filing of a notice of consummation by August 6, 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 no 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