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SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-354 (Sub-No. 2X)

ROCHESTER & SOUTHERN RAILROAD, INC.--ABANDONMENT
EXEMPTION--IN CATTARAUGUS COUNTY, NY

Decided: September 17, 1998

By petition filed June 1, 1998, Rochester & Southern Railroad, Inc. (R&S) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a 10.41-mile line of railroad (the Line), extending from milepost 83.39, at or near Machias, to milepost 93.8, at or near Ashford Junction, in Cattaraugus County, NY. Notice of the institution of this exemption proceeding was published in the Federal Register at 63 FR 33762 on June 19, 1998. Buffalo Crushed Stone (BCS), a shipper, filed an opposition statement on July 13, 1998. The United Transportation Union requests imposition of labor protective conditions. We will deny the petition.

BACKGROUND

R&S is a common carrier by railroad that owns approximately 55 miles of rail lines in New York. The Line is separated from the rest of the R&S rail system and has been since 1990, when R&S abandoned a portion of its rail line between Silver Spring and Machias.¹ The Line was retained by R&S because of its location between Conrail at Machias an R&S affiliate, the Buffalo & Pittsburgh Railroad, Inc. (B&P), at Ashford Junction. According to R&S, the Line has not been used for any substantial amounts of overhead traffic between B&P and Conrail. However, R&S states that it, together with its affiliate B&P, developed traffic totaling 569 carloads in 1997 for BCS. BCS is located on the R&S at Machias. Its traffic is interchanged with B&P at Ashford Junction, where the R&S line connects with the B&P.

Because B&P has simultaneously filed a petition for exemption to abandon its line from Ashford Junction to Salamanca, the route over which the BCS traffic moves, R&S claims that it will

¹ See Rochester & Southern Railroad, Inc.--Abandonment Exemption--in Wyoming, Allegany, and Cattaraugus Counties, NY, Docket No. AB-354 (Sub-No. 1X) (ICC served Jan. 8, 1992).

therefore no longer be able to handle BCS traffic.² If the BCS traffic terminates, R&S says, it will be left with no local traffic and no prospects for future local traffic.

In his verified statement, BCS's witness Laraiso says that his company will lose a growing segment of its business if rail service is discontinued. BCS presently supplies three distribution locations, Dubois, Johnsonburg and Erie, PA, with a skid resistant gravel that is used in roadway development. According to Mr. Laraiso, if rail service is not available to serve its Franklinville mine, BCS will be forced to discontinue distributing processed gravel to these three locations because the use of trucks is cost-prohibitive. BCS projects its 1998 sales to the three distribution points will increase 25% to approximately 700 carloads. Although the prime shipping season for its product is between May and October, BCS states that it already shipped 112 carloads to these locations in the first five months of 1998.

Mr. Laraiso notes that R&S does not claim that it is losing money as a result of operating the Line. Instead, he says, R&S claims that, because no local traffic can be handled if B&P abandons its line, the Line would generate no revenue. Mr. Laraiso points out, however, that while B&P has filed for abandonment of its line, which connects with R&S at Ashford Junction, B&P indicates that it may be willing to provide rail service over portions of the line as a sidetrack or spur. This being the case, Mr. Laraiso argues that it is by no means certain that B&P service that connects with R&S at Ashford will disappear.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without 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.

In this case there is insufficient information for us to make an informed decision on the merits of the proposed abandonment exemption. R&S mistakenly assumes that affiliate B&P's simultaneously-filed petition for exemption will be granted, and bases its exemption request on its claim that, because it would be unable to handle BCS's traffic after the B&P abandonment, R&S would receive no revenue. In a separate decision, however, in Buffalo & Pittsburgh Railroad, Inc.--Abandonment Exemption--In Erie and Cattaraugus County, NY, STB Docket No. AB-369 (Sub-

² B&P concurrently filed a petition for exemption in Buffalo & Pittsburgh Railroad, Inc.--Abandonment Exemption--In Erie and Cattaraugus Counties, NY, STB Docket No. AB-369 (Sub-No. 3X) (STB served June 19, 1998), for two contiguous segments of rail line between Buffalo and Ashford Junction and Ashford Junction and Salamanca, NY.

No. 3X) concurrently served with this decision, we have denied B&P's petition for an abandonment exemption of its connecting rail line. Consequently, R&S's argument that an abandonment exemption is warranted because of the impossibility of continued rail service is unfounded.

Upon review of the record before us, we conclude that R&S has failed to establish (nor are we able to find) that continued regulation of the proposed abandonment is not necessary to carry out the rail transportation policy³ and either that it is not necessary to protect shippers from the abuse of market power or that the transaction is limited in scope. Our denial of R&S's petition to abandon service over the above-described line via the exemption process moots labor protection issues and environmental issues. Denial of this petition is without prejudice to R&S's refiling an appropriate abandonment application or petition for exemption that cures the defects found in the current proposal. Any new filing must be made under a new docket number.

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

It is ordered:

1. The petition for exemption is denied.
2. This decision is effective on the date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

³ The rail transportation policy provides, among other things, that, in regulating the railroad industry, it is the policy of the United States Government to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense.