

APPENDIX C

Conditional Approval for the Petition for Exemption

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SERVICE DATE - OCTOBER 19, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34075

SIX COUNTY ASSOCIATION OF GOVERNMENTS – CONSTRUCTION AND
OPERATION EXEMPTION – RAIL LINE BETWEEN
LEVAN AND SALINA, UT

Decided: October 18, 2001

By petition filed on July 30, 2001, the Six County Association of Governments (Six County) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 in order to construct and operate a 43-mile line of railroad between Salina, UT, and a connection with a line of the Union Pacific Railroad Company (UP) in the vicinity of Levan, UT. As Six County requests, we will conditionally grant the requested exemption, and will issue a final decision after completion of the environmental review process, making the exemption authority effective at that time, if appropriate.

BACKGROUND

Six County is a voluntary association of local governments of Sevier, Juab, Sanpete, Millard, Piute, and Wayne Counties in Utah. Its general purpose is to act as an ‘umbrella-type’ organization to plan and develop programs with respect to various economic activities including, but not limited to, owning, acquiring, constructing, operating, and financing transportation facilities. In this proceeding, Six County seeks authority to construct and operate a 43-mile rail line that would run between Salina, in an isolated area of the state, and the nearest active rail line, a UP line near Levan.

Salina is located in northern Sevier County, and Levan is located in southern Juab County. The planned rail line would run through a portion of Sevier County, through the entire length of the western edge of Sanpete County, and through a portion of Juab County. Other than Levan’s access to the nearby UP line, no rail service exists in this part of Utah.¹ Businesses in the counties of Sanpete and Sevier must now rely exclusively on trucking for freight transportation.

Sevier County has a population of about 18,400. It has over 50,000 acres of cropland and

¹ This area was served by the Denver and Rio Grande Western Railroad until service was discontinued in the mid-1980’s.

is home to various industries, including livestock raising, coal and rock salt mining, gypsum manufacturing, bentonite and clay mills, turkey processing, and tourism. Salina has a population of about 2,300 and contains many businesses, including the Southern Utah Fuel Company (SUFCO).² According to Six County, SUFCO is especially important to the local economy since it employs a large workforce at its coal mines about 30 miles east of Salina. These mines produce 5.8 million tons of coal annually.³ Juab County has a population of about 7,000, and its primary industries are agriculture, manufacturing, mining, and recreation. Sanpete County, with 20,000 residents, is an educational center and also has, as major industries, turkey, sheep, beef, and dairy production.

Six County claims that Sevier County needs a rail connection to the UP line near Levan. Due to the lack of rail service, SUFCO currently transports its mined coal by truck about 83 miles from Salina to UP's rail terminal near Levan along various roads and highways. These trucks each carry about 43 tons of coal and travel through downtown Salina at the rate of about one truck per minute. Six County says that this traffic causes severe congestion in Salina and significant wear-and-tear on area roads.⁴ It expects that rail access to the UP line near Levan would ease this congestion, extend the life of Salina's roads, and reduce air pollution. Six County also anticipates that the addition of a rail line would attract business and industry to the area, thereby increasing employment.

Six County indicates that, although it seeks authorization to construct and operate the proposed line and, therefore, would become a common carrier, it does not plan to own or operate this line for profit. Six County expects to work jointly with another entity in constructing the line and possibly assign its responsibility for common carrier operations to an experienced but not yet identified operator. Six County indicates that it intends to make appropriate filings with the Board for these events in the future.⁵

² Other businesses in Salina include Producers Livestock Auction, Burns Saddlery, Barney Trucking, Robinson Transport, and Redmond Salt Mines.

³ According to Six County, these mines are considered to be among the most efficient underground coal mines west of the Mississippi River.

⁴ According to Six County, the Utah Department of Transportation recently acknowledged the need for road improvements costing \$30-40 million due to coal traffic on State Route 28, which roughly parallels the proposed project area, and State Route 10, which is east of the area and not directly affected by this proposed project.

⁵ If final authority to construct and operate the line is granted, Six County would acquire a common carrier obligation to provide service on the line. That obligation could not be assigned or otherwise transferred without our approval. Furthermore, any operator other than Six County would need Board authority under 49 U.S.C. 10901 or an exemption under 49 U.S.C. 10502 in

DISCUSSION AND CONCLUSIONS

The construction and operation of railroad lines require prior Board approval under 49 U.S.C. 10901. However, under 49 U.S.C. 10502, we are directed to 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.

Based on the information provided, we conclude that detailed scrutiny of the proposed construction and operation under 49 U.S.C. 10901 is not necessary to carry out the rail transportation policy. Granting the requested exemption will provide an alternative rail service option to shippers in an isolated area of Utah and increase competition [49 U.S.C. 10101(1) and (4)]. Exempting the proposed construction and operation will reduce the need for Federal regulation, ensure the development of a sound transportation system with effective competition among carriers, foster sound economic conditions, and reduce regulatory barriers to entry [49 U.S.C. 10101(2), (4), (5), and (7)]. Nothing in the record indicates that the proposal would adversely affect other aspects of the rail transportation policy.

Regulation of the proposed construction and operation is not necessary to protect shippers from the abuse of market power. Rather, the proposed transaction would provide the area with another transportation option and enhanced competition. Given our findings regarding the probable effect of the transaction on market power, we need not determine whether the transaction is limited in scope. Because we find that detailed scrutiny of the proposed construction and operation under 49 U.S.C. 10901 is not necessary to carry out the rail transportation policy or to protect shippers from the abuse of market power, we will conditionally grant the requested exemption to construct and operate the proposed rail line, subject to completion of the environmental review process.⁶

Six County has consulted with our Section of Environmental Analysis (SEA) regarding the environmental review process. It has requested and received from SEA a waiver of the 6-month pre-filing notice normally required by 49 CFR 1105.10(a) for a proposed line construction project. SEA will issue an Environmental Assessment (EA) or a full Environmental Impact Statement (EIS) in this case. SEA will issue its environmental documentation in draft form to permit public review and comment and will consider all comments in making its final recommendations to the Board. We will then issue a further decision addressing the environmental issues and making the exemption effective at that time, if appropriate, thereby

order to operate the proposed line.

⁶ See Ellis County Rural Rail Transportation District–Construction and Operation Exemption–Ellis County, TX, STB Finance Docket No. 33731 (STB served Feb. 15, 2000).

allowing construction to begin. See Missouri Mining, Inc. v. ICC, 33 F.3d 980 (8th Cir. 1994); Illinois Commerce Com'n v. ICC, 848 F.2d 1246, 1259 (D.C. Cir. 1988), cert. denied, 488 U.S. 1004 (1989).

As conditioned, this action 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 conditionally exempt Six County's construction and operation of the above-described line from the prior approval requirement of 49 U.S.C. 10901, subject to our consideration of the anticipated environmental impacts of the proposal.

2. On completion of the environmental review process, we will issue a further decision making the exemption effective at that time, if appropriate, thereby allowing construction to begin.

3. Notice will be published in the Federal Register on October 26, 2001.

4. Petitions to reopen must be filed by November 15, 2001.

5. This decision is effective November 25, 2001.

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

Vernon A. Williams
Secretary