

SERVICE DATE - OCTOBER 2, 2000

SURFACE TRANSPORTATION BOARD

DECISION<sup>1</sup>

STB Docket No. AB-559 (Sub-No. 1X)

GAULEY RIVER RAILROAD, LLC—ABANDONMENT  
AND DISCONTINUANCE OF SERVICE—IN WEBSTER  
AND NICHOLAS COUNTIES, WV

STB Docket No. AB-55 (Sub-No. 572X)

CSX TRANSPORTATION, INC.—DISCONTINUANCE  
OF SERVICE—WEBSTER AND NICHOLAS COUNTIES, WV

Decided: September 27, 2000

In a decision served June 23, 2000, we reopened these proceedings and granted exemptions to Gauley River Railroad, LLC (Gauley River) and CSX Transportation, Inc. (CSXT), which permitted them to abandon and discontinue service over three rail line segments (collectively, the Lines), totaling 30.7 miles, in Webster and Nicholas Counties, WV. On July 13, 2000, Gauley Eagle Holdings, Inc. (GEH)<sup>2</sup> filed a petition to reopen the June 23 decision.<sup>3</sup> Gauley River replied on July 31, 2000. We will deny GEH's petition.

BACKGROUND

On February 26, 1999, Gauley River and CSXT jointly filed a petition seeking an exemption that would permit Gauley River to abandon: (1) a 10-mile line of railroad extending between milepost BUE-119 near Cowen, WV, and milepost BUE-129 at Allingdale, WV (Line A); and (2) an 8.3-mile line of railroad extending between milepost BUE-12.4 at Muddlety Falls, WV, and milepost BUE-20.7 at Muddlety, WV (including the McMillon Creek Branch and Delmont Branch) (Line C). Both Gauley River and CSXT also sought an exemption to discontinue service over a 12.4-mile line of railroad between milepost BUE-0.0 at Allingdale,

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<sup>1</sup> A single decision is being issued in the two proceedings for administrative convenience.

<sup>2</sup> GEH is a land and natural resources management company which owns or controls coal reserves located contiguous to a portion of the Lines. It does not currently ship coal on the Lines.

<sup>3</sup> GEH's request to stay the June 23 decision was denied on July 21, 2000.

WV, and milepost BUE-12.4 at Muddlety Falls, WV (Line B).<sup>4</sup> These exemptions were opposed by various parties, including GEH.<sup>5</sup>

Although the Lines had carried no traffic since 1994, we denied the petitions for exemption in a decision served June 16, 1999. The principal reason for this denial was that Gauley River received a \$12,000 monthly subsidy from Pace Carbon Fuels, LLC (Pace Carbon), and Gauley River had not demonstrated that the costs attributable to the Lines exceeded this amount. The petitions were denied without prejudice to refiling.

On November 2, 1999, Gauley River and CSXT jointly filed a petition to reopen these proceedings. The petition noted that the subsidy had ceased and included a statement from Pace Carbon and another local business, Pardee Resources Company (Pardee), that they did not object to the abandonment of the Lines, provided that Gauley River would not salvage track until after June 1, 2000.

Based upon the petition to reopen, which was not opposed, we granted the exemption petitions in the June 23 decision and permitted Gauley River and CSXT to abandon and discontinue service over the Lines. We found that exemption would relieve Gauley River of the costs it was incurring from owning the Lines. We also noted that the Lines had not been operated since 1994 and that there was no potential for future traffic.

GEH seeks to reopen these proceedings, claiming that we committed material error by not requiring Gauley River and CSXT to provide sufficient information to evaluate the economic impact on each carrier of owning and operating the Lines. GEH also alleges that Gauley River and CSXT did not provide any evidence about the condition of the line. GEH notes that petitioners had claimed that the line was embargoed for safety reasons, and that it would cost over \$1 million to bring the line up to Federal Railroad Administration class 1 standards, but that petitioners did not submit any evidence to support these assertions. GEH also claims that it hired

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<sup>4</sup> Gauley River purchased Lines A and C from CSXT in 1998. See Gauley River Railroad, LLC—Purchase and Operation Exemption—CSX Transportation, Inc., STB Finance Docket No. 33579 (STB served July 14, 1998). Gauley River subleased Line B from CSXT, which in turn leases the line from the Strouds Creek and Muddlety Railroad (SC&M). See CSX Transportation, Inc.—Renewal of Lease Exemption—Strouds Creek and Muddlety Railroad Company, Finance Docket No. 31373 (ICC served Dec. 21, 1988). A notice of exemption permitting SC&M to abandon Line B was served and published on August 23, 2000 (65 FR 51405) in STB Docket No. AB-571 (Sub-No. 1X), Strouds Creek and Muddlety Railroad—Abandonment Exemption—in Webster and Nicholas Counties, WV.

<sup>5</sup> The abandonment request originally was also opposed by Senator Robert C. Byrd, Representative Bob Wise, state and local government agencies, local business interests, and by the Brotherhood of Locomotive Engineers Division 751.

a railroad contractor to inspect portions of the Lines, and the contractor estimated that the Lines could be repaired for substantially less than the amount estimated by petitioners.

GEH contends that the needs of the public to retain the Lines outweigh the financial burden on Gauley River. GEH cites statements entered into the record earlier by the Region 4 Planning and Development Council of Nicholas and Webster Counties, WV, indicating that rail service would be important to developing and marketing potential industrial sites along the Lines. GEH also maintains that it has been subjected to an abuse of market power because Gauley River has not offered to establish reasonable rates for transporting coal over the Lines.

GEH also claims that Gauley River has removed spur tracks and cross ties at the McMillon Creek Branch and Delmont Branch. GEH argues that Gauley River should have reported as revenue the net salvage value of track and material from these branch lines. GEH further contends that the Delmont Branch could have served industrial sites.

Finally, GEH states that it is negotiating with a company that is interested in developing coal on GEH property. GEH expects that, if a reasonable transportation rate were established, coal rail transportation could be initiated by the end of the year. GEH asserts that this new evidence warrants reopening these proceedings.

In its reply, Gauley River notes that GEH does not dispute that the carrier is incurring costs by owning the unused rail lines and is not earning any revenue from them. Gauley River states that the June 23 decision is supported by substantial evidence showing that the railroad had incurred interest expenses of \$96,000 as of April 30, 1999, and that those expenses have continued. The only revenues received to offset these interest expenses were the \$89,000 in subsidy payments received from Pace Carbon, which stopped in July 1999. Gauley River also claims that GEH only offers unsupported speculation about the condition of the Lines, and argues that the Board did not rely upon the burden of restoration costs as a factor in granting the exemption.

Gauley River disputes GEH's argument that the Board needed to do more in balancing the interests of shippers and the public against the financial burden on Gauley River. Gauley River asserts that GEH has offered nothing of substance to show that the harm to shippers and the public outweigh the harm to the carrier. Gauley River also notes that GEH's claims that it is subject to market abuse are vague and lacking in substance. In addition, Gauley River points out that GEH makes no showing of specific tenders or commitments of traffic and offers nothing specific about rate levels to justify reopening this proceeding.

Gauley River notes that it advised the Board in its petition to reopen that it had salvaged certain yard and side tracks to recoup some of its initial investment in the Lines. The carrier indicates that the track it salvaged was exempt from Board jurisdiction under 49 U.S.C. 10906, and thus Board approval of the salvage operation was not required.

Finally, regarding the asserted negotiations for developing coal production from GEH property, Gauley River contends that GEH's claim that rail traffic might develop by the end of the year is speculative.

#### DISCUSSION AND CONCLUSIONS

A petition to reopen an abandonment proceeding must state in detail the respects in which the proceeding involves material error, new evidence, or substantially changed circumstances. 49 CFR 1152.25(e)(4). GEH has not shown that reopening these proceedings is warranted.

In granting the petition for exemption, we relied upon the undisputed record that indicated that Gauley River incurs costs from operating the Lines, and that, since the subsidy payments stopped, the Lines are not generating any revenue to offset these costs. The record supports our findings that the proposed exemption would relieve Gauley River of the costs of owning the line. A rail carrier seeking an abandonment exemption need not provide detailed documentation of the financial burden it would purportedly incur. Here, the record indicates that the Lines are generating no revenues and have a net liquidation value of over \$2 million, which means that Gauley River incurs significant lost opportunity costs. This is substantial evidence of the financial burden of retaining the Lines, and GEH has not shown that we committed material error in making our findings in this regard.

Nor has GEH shown that we materially erred in balancing the interests of the shippers and the public against the burden on the railroads. Pace Carbon and Pardee were the only parties who responded to the carriers' petitions to reopen this proceeding. Neither objected to the abandonment of the Lines, provided that Gauley River would not salvage track until after June 1, 2000. None of the community interests that initially protested the carriers' exemption petition has supported GEH's reopening request. There is no evidence in the record indicating that the cessation of service would harm the community.

GEH's statements about the condition of the Lines and the cost of restoration are irrelevant here. We did not include the cost of rehabilitation needed to resume service in granting the exemption. Additionally, GEH has not offered any support for its claim that it was subjected to an abuse of market power because Gauley River allegedly did not offer to establish a reasonable rate. In any event, GEH has not shown how this exemption permitting abandonment will permit the carrier to subject any shipper to an abuse of market power.

We also find nothing improper about the salvage of yard and side tracks. This is not new evidence or changed circumstances that would warrant reopening. Gauley River advised the Board that it was salvaging track in its petition to reopen. According to Gauley River, the salvaged track was exempt trackage for which Board approval was not required to remove the

track.<sup>6</sup> Also, Gauley River was not obligated to provide the Board with information about the net proceeds it received from salvaging the track and material.

Finally, GEH's unsupported claim of possible future traffic on the Lines does not warrant reopening these proceedings. Unsupported speculation about future traffic is not a sufficient basis to reopen a proceeding. Idaho Northern & Pacific Railroad Company—Abandonment Exemption—In Wallowa and Union Counties, OR, STB Docket No. AB-433X (STB served Mar. 12, 1997).

Accordingly, GEH's petition to reopen will be denied.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. GEH's petition to reopen these proceedings is denied.
2. This decision is effective on the date served.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams  
Secretary

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<sup>6</sup> Even if Gauley River was wrong in this assessment, the removal could not have undermined its obligation to provide service upon request because there were no such requests.