

SERVICE DATE - AUGUST 1, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-477 (Sub-No. 1X)

OWENSVILLE TERMINAL COMPANY, INC.--ABANDONMENT
EXEMPTION--IN EDWARDS AND WHITE COUNTIES, IL
AND IN GIBSON AND POSEY COUNTIES, IN

Decided: July 22, 1997

On April 15, 1997, Owensville Terminal Company, Inc. (OTC) filed a petition for an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon its rail line between milepost 205.0 at or near Browns, IL, and milepost 227.5 near Poseyville, IN, a distance of 22.5 miles in Edwards and White Counties, IL, and Gibson and Posey Counties, IN. The line is referred to as the Browns-Poseyville line. Pursuant to 49 U.S.C. 10502(b), the Board published a notice in the *Federal Register* [62 FR 27108] on May 16, 1997, instituting an exemption proceeding. Agricultural shippers replied in opposition. The Indiana Department of Transportation (INDOT) filed a request for a public use condition. The United Transportation Union requested imposition of labor protective conditions. OTC replied.

BACKGROUND

Rail lines emanate in three directions from Poseyville, IN. The rail line involved in this proceeding extends southeasterly from a point near Browns to a point near Poseyville, and connects with Norfolk Southern Railroad Company (NS). A second rail line extends approximately 19 miles southeasterly from Poseyville to Evansville, IN (Poseyville-Evansville line), and connects with CSX Transportation, Inc. (CSXT) and with NS, via an intermediate switch over CSXT, at Evansville. This line is owned by the Evansville Terminal Company, Inc. (ETC).¹ Both the Browns-Poseyville and Poseyville-Evansville lines were formerly part of the Chicago-Evansville rail line of the Illinois Central Railroad Company (IC). In 1986, IC sold those lines to Garden Spot & Ohio Partnership. The lines were operated by Indiana Hi-Rail Corporation (IHRC), until IHRC went bankrupt. A third rail line extends approximately 12 miles northeast from Poseyville to Owensville, IN (Poseyville-Owensville line), and is owned and operated by OTC and also was formerly operated by IHRC. OTC acquired this line after both its owner and its operator, IHRC, went bankrupt.²

After acquisition of the above-described lines in 1996 by OTC and ETC, shippers on the Poseyville-Owensville line began to route their shipments over ETC's Poseyville-Evansville line instead of the Browns-Poseyville line, including shipments to be interchanged with NS which involve an intermediate switch over CSXT at Evansville. OTC states that between May 1996 and February 1997, 732 carloads were originated or terminated on the Poseyville-Owensville line at Cynthiana and 16 carloads were originated or terminated on that line at Owensville. Only 3 of those cars, which moved in July 1996, were transported over the Browns-Poseyville line. On September 12, 1996, due to track conditions, ETC embargoed rail service on the Browns-Poseyville line. With no demand for rail service, ETC evidently decided to pursue abandonment, and, because OTC had financed ETC's

¹ See *Evansville Terminal Company, Inc.--Acquisition and Operation Exemption--Trustee, Indiana HiRail Corporation*, STB Finance Docket No. 32989 (STB served July 17, 1996) and *RailAmerica, Inc.--Continuance in Control Exemption--Evansville Terminal Company, Inc.*, STB Finance Docket No. 32990 (STB served July 17, 1996).

² See *Owensville Terminal Company, Inc.--Acquisition and Operation Exemption--Poseyville & Owensville Railroad Company, Inc.*, STB Finance Docket No. 32899 (STB served May 17, 1996).

acquisition, OTC agreed to acquire the line³ from ETC in early 1997 with the purpose of seeking the abandonment at issue. No shippers were actually located on the line acquired by OTC.

The petition for exemption alleges that no traffic has originated or terminated on the Browns-Poseyville line during the past two years, that no complaint had been filed alleging that OTC or any former owner of the line had failed to provide rail transportation on reasonable request, that no overhead traffic moved over the line for the last nine months, and that overhead traffic that moved over the line prior to that time had been rerouted over other lines to the apparent satisfaction of the shippers. Petitioner characterized the proposed exemption as noncontroversial.

Petitioner argues that abandonment of the Browns-Poseyville line is justified in that (1) there is no public need for the involved rail services and no reasonable prospect of such need in the foreseeable future; (2) continued ownership of the line would cause OTC to incur a substantial opportunity cost and modest, but nevertheless harmful, operating losses; and (3) reinstitution of rail service would not be possible without a very substantial expenditure for track rehabilitation that could not be recovered within a reasonable period of time from operating revenues.

Petitioner states that local traffic has been nonexistent on this line for approximately five years and that there are no reasonable prospects for originated or terminated traffic on the line. Petitioner describes the communities along the rail line as small and says that the surrounding area is dominated by grain producers and that such grain has long been transported by truck. Petitioner states that there are no indications that anyone desires to transport grain from the line by rail.

