

SERVICE DATE - MAY 6, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-42 (Sub-No. 3X)

AROOSTOOK VALLEY RAILROAD COMPANY--ABANDONMENT EXEMPTION--
IN AROOSTOOK COUNTY, ME

Decided: April 25, 1997

By petition filed on January 16, 1997, Aroostook Valley Railroad Company (AVR) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon its entire line of railroad between: (1) milepost 3.04 on Skyway Branch and milepost 4.62 (the end of the main line) at Skyway Industrial Park, including all line and sidings on Skyway Industrial Park; and (2) the connection with Bangor and Aroostook Railroad (BAR), at AVR milepost 0.0 at Skyway Junction and milepost 3.41 on Skyway Branch (together, the line), for a total of approximately 3.19 miles,¹ in Aroostook County, ME. The United Transportation Union seeks imposition of labor protective conditions. We will grant the exemption request.

BACKGROUND

The line consists of a single track in an industrial park complex with a connection to the BAR.² It is in operable condition and conforms to Federal Railroad Administration class 1 standards. AVR previously provided service to four customers in Skyway Industrial Park in the City of Presque Isle, but has not provided rail service to these customers since May 1996.³ AVR states that the number of shipments, both inbound and outbound, totaled 131 in 1995, and only 35 from January 1996 to April 1996. Petitioner contends that the revenue generated from these shipments covers only a small portion of its operating expenses. According to AVR, all customers using the line during 1995 or 1996 have been notified of the proposed abandonment, and none has indicated opposition.

AVR states that it desires to leave the railroad business and, accordingly, has entered into a written agreement with the City of Presque Isle (City) for the City to purchase AVR's interest in the line, including the right-of-way, and all additional track material (crossing lights, etc.).⁴ According to petitioner, the City will hold the rail line and right-of-way for the resumption of rail service to

¹ By supplemental pleading, AVR informs the Board that the actual mileage between AVR milepost 0.0 at Skyway Junction and milepost 3.41 on Skyway Branch is 1.61 miles. Apparently, milepost 3.41 (as well as milepost 3.04 and milepost 4.62) refers to AVR's historic mileage system, while milepost 0.0 does not.

² By decision served April 28, 1992, AVR was granted an exemption to construct a 1.5-mile rail interchange connection extending from the BAR line that runs west out of Presque Isle, ME to the Skyway Industrial Park, where 75% of AVR's customers were located. AVR states that this new connection was constructed as a more direct, workable, safe, and cost-effective rail connection than previous operations.

³ As a temporary accommodation designed to maintain interim service to shippers, BAR, with permission from AVR, has been using a portion of the subject line to switch cars between shipper facilities on the line and BAR's lines. However, because BAR does not desire to acquire common carrier status over the subject line, this arrangement cannot continue. Petitioner also states that truck service is available to shippers.

⁴ AVR avers, however, that the City does not seek to acquire any common carrier status itself with respect to the line. Also, liens on the new connection arising from Federal funding will be transferred to the City.

Skyway Industrial Park (Skyway) by an appropriate operator, with the trackage classified as an industrial siding.

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. Exempting the proposed transaction will minimize the need for Federal regulatory control over the rail transportation system and the time and expense of the application process, thereby reducing regulatory barriers to exit [49 U.S.C. 10101(2), and (7)]. An exemption will also promote an efficient rail transportation system, ensure the development and continuation of a sound rail transportation system, foster sound economic conditions, and encourage efficient management by allowing AVR to terminate its continuing losses and to allow its assets to be sold and used productively elsewhere [49 U.S.C. 10101(3), (4), (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 an abuse of market power. The former shippers on the line have not objected to the proposed abandonment and appear to have adequate transportation alternatives available.⁵ Nevertheless, to ensure that shippers are informed of our decision, we will require AVR to serve a copy on each of them within 5 days after the decision is served and certify to us that it has done so.

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 impose employee protective conditions when 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*). AVR proposes to abandon its entire line and go out of the railroad business. It does not appear to have any corporate affiliate or parent that could benefit from the proposed abandonment. And no one has attempted to show that the situation under *Northampton* exists for imposing labor protection in entire line abandonments. Under the circumstances, we will not impose labor protective conditions in this case.

AVR 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 action. *See* 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified the data it contains, analyzed the probable effects of the proposed action on the quality of the human environment, and served an environmental assessment (EA) on February 18, 1997. In the EA, SEA did not recommend imposition of any environmental conditions.

No comments to the EA were filed by the March 10, 1997 due date. Based on SEA's recommendation, we conclude that the proposed abandonment 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, if the line is purchased by the City and operations resume, the right-of-way may not be suitable for other public uses under 49 U.S.C.

⁵ Given our market power finding, we need not determine whether the proposed abandonment is limited in scope.

10905. We note that no one has sought a public use condition, and none will be imposed. Nevertheless, we will provide a period of 20 days after *Federal Register* publication for interested persons to request a public use condition.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt the abandonment of AVR's entire line described above from the prior approval requirements of 49 U.S.C. 10903.

2. AVR must serve a copy of this decision on the line's four former shippers within 5 days after the service date of this decision and certify to the Board that it has done so.

3. Notice will be published in the *Federal Register* on May 6, 1997.

4. Provided no formal expression of intent to file an offer of financial assistance (OFA)⁶ has been received, this exemption will be effective on June 5, 1997; formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2) must be filed by May 16, 1997; petitions to stay must be filed by May 21, 1997; requests for public use conditions in conformity with 49 CFR 1152.28(a)(2) must be filed by May 27, 1997; and petitions to reopen must be filed by June 2, 1997.

5. If a formal expression of intent to file an OFA has been timely submitted, an OFA to allow rail service to continue must be received by the railroad and the Board within 30 days after publication, subject to time extensions authorized under 49 CFR 1152.27(c)(2)(ii)(C) and (D). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(2). Each OFA must be accompanied by the filing fee, which currently is set at \$900. See 49 C FR 1002.2(f)(25).

6. 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.**"

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

⁶ See *Exempt. of Rail Abandonment--Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), for regulations in effect at the time of filing of the exemption petition. We note that the ICC Termination Act of 1995 has made changes and additions to the previous law regarding the processing of abandonments and OFAs. To implement these changes, we have issued final rules in *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), that became effective on January 23, 1997. Because we have processed the exemption petition under the former regulations, we will continue to use the former regulations in this proceeding to process an OFA, if one is filed.