

Case (Released after 10:30 AM)

Docket No.

Title

AB 6 380 X

BURLINGTON NORTHERN ABANDONMENT EXEMPTION - IN KING COUNTY, WA

Decision Summary

REJECTED THE OFFER OF FINANCIAL ASSISTANCE SUBMITTED BY REDMOND-
ISSAQUAH RAILROAD PRESERVATION ASSOCIATION, AND DEFERRED ACTION ON TRAIL
USE REQUESTS FILED BY KING COUNTY, WA, AND THE LAND CONSERVANCY OF
SEATTLE AND KING COUNTY.

Docket No.

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29298

SERVICE DATE - LATE RELEASE AUGUST 5, 1998

EB

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-6 (Sub-No. 380X)⁽¹⁾

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY
COMPANY

--ABANDONMENT EXEMPTION--IN KING COUNTY, WA

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

Decided: August 4, 1998

This decision rejects an offer of financial assistance (OFA) filed by Redmond-Issaquah Railroad Preservation Association (RIRPA) and defers action on trail use requests filed by King County, WA, and The Land Conservancy of Seattle and King County (TLC).

BACKGROUND

This proceeding concerns the disposition of a line of railroad (the Lake Sammamish line or the line) extending between milepost 7.3, near Redmond, and milepost 19.75, at Issaquah, a distance of 12.45 miles in King County. The line runs along Lake Sammamish, several miles to the east of Seattle, WA. No scheduled train operations have been conducted on the line since BNSF embargoed it for safety reasons on August 8, 1996.

On April 15, 1997, TLC, a noncarrier, filed a notice of exemption under 49 CFR 1150.31 to acquire and operate the Redmond-Issaquah line. The exemption became effective on April 22, 1997, and BNSF and TLC consummated the transaction on that date.⁽²⁾ Then, on June 11, 1997, less than 3 months later, TLC filed a petition for exemption to abandon the line. TLC's petition included a request for exemption from the provisions of 49 U.S.C. 10904, which provide any financially responsible person the opportunity to buy or subsidize a line authorized for abandonment at a price set by the Board. The petition also included a request for the issuance of a notice of interim trail use or abandonment (NITU) under 16 U.S.C. 1247(d).

In a decision served September 26, 1997,⁽³⁾ we concluded that TLC never had any intention of reinstating rail service on the line, and that, instead, TLC had put into effect a plan to convert the line to trail use as soon as possible after acquisition of the line. We also concluded that TLC's actions constituted a misuse of our procedures, which envision that a party that acquires a nonabandoned rail line under 49 U.S.C. 10904 does so to continue to provide rail service.

To protect the integrity of our processes, we revoked our authority for the acquisition and ordered TLC to reconvey the Redmond-Issaquah line to BNSF.⁽⁴⁾ We noted that BNSF itself might pursue abandonment, and that interested persons, such as King County, might seek trail use/railbanking conditions or make an offer of financial assistance to provide for continued operations at that point.

In a separate decision served September 29, 1997, the Board dismissed TLC's petition to abandon the line. By petitions filed October 7 and 17, 1997, respectively, TLC and BNSF sought reconsideration of the decision revoking the acquisition. On October 9, 1997, TLC petitioned for reinstatement of its abandonment proceeding. As pertinent, in the acquisition exemption proceeding, RIRPA intervened and replied to the petitions. The National Association of Reversionary Property Owners (NARPO) also replied to the petitions.

In a decision served May 13, 1998, we concluded that TLC and BNSF had failed to establish any basis for reconsideration of the prior decision revoking the acquisition exemption, and thus we denied their petitions seeking such relief.⁽⁵⁾ We also found that title to the line had never appropriately passed to TLC, but we continued to hold in abeyance the requirement that TLC reconvey the line to BNSF. We noted that the record showed that no traffic had moved over the line for nearly 2 years, that there was little, if any, demand for future service over the line, that BNSF wanted to dispose of the line, which required substantial rehabilitation, and that King County wanted to acquire it for trail use. In view of these facts, we determined that the best way to accommodate the public interest was to reinstate the abandonment proceeding initiated by TLC, substitute BNSF for TLC (because title had never properly passed), and determine whether the criteria for an abandonment exemption had been met.⁽⁶⁾ We found that the criteria had been met and granted BNSF an exemption to abandon the Redmond-Issaquah line, subject to labor protection and environmental conditions. We directed BNSF to advise us by May 26, 1998, whether the railroad was going to exercise its abandonment authority.

