

Before the
Surface Transportation Board

STB Docket No. AB-512X

SIERRA PACIFIC INDUSTRIES—ABANDONMENT EXEMPTION—
IN AMADOR COUNTY, CA •

ENTERED
Office of Proceedings

STB Docket No. AB-880X

SIERRAPINE—DISCONTINUANCE EXEMPTION—
IN AMADOR COUNTY, CA

Part of
Public Record

PETITIONERS' REPLY TO COMMENTS

Sierra Pacific Industries ("SPI") and SierraPine (collectively, "Petitioners") hereby reply to the four comments submitted on the merits of Petitioners' November 12, 2004 Petition for Exemption (the "Petition") to abandon and discontinue service over a 12-mile line of railroad between Martell and Ione, California (the "Line"). They are: (1) a letter from the Board of Supervisors of Amador County ("Amador County") dated December 10, 2004 ("Amador County Comments"); (2) a letter from the California Department of Transportation ("Cal DOT") dated December 22, 2004 ("Cal DOT Comments"); (3) a "Protest to Petition for Exemption" by the Amador County Transportation Commission ("ACTC") dated December 21, 2004 ("ACTC Comments"); and (4) a significantly late-filed letter from the Martell Industrial Center, LLC ("Martell"), dated January 7, 2005 ("Martell Comments").

Most significantly, no shipper or prospective shipper has filed any comments or objection to the Petition. Moreover, while the four commenting parties oppose the Petition, none of them has disputed the essential facts set forth in the Petition as to the lack of demand, currently or in the foreseeable future, for rail service over the Line, the very substantial costs that would be required to operate the Line and restore it to Class I standards, and the adequacy of truck transportation to SierraPine and other shippers in the area.

Amador County

Amador County briefly and generally asserts that abandonment and discontinuance “would be detrimental to the commercial life and the environment of Amador County,” Amador County Comments at 1, and it expresses concern that the abandonment and discontinuance “will cause a domino effect on downstream points between Galt and Ione,” which receive rail service not from Petitioners but from the Union Pacific Railroad Company. *Id.*

While Amador County’s asserted wish to preserve rail service is perhaps understandable, its comments provide no basis for concluding that abandonment and discontinuance is not warranted or that the Petition for Exemption should not be granted. Amador County asserts that “[r]ail transit is important to some existing and some prospective businesses in Martell and to the overall development of Amador County,” *id.*, but the County does not identify any such businesses, nor does it provide any evidence to support its assertions of downstream effects or demonstrate that there is any present need for rail service on the Line. As this Board has stated, “[a] railroad cannot be required to continue operating a losing line based on mere hope of economic growth.” *SWKR*

Operating Co.—Abandonment Exemption—In Cochise County, AZ, STB Docket No. AB-441 (Sub-No. 2X), slip op. at 6 (served February 14, 1997). Similarly, “[s]peculation that additional traffic might materialize in the future does not justify forcing [a] railroad to incur losses by operating [a] rail line.” *Paducah & Louisville Ry., Inc.—Abandonment Exemption—In McCracken County, KY*, STB Docket No. AB-468 (Sub-No. 5X), slip op. at 3 (served June 20, 2003).

Cal DOT

The same response applies to Cal DOT’s comments. Cal DOT does not dispute the facts set forth in the Petition, but merely asserts, rather equivocally, that the Line “may serve as a vital link in the industrial growth of the area,” and that if the Line is abandoned “there could be negative impacts to the Martel [sic] Industrial Area which could impact the local economy.” Cal DOT Comments at 1. Those conclusory assertions, unaccompanied by any actual evidence of any present or future need for rail service, provide no basis for denying the Petition.

ACTC

ACTC does not contend that abandonment and discontinuance are not warranted by the facts set forth in the Petition, nor does it dispute those facts; ACTC merely argues that exemption of the abandonment and discontinuance is inappropriate and that a full-blown application is necessary to carry out the Board’s transportation policy. However, given the undisputed facts stated in the Petition, including the lack of demand for rail traffic, the losses incurred by Petitioners and the costs associated with rehabilitation and operation of the Line, ACTC provides no convincing reasons why exemption of the

transactions is inappropriate and why Petitioners should be subjected to the burden, expense and delay attendant on a full blown application.