On June 18, 1997, Bailey-Peavey Ag Center and Bailey Enterprises, Inc. (Bailey), Consolidated Grain and Barge Company (Consolidated), Continental Grain Company (Continental), and Peavey Company (Peavey) filed a joint motion requesting the Board to reject or deny OTC's petition for exemption. Bailey and Peavey operate facilities at Browns adjacent to the line for which the abandonment exemption is sought. Consolidated and Continental operate grain facilities on an adjacent OTC line. Bailey, Consolidated, Continental, and Peavey will collectively be referred to as the shippers.

The shippers argue that the line remains capable of handling a healthy volume of traffic that cannot feasibly move via other routes. Shippers state that the proposed abandonment has the effect of stranding Bailey and Peavey on a .7-mile segment of a line owned by ETC, which will be separated from the rest of a nearby ETC line, thus foreclosing "rational" access to CSXT at Evansville for Peavey and Bailey, and foreclosing "rational" access to the NS at Browns for Consolidated and Continental. Shippers maintain that the Browns-Poseyville line is an important potential conduit for overhead traffic. Shippers explain that Peavey will require service from its facility at Browns, on the .7-mile ETC line, to its new soybean crushing plant under construction at Mt. Vernon, IN, which is reached via CSXT. This preferred route would be over the line proposed to be abandoned. Shippers argue that, if the line is abandoned, it would force Peavey's traffic to reach Mt. Vernon instead via the NS interchange at Browns, which would be unduly circuitous and economically prohibitive. Shippers argue that Bailey also requires service between the CSXT interchange at Evansville and its facility at Browns for the movement of inbound fertilizer that originates on CSXT and that this traffic should economically remain with CSXT for its maximum haul.

The shippers indicate that, because of the proposed abandonment, plans are being made to acquire the Browns-Poseyville line together with other connecting lines under 49 U.S.C. 10907 to allow for a unified operating rail system to serve the shippers' interest.

In its reply filed July 2, 1997, OTC argues that the agricultural shippers have not demonstrated a legitimate need for the involved rail line, nor serious harm that would result from its

³ Petitioner acquired the Browns-Poseyville line in *Owensville Terminal Company, Inc. -- Acquisition and Operation Exemption--Evansville Terminal Company, Inc.*, STB Finance Docket No. 33339 (STB served Feb. 10, 1997).

abandonment. OTC states that abandonment law does not protect what it describes as the shippers' interests in low rates for their overhead traffic and that maintenance of unprofitable lines is not required to ensure lower rates for shippers. On July 10, 1997, the shippers sought leave to file a reply and tendered that reply. The shippers' reply will not be considered.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without 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.

The exemption process is designed to minimize regulatory burdens, but the information provided must be sufficient for us to reach an informed decision. Typically, the type of abandonment transactions that are exempted are those where the shippers do not contest the abandonment or if they do contest it, revenue from their traffic is minimal or marginal when compared to the cost of operating the line. See *Boston and Maine Corporation--Abandonment Exemption--In Hartford and New Haven Counties, CT*, STB Docket No. AB-32 (Sub-No. 75X) *et al.*, (STB served Dec. 31, 1996), slip op. at 5 (*Boston and Maine*); and *Tulare Valley Railroad Company--Abandonment and Discontinuance Exemption--In Tulare and Kern Counties, CA*, STB Docket No. AB-397 (Sub-No. 5X) (STB served Feb. 21, 1997), slip op. at 5-6. Where there is an inadequate record on which to grant an abandonment petition for exemption, the petition will be denied outright. See *Boston and Maine*, slip op. at 6.

As stated, a requirement for an exemption is that continued regulation is not necessary to carry out the rail transportation policy. The rail transportation policy provides, among other things, that the Board in regulating the railroad industry is to "ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense." Although OTC, in its petition, asserted that the proposed abandonment exemption "should be" as noncontroversial as abandonments processed under the class exemption for out-of-service lines, and that overhead traffic has been rerouted "to the apparent satisfaction of the shippers who control that traffic," the shippers' opposition clearly reflects a different point of view. While the protesting shippers are not located on the line itself, they are still affected by the proposed abandonment and their interests must be balanced with other factors in determining if abandonment should be permitted. While there is no local traffic on the line proposed for abandonment, and apparently no overhead traffic has moved over the line since July 1996, it appears to be a critical link for shippers. We are unable to conclude on the present record that regulation is not required under such circumstances to carry out the rail transportation policy. The shippers' strong interest in having rail service over the line suggests that there may be sufficient demand for the subject line to make it a viable operation for some rail operator. As in *Boston and Maine*, we believe that the shippers' concerns here warrant a more thorough review and, therefore, conclude that the petition for exemption should be denied. Denial of this petition is without prejudice to OTC's filing of an abandonment application. Any new filing must be under a new docket sub-number accompanied by a new filing fee. Our denial of OTC's request to abandon moots labor protection issues and INDOT's request for a public use condition.

It is ordered:

1. The petition for exemption is denied.
2. This decision is effective on the date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.

STB Docket No. AB-477 (Sub-No. 1X)

Vernon A. Williams
Secretary