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SERVICE DATE - AUGUST 11, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-414 (Sub-No. 2X)

IOWA INTERSTATE RAILROAD, LTD.--ABANDONMENT EXEMPTION—  
IN MARION COUNTY, IA

Decided: August 7, 1998

By petition filed April 23, 1998,<sup>1</sup> Iowa Interstate Railroad, Ltd. (IAIS), seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon its line of railroad extending from milepost 123.5 near Otley to the end of the line at or near milepost 114.80 in Pella, a distance of 8.70 miles, in Marion County, IA. We will grant the exemption, subject to environmental, historic preservation, and standard employee protective conditions.

BACKGROUND

The line proposed for abandonment was a line of the former Chicago, Rock Island & Pacific Railroad Co. (the Rock Island). IAIS, a Class II carrier, purchased the line on October 10, 1984, from Chicago Pacific Corporation, the successor to the Trustee of the Rock Island. According to IAIS, the line is constructed of 100-pound rail laid in 1910, and is generally in fair condition. The ties and ballast range from fair to poor condition. IAIS estimates that it would cost \$1,350,000 to rehabilitate the line to Federal Railroad Administration (FRA) Class 2 safety standards.<sup>2</sup> IAIS asserts that there is no economic justification for such costly rehabilitation given the minimal usage of the line by its former rail customers.

IAIS states that four shippers are located on the line at Pella: Pella Corporation, Pella Field Service, the City of Pella, and Farm Service Co-op. There is no overhead traffic. The two major shippers, Pella Corporation and the City of Pella, support the abandonment. According to IAIS, during its last full year of operation in 1996, it handled 330 cars and 308 cars the year before. All former rail usage has been diverted to truck due to reasons unique to each shipper. In addition to numerous motor carriers in the area, IAIS submits that alternative transportation is available from

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<sup>1</sup> Notice of the filing was served and published in the Federal Register on May 13, 1998 (63 FR 26676).

<sup>2</sup> We do not normally accept rehabilitation costs in excess of those necessary to bring a line up to FRA Class 1 standards unless there are circumstances that justify the additional cost. Central Railroad Company of Indiana--Abandonment Exemption--In Dearborn, Decatur, Franklin, Ripley, and Shelby Counties, IN, STB Docket No. AB-459 (Sub-No. 2X) (STB served May 4, 1998), slip op. at 11.

other rail carriers.<sup>3</sup>

## 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.

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 IAIS from the costs of rehabilitating and maintaining the line, and allowing IAIS's assets to be used more productively elsewhere on its system [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation of the transaction does not appear to be necessary to protect shippers from an abuse of market power because the four shippers located on the line apparently are already using motor carriers to meet their transportation needs.<sup>4</sup> Nevertheless, to ensure that the shippers are informed of our action, we will require IAIS to serve a copy of this decision on the shippers 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).

IAIS 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, analyzed the probable effects of the proposed action on the quality of the human environment, and

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<sup>3</sup> According to IAIS, The Burlington Northern and Santa Fe Railway Company is only 6 miles south of Pella, and Union Pacific Railroad Company's north-south line is approximately 15 miles east of Pella.

<sup>4</sup> Given our market power finding, we need not determine whether the proposed abandonment is limited in scope.

served an environmental assessment (EA) on June 22, 1998. In the EA, SEA indicated that the U.S. Department of Commerce, National Geodetic Survey (NGS), has identified five geodetic station markers that could be affected by the proposed abandonment. Therefore, SEA recommends that a condition be imposed requiring IAIS to notify NGS at least 90 days prior to any salvage activities that may disturb or destroy these geodetic markers so that plans can be made for their relocation. SEA also indicated that the U.S. Army Corps of Engineers states that IAIS should contact Mr. Rick Nelson, Field Supervisor, Rock Island Field Office of the U.S. Fish and Wildlife Service (FWS), to determine if any federally listed endangered species are being impacted, and if so, how to avoid or minimize impacts. Also the Iowa Department of Natural Resources (IDNR) states that if listed species or rare communities are found during the planning or construction phases, additional studies and/or mitigation may be required. Therefore, SEA recommends that a condition be imposed requiring IAIS, prior to salvage activities, to consult with FWS and IDNR to determine if permits are required. Finally, SEA indicated that the State Historical Society of Iowa (IA SHPO) states that, if the abandonment uncovers an item or items which may have archeological, historical or architectural interest, or if important data come to light in the project area, IAIS should make reasonable efforts to avoid or minimize harm to the property until the significance of the discovery can be determined. SEA recommends that a condition be imposed requiring IAIS to discontinue salvage operations and consult with the IA SHPO, if archaeological or historical materials are discovered.

No comments to the EA were filed by the July 22, 1998 due date. We will impose the conditions recommended by SEA. Based on SEA's recommendations, 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.

SEA states that, following the line's abandonment, the right-of-way may be suitable for other public use 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 the conditions that: (1) IAIS shall notify NGS at least 90 days prior to any salvage activities that may disturb or destroy any geodetic markers so that plans can be made for their relocation; (2) IAIS shall consult with FWS and IDNR to determine if permits are required prior to salvage activities; and (3) IAIS shall discontinue salvage operations and consult with IA SHPO, if archaeological or historical materials are discovered.

2. IAIS must serve a copy of this decision on the 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) to allow rail service to continue must be received by the railroad and the Board by August 21, 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 \$1,000 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 September 10, 1998. Petitions to stay must be filed by August 26, 1998, and petitions to reopen must be filed by September 8, 1998.

6. Pursuant to the provisions of 49 CFR 1152.29(e)(2), IAIS 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 IAIS's filing of a notice of consummation by August 11, 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.

Vernon A. Williams  
Secretary