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SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-31 (Sub-No. 36X)

GRAND TRUNK WESTERN RAILROAD INCORPORATED–
ABANDONMENT EXEMPTION–RAIL LINE IN DETROIT, MI

Decided: January 27, 2000

By petition filed October 12, 1999,¹ Grand Trunk Western Railroad Incorporated (GTW) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a 1.31-mile portion of a line of railroad known as the Dequindre Line between milepost 1.77 and milepost 0.46, in Detroit, Wayne County, MI. GTW also seeks exemptions from the offer of financial assistance (OFA) provisions of 49 U.S.C. 10904 and the public use provisions of 49 U.S.C. 10905. The United Transportation Union (UTU) requests imposition of labor protective conditions. We will grant exemptions from 49 U.S.C. 10903-05, subject to environmental and standard employee protective conditions.

BACKGROUND

This is one of several transactions that the Board has considered which would enable the City of Detroit (City) to proceed with plans to redevelop its riverfront area. Previously, we had authorized GTW to sell a portion of the Dequindre Line between milepost 4.04 and 1.77 to the Adrian & Blissfield Rail Road Company (ABRR) for continued operation.² Also we had issued a declaratory order finding that the tracks leading off the Dequindre Line at various points were spur, industrial, team, switching or side track.³

In its petition, GTW states that no rail service has been provided on the line since April 1997. GTW indicates that, until March 27, 1997, it provided rail service to Lafarge Corporation (Lafarge), which is located on a spur at milepost 0.71. GTW claims that it handled 93 carloads of cement for Lafarge in 1996 and 66 carloads in the first 3 months of 1997 and realized revenues of

¹ Notice of the filing was served and published in the Federal Register on November 1, 1999 (64 FR 58906).

² See Adrian & Blissfield Rail Road Company–Acquisition Exemption–Grand Trunk Western Railroad Incorporated, STB Finance Docket No. 33692 (STB served Dec. 28, 1998). The purchase is subject to ABRR's agreement to grant an easement to an appropriate governmental entity for possible commuter rail operations over that line.

³ See Grand Trunk Western Railroad Incorporated–Petition for Declaratory–Spur, Industrial, Team, Switching or Side Tracks in Detroit, MI, STB Finance Docket No. 33601 (STB served July 30, 1998).

\$53,143 and \$35,010, respectively. GTW states that it has not moved any traffic for Lafarge or any other shippers on the line since April 1997 and that no other active shippers are situated nearby. GTW indicates that Lafarge no longer requires rail service and will not oppose abandonment of the line.⁴

GTW asserts further that there is no possibility that a new shipper could locate on or near the line. It notes that the physical characteristics of the right-of-way make it almost impossible to locate a business there.⁵ GTW further states that the City has initiated condemnation proceedings to acquire all of the land the City does not own or control in the area of redevelopment, except for the land underlying the line.

GTW states that it receives no freight revenues to justify the costs of rehabilitation and maintenance and that there is no reasonable prospect that enough traffic and revenues will return to the line to warrant keeping the line in operation. According to GTW, the line is currently classified at Federal Railroad Administration Class 1 condition. To maintain that status, GTW says that it would need to spend at least \$12,000 to repair trackage. In addition, GTW says that it is responsible for half of the cost of maintaining the 10 city-owned, overhead bridges on the line at an estimated cost of \$1,127,500 over the next 10 years. GTW maintains that abandoning the line would enable it to avoid these costs and reallocate its resources to other lines in its system.

GTW states that, after abandonment, it will transfer the underlying property to Jefferson Holdings, LLC (Jefferson), a company composed of the developers of the project. According to GTW, Jefferson and/or the City expect to use the right-of-way for a transportation corridor. Current plans are to construct a four-lane roadway over the right-of-way to provide access from highways and streets into the project area. GTW indicates further that the City has reserved the right to use the right-of-way for mass transit.

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.

⁴ GTW certified that it served a copy of its petition on Lafarge. Lafarge has not participated in this proceeding.

⁵ According to GTW, the right-of-way between milepost 0.86 and the end of the line at milepost 1.77 lies in a recessed roadbed that is located 15 to 20 feet below street level and is overgrown with vegetation.

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of the application process, 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 GTW of the cost of owning and maintaining a line that is not in use [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 the abuse of market power because it appears that no shipper has used the line for over 2 years and no shipper has opposed the proposed abandonment.⁶

Labor Protection. UTU requests imposition of employee protective conditions. 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).