In the May 1998 decision, we noted (at pp. 13-14) that, if BNSF decided to exercise the abandonment exemption authority, any person desiring rail service to be continued would have the opportunity to file an OFA. We advised, however, that the facts that caused us to find in the acquisition proceeding that TLC never had any intention of providing rail service on the line made it highly unlikely that any future acquisition proceeding involving the line, whether under 49 U.S.C. 10902 (acquisition by Class II and Class III rail carrier) or 49 U.S.C. 10904 (offers of financial assistance), would survive review by us.

We emphasized that the OFA process envisions that a party that acquires a rail line under section 10904 will continue to provide rail service. Where that is not the case, we noted, we will not allow our jurisdiction to shield a railroad, or any other party seeking relief

before us, from the legitimate processes of Federal, state, or local law.⁽⁷⁾ Given our concern about the potential for further misuse or abuse of our processes in this matter, at p. 14 of our decision we indicated our intentions regarding any OFAs that might be filed:

Given the circumstances surrounding this case, we advise the public and all the parties that have participated in these proceedings that we intend to carefully review the substance as well as the form of any OFA that should be filed involving this line. Specifically, because the information now before us shows that this line is not currently being used for rail service and that there is no apparent demand for rail service, any entity filing an OFA should be prepared to submit not only evidence of its financial responsibility, but also evidence of a public need for continued rail service. Similarly, anyone challenging an OFA should be prepared to address why the OFA is not bona fide. We will not tolerate abuse of the OFA procedures by either proponents or opponents of an OFA.

On May 26, 1998, BNSF filed a letter stating that it had not yet determined whether it will abandon the Redmond-Issaquah line. BNSF also stated, however, that it intends to take whatever steps are necessary to be relieved of its common carrier status with respect to the subject line.

On June 2, 1998, RIRPA filed an OFA to acquire the line.⁽⁸⁾ On June 5, 1998, BNSF filed a petition to reject the OFA.⁽⁹⁾ Also on June 5, Darigold, Inc., the sole shipper to use the line in recent years,⁽¹⁰⁾ filed a letter supporting railbanking of the line and dismissal of the OFA. On June 8, 1998, TLC filed a motion to dismiss the OFA. Also on that date, King County filed objections to an OFA proceeding, renewed its request for issuance of a NITU, and reaffirmed its "statement of willingness" with respect to the subject line.⁽¹¹⁾ Also filing a statement of willingness in this proceeding was TLC itself, on June 1, 1998.

In its OFA, RIRPA offered to buy the line for \$997,260. The offeror provided evidence to demonstrate that it had assets of \$1.9 million, enough, RIRPA maintained, to finance the acquisition plus start-up costs of \$52,477 and \$77,110 needed to bring the line up to Federal Railroad Administration (FRA) "excepted" track standards.⁽¹²⁾ Noting that BNSF had estimated the line to be worth \$16,197,000, RIRPA offered an explanation of the discrepancy between the railroad's valuation and RIRPA's offer by stating that BNSF possessed only an easement interest for 23 of the 30 parcels comprising the line. RIRPA supported its valuation by verified statements of individuals allegedly qualified to assess rail real estate and to value scrap track material.

DISCUSSION AND CONCLUSIONS

Generally where an OFA is filed, the Director of the Office of Proceedings, exercising delegated authority, would determine if the offeror possessed the wherewithal to make good on the offer, and, in so doing, consider whether the offeror had explained any discrepancy between the offer and the carrier's estimate of the value of the line. But as we specifically explained in our May 1998 decision, it is appropriate for us to require, and carefully review before instituting an OFA proceeding, evidence of a public need for continued rail services, given the unusual circumstances surrounding this case (i.e., a record showing that (1) BNSF embargoed the line for safety reasons in August 1996, (2) no traffic has moved on it since that time, (3) the cost of restoring the line would be substantial, and (4) we had no information to suggest that prospects for anything more than de minimis traffic on the line now or in the future exists--certainly not enough to cover rehabilitation, maintenance and operating costs).

