

SURFACE TRANSPORTATION BOARD DENIES OPPOSED PORTION OF TULARE VALLEY RAILROAD ABANDONMENT FOR LACK OF EVIDENCE

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SURFACE TRANSPORTATION BOARD DENIES OPPOSED PORTION OF TULARE VALLEY RAILROAD ABANDONMENT FOR LACK OF EVIDENCE

Surface Transportation Board (Board) Chairman Linda J. Morgan has announced that the Board has denied the portion of Tulare Valley Railroad Company's (TVR) petition for an exemption from its prior-approval requirements to permit TVR to abandon its 5.9-mile railroad line segment between Ultra and Ducor, in Tulare County, California. The Board has granted, however, the portion of TVR's petition for an abandonment exemption for its 18.5-mile line segment between Ultra and Lindsay, also in Tulare County, and for discontinuance of trackage rights over approximately 25.7 miles of lines between Ducor and Famoso, including a branch line, in Tulare and Kern Counties, CA.

In reaching its decision, the Board explained that the exemption process is designed to minimize regulatory burdens, but that a carrier seeking to use the exemption process for an abandonment must provide sufficient information for the Board to reach an informed decision within the overall 120-day time period for handling abandonment cases. The Board found that

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the evidence in the public record was insufficient to support an abandonment exemption regarding the 5.9-mile Ultra-Ducor segment, which was opposed by the Cannella Chemical Company and the California Public Utilities Commission. Specifically, the Board said that TVR had failed to present credible evidence that the Ultra-Ducor segment cannot be operated profitably. In view of the opposition evidence, the Board rejected TVR's claim that a low annual traffic level of 4.2 carloads per mile demonstrated that the line is unprofitable. The Board said that it would not use carload-per-mile comparisons "as a substitute for legitimate methods of determining profitability" or, more importantly, as a substitute for evidence that the Board found lacking in this case. The Board thus denied the Ultra-Ducor portion of TVR's abandonment request on the finding that TVR had failed to establish that the statutory criteria for granting an exemption for that portion of its proposal had been met. However, the Board found that the lack of any public opposition to TVR's proposed abandonment of the Ultra-Lindsay line segment, and to the discontinuance of TVR's trackage rights, supports the conclusion that statutory requirements for the granting of the exemption for that portion of line have been met.

Under section 10903 of Title 49, United States Code (49 U.S.C. 10903), a rail line may not be abandoned without the Board's prior approval. Under 49 U.S.C. 10502, however, the Board must exempt a transaction or service from regulation when it finds that (1) continued regulation is unnecessary to carry out the rail transportation policy, and (2) either regulation is unnecessary to protect shippers from the abuse of market power or a proposed transaction is limited in scope.

The Board issued its decision in the case entitled Tulare Valley Railroad Company--Abandonment and Discontinuance Exemption--in Tulare and Kern Counties, CA, on February 21, 1997, subject to employee-protective and environmental conditions.

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