ACTC asserts that a Martell Business Park Plan proposed by SPI in June 2002 and approved by the Amador County Board of Supervisors contemplated the continued use of the rail line between Martell and Ione. *See* ACTC Comments at 2. That is hardly surprising, since, as discussed in the Petition, at that time, SierraPine was providing rail service, mainly to itself. As also explained in the Petition, events since that time led to SierraPine's decision to stop using rail service and to embargo the Line for safety reasons. Nothing in the Martell Business Park Plan obligates Petitioners to maintain and operate the Line in perpetuity and regardless of cost and lack of demand, as ACTC appears to concede by acknowledging that "[t]he Commission is not asking Sierra Pacific to operate the Amador Foothills Rail line in perpetuity regardless of cost and safety." *Id.* at 5.¹

ACTC also says (at p. 3) the Petition makes no reference to ACTC's "Regional Transportation Plan," dated September 15, 2004. But that plan indicates, if anything, that Amador County does *not* expect rail passenger service to be practical for the next 20 years and that the county intends to rely mainly on truck transportation for the movement

¹ ACTC is incorrect in suggesting (ACTC Comments at 2) that Petitioners failed to apprise the Board about the Martell Business Park Master Plan. The Combined Environmental Report and Historical Report that Petitioners filed on October 22, 2004 specifically reported that the Amador County Board of Supervisors had advised Petitioners in a letter dated September 28, 2004 that "the existing master plan for Sierra Pacific's Martell Business Park site assumes continued rail service operation as supported by the following statement, 'The proposed project would also continue the use of the Amador Central Railroad.' The County is currently evaluating how the proposed abandonment might impact this master plan and ongoing redevelopment efforts." Combined Environmental Report And Historical Report (filed October 22, 2004) at 5 and Exhibit 4 (Amador County letter dated September 28, 2004).

of freight over the next 25 years. The discussion of “Rail and Goods Movement” at page

IV-8 of the plan states (emphasis supplied):

Trucks are expected to be the most commonly use mode for transporting freight in Amador County over the next 25 years.[²] Truck traffic is expected to remain approximately 10% of total traffic on the regional road system through 2025.

The Amador County Rail Transit Study (February, 1993) reviewed two light rail transit (LRT) alternatives for operations along the existing rail corridor between Martell, Ione and Galt. Ridership projections for the proposed route in 2012 were estimated at 380 one-way trips per day. Based on the forecast ridership, compared to capital costs, it does not appear that passenger rail service between the population centers in western Amador County and the San Joaquin or Sacramento valleys will be cost effective within the 2025 planning period.

ACTC also says it desires “an opportunity to negotiate a joint-use arrangement with Sierra Pacific for trail uses on the rail right-of-way until the business park can be built.” ACTC Comments at 3. SPI is willing to discuss such an arrangement and to consider any proposal ACTC wishes to make. But that has no bearing on whether the Petition for Exemption should be granted. The Commission’s rules concerning trail-use conditions apply in exemption proceedings as well as application proceedings, and, indeed, we note that ACTC filed, along with its protest, a request that the Board issue a public use condition and request for a Certificate or Notice Of Interim Trail Use in the event it grants the Petition for Exemption.³

² See also page III-11: “With limited rail freight service in the County, trucks handle most of the freight entering and exiting Amador County.”

³ Petitioners are filing a separate response to this request, which appears to be solely a request for issuance of a Certificate or Notice of Interim Trail Use; the response states that SPI is willing to negotiate a trail use agreement with ACTC and therefore has no objection to the issuance of a Notice of Interim Trail Use, which, under 49 C.F.R. §1152.29(d), is appropriate in exemption proceedings.

ACTC contends that Petitioners should be required to file formal applications for abandonment and discontinuance in order to require them to “discuss rural and community impacts in depth.” Protest at 3. But the uncontested facts set forth in the Petition as well as ACTC’s Regional Transportation Plan, discussed above, clearly show that the impacts of the abandonment and discontinuance on the community served by the Line will be minimal. The only substantial user of the Line in recent years – Petitioner SierraPine itself – has decided not to use rail service at its Martell facility and seeks authority for its discontinuance. The only other (and merely incidental) user of the Line in recent years, Landmark Trim USA, no longer is located on the Line,⁴ and there are no shippers on the Line that have requested resumption of rail service or protested the proposed abandonment and discontinuance. And ACTC’s own Regional Transportation Plan confirms that the community is adequately served by truck transportation.

In sum, ACTC has provided no persuasive reasons why these transactions should not be authorized by exemption rather than by application.