In implementing section 10904 of the ICC Termination Act, formerly section 10905 of the Interstate Commerce Act, we must be mindful that Congress enacted the OFA provisions to provide for continued rail service. The "aim of [former section 10905] is not simply the maintenance of rail lines but the continuation of rail service." Conrail v. ICC, 29 F.3d 706, 712 (D.C. Cir. 1994). In implementing former section 10905, our predecessor agency, the Interstate Commerce Commission, concluded that

[The statute] envisions either an uninterrupted service or a continuation of service within a reasonable period of time Those situations in which a purchaser of rail properties has no affirmative plans for continuation or resumption of service, but merely holds out the possibility of service at some unspecified future time, are not properly to be considered offers of financial assistance and do not fall within the scope of [the statute].

Abandonment of R. Lines & Discontinuance of Serv., 365 I.C.C. 249, 260 (1981).

While the ICC Termination Act streamlined the language in former section 10905, now section 10904, language remaining in the statute clearly reaffirms the fundamental purpose of section 10904 to continue rail service. For example, section 10904(b)(1) refers to "an estimate of the annual subsidy and minimum purchase price required to keep the line or a portion of the line in operation." Section 10904(b)(3) requires a rail carrier to provide certain data "which would be required to continue rail transportation over that part of the railroad line." Section 10904(f)(1)(B) provides for the Board to set terms and conditions at not less than fair market value for the line, "including . . . all facilities on the line or portion necessary to provide effective transportation services." Section 10904(f)(4)(A) provides that no offeror may "transfer or discontinue service" for 2 years and shall not transfer the line to anyone other than the previous rail carrier for 5 years.

Accordingly, this agency's (and its predecessor's) long-standing precedent that an offer must contemplate continued rail service reflects current law as well as the prior statute.

See, e.g., Owensville Term. Co.--Aband. Exemption--In Gibson and Posey Counties, OFA, Docket No. AB-477 (Sub-No. 2X) (STB served Dec. 16, 1997); Union Pac. R. Co.--Aband. Exemption--In Lancaster County, NE, In the Matter of a Request to Set Terms and Conditions, Docket No. AB-33 (Sub-No. 71X) (ICC served Sept. 28, 1992); Norfolk and Western Ry. Co.--Aband. Exemption--Between Bowyer Creek Junction and Burma, VA, Docket No. AB-290 (Sub-No. 43X) (ICC served Dec. 5, 1988); Conrail Aband. of W. 30th Street in New York, Docket No. AB-167 (Sub-No. 493N) (ICC served Jan. 13, 1987).

The first provision aimed at allowing shippers or other interested parties to preserve lines approved for abandonment by purchasing the line or subsidizing the carriers was enacted as 49 U.S.C. 1a (6), (7), and (11) by sections 802 and 809(c) of the Railroad Revitalization and Regulatory Reform Act of 1976, Public Law 94-210. Sections 1a (6), (7), and (11) of the Interstate Commerce Act were recodified as section 10905 by the Revised Interstate Commerce Act, Public Law 95-473, approved Oct. 17, 1978. In reviewing these provisions as part of proposed legislation (the Railroad Transportation Policy Act of 1979, which became the Staggers Rail Act of 1980, or the Staggers Act), the Senate Commerce Committee noted,⁽¹³⁾

Present law (section 10905 of title 49 of the U.S. Code) sets up a procedure where rail lines approved for abandonment may be purchased or subsidized in order to continue rail service (emphasis added).

Subsequently, in the Conference Report on the Staggers Act, the Conferees noted that they had adopted the Senate bill, section 202, which was designed to

assist shippers who are sincerely interested in improving rail service, while at the same time protecting carriers from protracted legal proceedings. . . .

H.R. Rep. No. 1430, 96th Cong., 2d Sess. 125 (1980) (emphasis added). In short, the legislative history of the Staggers Act makes clear that the financial assistance provisions were to be invoked only when those offering financial assistance did so because they were "sincerely interested in improving rail service". See Hayfield Northern R. v. Chicago & N.W. Transp., 467 U.S. 622, 630 & n.8 (1984).

Here, after considering all the evidence presented by RIRPA and the other parties, we conclude that the record does not permit us to conclude that the offer is motivated by a desire to provide continued rail service. Nor can we find that continued rail service is likely to result from the offer. That being the case, it would be an abuse of our processes to permit the section 10904 process to go forward.⁽¹⁴⁾ Accordingly, RIRPA's OFA will be

rejected.