Environmental Issues. GTW 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 abandonment. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified its data, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on December 10, 1999.

In the EA, SEA notes that the National Geodetic Survey (NGS) has identified one geodetic station marker that may be affected by the proposed abandonment. Accordingly, SEA recommends that a condition be imposed requiring GTW to consult with NGS at least 90 days prior to salvage activities in order to plan for its relocation if the marker will be disturbed or destroyed by abandonment activities.

No comments to the EA were filed by the January 10, 2000 due date. We will impose the condition recommended by SEA. Based on SEA's recommendation, we conclude that the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

Other Exemptions. As previously noted, to expedite the post-abandonment transfer of the right-of-way needed for the project, GTW has requested that the abandonment be exempted from the OFA provisions of 49 U.S.C. 10904 and the public use provisions of 49 U.S.C. 10905. Exemptions from 49 U.S.C. 10904-05 have been granted from time to time, but only when the right-of-way is

⁶ Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

needed for a valid public purpose and there is no overriding public need for continued rail service.⁷ Here, GTW has agreed to transfer the subject right-of-way to Jefferson for a valid public purpose, and the last active shipper on the line has shipped no traffic in 2½ years. On the other hand, imposition of the OFA procedures could delay transfer of the line to Jefferson and jeopardize the timely completion of its construction project. Additionally, as a public use for the right-of-way here has already been established by agreement between GTW and Jefferson, there is no need for a public use condition under these circumstances. Accordingly, we will grant an exemption from the OFA and public use provisions of 49 U.S.C. 10904-05.

The evidence of record establishes that the proposed exemptions from 49 U.S.C. 10904-05 meet the criteria of 49 U.S.C. 10502. Applying OFA or public use requirements, in this instance, is not necessary to carry out the rail transportation policy. Allowing the abandonment exemption to become effective expeditiously, without first being subject to these requirements, would minimize the need for Federal regulatory control over the rail transportation system, expedite the regulatory decision, and reduce regulatory barriers to exit [49 U.S.C. 10101(2) and (7)]. We have already determined that regulation is not necessary to protect shippers from an abuse of market power.

We will also not provide any further opportunity for interested persons to file trail use/rail banking requests. Trail use/rail banking is voluntary and can only be implemented if an abandoning railroad agrees to negotiate an agreement. See section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d). Here, the right-of-way is needed for other public purposes, and therefore it can be expected that GTW will not entertain trail use requests.

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

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903-05 the abandonment of the above-described line, subject to the employee protective

⁷ See Union Pacific Railroad Company–Abandonment Exemption–In Salt Lake County, UT, STB Docket No. AB-33 (Sub-No. 116X) (STB served Sept. 30, 1998); K&E Railway Company–Abandonment Exemption–In Alfalfa, Garfield, and Grant Counties, OK and Barber County, KS, STB Docket No. AB-480X (STB served Dec. 31, 1996), slip op. at 4, citing Southern Pacific Transportation Company–Discontinuance of Service Exemption–In Los Angeles County, CA, Docket No. AB-12 (Sub-No. 172X), et al. (ICC served Dec. 23, 1994); Missouri Pacific Railroad Company–Abandonment–In Harris County, TX, Docket No. AB-3 (Sub-No. 105X) (ICC served Dec. 22, 1992); Chicago & North Western Transportation Company–Abandonment Exemption–In Blackhawk County, IA, Docket No. AB-1 (Sub-No. 226X), et al. (ICC served July 14, 1989); and Iowa Northern Railway Company–Abandonment–In Blackhawk County, IA, Docket No. AB-284 (Sub-No. 1X) (ICC served Apr. 1, 1988).

conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979), and the condition that GTW shall consult with NGS at least 90 days prior to salvage activities in order to plan for relocation of the geodetic station marker if the marker will be disturbed or destroyed by abandonment activities.

2. This exemption will be effective on February 27, 2000.
3. Petitions to stay must be filed by February 7, 2000.
4. Petitions to reopen must be filed by February 17, 2000.

5. Pursuant to the provisions of 49 CFR 1152.29(e)(2), GTW 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 GTW's filing of a notice of consummation by January 28, 2001, 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, Vice Chairman Burkes and Commissioner Clyburn.

Vernon A. Williams
Secretary