Martell Industrial Center

Martell submitted a letter, which it describes as a “Protest,” on January 7, 2005. As an initial matter, we note that this letter was filed some two and a half weeks after the December 22, 2004 deadline for comments, a deadline admittedly known to Martell. *See* Martell Comments at 1 n.1. Martell’s late filing comes without explanation and is without excuse. As reflected in the correspondence between Martell and Petitioners, Martell has been well aware of Petitioners’ abandonment and discontinuance plans for

⁴ ACTC asserts its belief that Landmark is opposing the Petition, but we are aware of no such opposition; indeed, as discussed below at p. 7, Landmark no longer operates a facility on the Line.

many months, and, in fact, all along has been timely served with Petitioners' pleadings in this proceeding, including the Combined Environmental Report and Historical Report on October 22, 2004 and the Petition itself on November 12, 2004.

In any event, in a December 22, 2004 letter to the undersigned (which apparently was copied to the Board), Martell states that it is the owner of certain real estate near the Line, including the facility previously owned and operated by Fiberform and later operated by Landmark. (As noted in the Petition, Fiberform and its successor operator, Landmark, are the only shippers other than SierraPine itself to have used rail service, albeit sparingly, in recent years. *See* Petition at 4-6.) Martell says, however, that Landmark ceased operation several months ago and that the facility is now operated by two other entities: MidValley Trust (Landmark's parent), which began operating there "about six months" prior to December 22, and Global Molding, which began operations "earlier this month" (*i.e.*, December 2004). December 22 letter at 2.⁵

Neither tenant, however, has requested resumption of rail service, and neither has objected, either to Petitioners directly or, to our knowledge, to the Board, to the proposed abandonment and discontinuance. Indeed, it appears that both companies began their operations at a time when they either actually knew, or certainly had reason to know, that rail service was not, and would not be, available: SierraPine informed MidValley's subsidiary, Landmark, on or about April 30, 2004 that rail service would cease; service ceased on June 3, 2004; the Line was embargoed on July 7, 2004; notice of the abandonment was locally published on October 22, 2004; and the Petition was filed on

⁵ Tellingly, Martell does not suggest that Landmark's cessation of operations had anything to do with the cessation of rail service, much less provide any evidence to that effect.

November 12, 2004. *See* Petition, Exh. B at 6 and Exh. E. It seems clear that neither MidValley nor Global could claim to have begun operations in reliance on the availability of rail service; if anything, those operations suggest, to the contrary, that trucks can, and do, satisfactorily provide for those companies' transportation needs.

As for Martell's January 7 letter itself, neither it nor any of Martell's prior correspondence provides any evidence that continued rail service is needed on the Line or contradicts the evidence in the Petition that abandonment and discontinuance is warranted. Martell, like the other commentators, merely asserts, in a generalized fashion, that rail service must be preserved in the hope that it would support unspecified and speculative industrial development in the future. While Martell asserts (Comments at 2) that its property near the Line "provides Martell with significant industrial development opportunities (and Petitioners with significant opportunities to increase rail traffic)," it provides no evidence that rail service is needed now or will be needed in the future. Other Martell correspondence is equally generalized, speculative, and unsupported. *See, e.g.,* Martell's July 7, 2004 letter (attached to the Martell Comments) at 1 ("The cessation of rail service by SierraPine has a substantial harmful impact on the financial viability of Martell's plant, its real estate, and the current plant operations of its tenant, [Landmark]"); Martell's September 9, 2004 letter (attached to Martell Comments) at 1 ("Martell has an important financial stake in the status of the Amador Foothills Railroad, both as a current owner of a facility located on the line, and as a developer of future facilities on property situated on the line."); Martell's December 22, 2004 letter at 2 ("Availability of rail service is an important factor in both keeping and attracting new businesses."). As noted above, however, the mere hope of future economic development

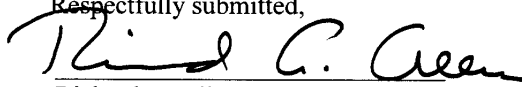
or future rail traffic is insufficient to deny abandonment and discontinuance authority.

See, e.g., Paducah & Louisville Ry., Inc.—Abandonment Exemption—In McCracken County, KY, STB Docket No. AB-468 (Sub-No. 5X), slip op. at 3 (served June 20, 2003);
SWKR Operating Co.—Abandonment Exemption—In Cochise County, AZ, Docket No. AB-441 (Sub-No. 2X), slip op. at 6 (served February 14, 1997).

CONCLUSION

For the foregoing reasons and those set forth in the Petition, the Petition for Exemption should be granted.

Respectfully submitted,



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Dated: January 10, 2005

CERTIFICATE OF SERVICE

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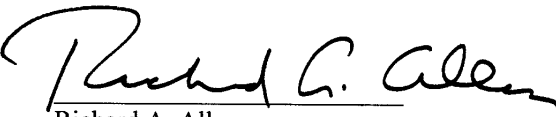
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