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EB

SERVICE DATE - JANUARY 12, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-493 (Sub-No. 5X)

TRACK TECH, INC.--ABANDONMENT EXEMPTION--  
IN POTTER COUNTY, TX

Decided: January 7, 1998

By petition filed on September 24, 1997,<sup>1</sup> Track Tech, Inc. (Track Tech) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a line of railroad located generally between Amarillo (milepost 761.80) and Bushland (milepost 775.70), a distance of 13.90 miles in Potter County, TX. We will grant the exemption subject to an environmental condition and standard employee protective conditions.

BACKGROUND

Petitioner has operated no trains on the line since its acquisition from Burlington Northern Railroad Company (BN).<sup>2</sup> According to petitioner, BN had only limited operations over the line before it was embargoed in April 1996 because of significant safety defects, which would require approximately \$500,000 of upgrading and repairs.

Petitioner reports that there were four rail users on the line in 1994--Bushland Grain, Aerion Industries, Fumico, Inc., and Southwestern Portland Cement Company--and that, since then, all four have either relocated or closed. According to Track Tech, in the first half of 1996, only one carload was shipped and nine were received on the line. Because of the high cost of repairs, the lack of traffic, and the prospect that little traffic will be generated in the future, petitioner maintains that it is not economically feasible to continue operation of the line, and that there is alternative transportation available through other rail carriers and trucking companies in the area.

DISCUSSION AND CONCLUSIONS

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<sup>1</sup> Notice of the filing was served and published in the Federal Register on October 16, 1997 (62 FR 53875).

<sup>2</sup> Petitioner acquired this line and 5 others from BN in November 1996. Petitioner is also seeking to abandon the other lines via exemption in STB Docket No. AB-493 (Sub-Nos. 1X, 2X, 3X, 4X, and 6X).

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 an abandonment application, 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 Track Tech of the costs of owning and maintaining the line [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 an abuse of market power because all of the shippers on the line have either closed or relocated. In addition, there is ample transportation available from other rail carriers and trucking companies in the area.<sup>3</sup> Nevertheless, to ensure that the shippers are informed of our action, we will require Track Tech to serve a copy of this decision on each shipper within 5 days of the service date of this decision 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. 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).

Track Tech 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, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on November 21, 1997, recommending an environmental condition requested by the National Geodetic Survey (NGS) concerning eight historic geodetic station markers. No comments were received by the December 19, 1996 due date. We will impose the condition. Based on SEA's recommendation, we conclude that the proposed abandonment, as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

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<sup>3</sup> Given our market power finding, we need not determine whether the proposed abandonment is limited in scope.

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

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 of the above-described line, subject to the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979), and subject to the condition that Track Tech will notify NGS not less than 90 days in advance of any salvage activities that may disturb or destroy the eight historic geodetic station markers that NGS has identified along the line so that plans can be made for their relocation.

2. Track Tech must serve a copy of this decision on all known shippers on the line within 5 days after the service date of this decision and certify to the Board that it has done so.

3. An offer of financial assistance (OFA) under 49 CFR 1152.27(c)(1)<sup>4</sup> to allow rail service to continue must be received by the railroad and the Board by January 22, 1998, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by a \$900 filing fee. See 49 CFR 1002.2(f)(25).

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 February 11, 1998. Petitions to stay must be filed by January 27, 1998, and petitions to reopen must be filed by February 6, 1998.

6. Pursuant to the provisions of 49 CFR 1152.29(e)(2), Track Tech 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 Track Tech's filing of a notice of consummation by January 12, 1999, 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 not later than 60 days after satisfaction, expiration or removal of the legal or regulatory barrier.

By the Board, Chairman Morgan and Vice Chairman Owen.

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<sup>4</sup> See 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, and June 27, 1997).

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Vernon A. Williams  
Secretary

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BACKGROUND

Petitioner has operated no trains on the line since its acquisition from Burlington Northern Railroad Company (BN).<sup>2</sup> According to petitioner, BN had only limited operations over the line before it was embargoed in April 1996 because of significant safety defects, which would require approximately \$500,000 of upgrading and repairs.

Petitioner reports that there were four rail users on the line in 1994--Bushland Grain, Aerion Industries, Fumico, Inc., and Southwestern Portland Cement Company--and that, since then, all four have either relocated or closed. According to Track Tech, in the first half of 1996, only one carload was shipped and nine were received on the line. Because of the high cost of repairs, the lack of traffic, and the prospect that little traffic will be generated in the future, petitioner maintains that it is not economically feasible to continue operation of the line, and that there is alternative transportation available through other rail carriers and trucking companies in the area.

DISCUSSION AND CONCLUSIONS

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<sup>1</sup> Notice of the filing was served and published in the Federal Register on October 16, 1997 (62 FR 53875).

<sup>2</sup> Petitioner acquired this line and 5 others from BN in November 1996. Petitioner is also seeking to abandon the other lines via exemption in STB Docket No. AB-493 (Sub-Nos. 1X, 2X, 3X, 4X, and 6X).

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 an abandonment application, 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 Track Tech of the costs of owning and maintaining the line [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 an abuse of market power because all of the shippers on the line have either closed or relocated. In addition, there is ample transportation available from other rail carriers and trucking companies in the area.<sup>3</sup> Nevertheless, to ensure that the shippers are informed of our action, we will require Track Tech to serve a copy of this decision on each shipper within 5 days of the service date of this decision and certify to us that it has done so.

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