RIRPA is an association of individuals, most of whom live along the shore of Lake Sammamish adjacent to the railroad right of way. In motions asking us to dismiss the OFA, TLC, King County, and the BNSF (herein collectively, the opponents) say that RIRPA's only interest is to frustrate the development of a trail on the right of way and to thereby preserve the privacy of RIRPA members. The opponents offer correspondence by RIRPA about the project to substantiate this claim.⁽¹⁵⁾

This evidence is relevant but is not, by itself, dispositive. Nothing prohibits landowners adjacent to a right of way from filing an OFA. That their primary motivation might be to defeat interim trail use would by itself not condemn an offer, as long as they were intending to provide rail service and there existed a real need for that service. Indeed, correspondence prepared at a time when this line was still in service envisioned continuing service to the last remaining shipper on the line.⁽¹⁶⁾

But that shipper, Darigold, stopped using the line for shipping butter following the BNSF embargo for safety reasons and has made clear that it does not oppose abandonment and has no desire to use this line for rail service again.⁽¹⁷⁾ In response to the request in our May 1998 decision that any offeror submit evidence of a public need for rail service in its OFA, RIRPA submitted verified statements from four shippers. However, RIRPA's statements provide no basis for us to conclude that future traffic on the line is other than highly speculative.

None of the companies that submitted verified statements has ever shipped or received traffic over this line. Indeed, it does not appear that any has ever used rail service at all. Two of the companies ship manufactured goods--boats, wood stoves, saunas, and hot tubs--that rarely move by rail. Both use truck exclusively and make no commitment to use the line. The perfunctory support statements from these companies indicate only that they would consider using rail service if rates were reasonable and competitive with alternative modes of transportation. Neither company has any agreement with RIRPA on what such a rate might be. As neither has a rail siding, each would need to have any rail shipment transloaded onto truck, a costly, time consuming process which poses the threat of damage, especially with a commodity such as boats.

A third statement of support was submitted by Schrod-Mar, Inc. (SMI), which supplies sand and gravel to asphalt and concrete production facilities at Redmond, WA. SMI says it would be interested in shipping gravel from Palmer, WA, to a siding on the line for transloading onto truck for delivery to SMI's facilities. SMI currently uses truck but expresses concern about traffic congestion and possible weight limits on a part its routing, which would necessitate circuitous movements. SMI states that it has requested

RIRPA to advise it of "when and under what terms SMI can begin to use RIRPA's rail service." Apparently neither has made any commitment to the other.

SMI's statement does not show a public need for continued rail service on this line. As BNSF points out in its comments, SMI does not say it is served by rail at origin, and it does not appear to be. Thus, gravel would have to be trucked from origin to the railhead, loaded into freight cars, transported to the Lake Sammamish line, transloaded onto trucks, and hauled to the destination. The shipment would have to move over two carriers, BNSF and RIRPA. The entire haul is only slightly in excess of 100 miles, a very short haul for a truck-rail-truck move involving two rail carriers. SMI has no transloading facility at origin and apparently would have to build one, which would require a significant investment. BNSF would charge the rate at origin, and there is no indication that that carrier could or would quote a rate that would compete with existing trucking service. SMI has made no commitment to volumes and has not sought a rate quote from either BNSF or RIRPA.

The fourth statement is from Lakeside Industries (Lakeside), which ships rock. Lakeside operates a gravel pit and rock crushing facility on the Lake Sammamish line at Issaquah, and it states that the reserves of rock there have been almost depleted. Lakeside states that it needs rail service to bring rock from Centralia, WA, 90 miles away, to Issaquah, so that Lakeside could crush the rock there and ship it to Lakeside customers. Lakeside does not explain why it must employ this seemingly circuitous procedure rather than crushing rock at origin in Centralia the way it does now at Issaquah.

The movement from Centralia would originate on a short line, the Puget Sound and Pacific Railroad, then move over BNSF and RIRPA, a three-line haul. This would seem to be an inefficient and expensive movement requiring extensive switching on a very short line haul. The entire movement here is only slightly more than 200 miles.

Lakeside sought a rate quote from BNSF. That carrier quoted a rate of \$1,361 per car, which Lakeside has rejected as unreasonably high. That being the case, Lakeside does not appear to offer any potential as a source of business of the RIRPA. Lakeside speaks of challenging the BNSF rate if RIRPA acquires the line. But inasmuch as Lakeside has shipped by truck over this route for years, it would be extremely unlikely that the Board would have jurisdiction over the reasonableness of such a rate.⁽¹⁸⁾

The record here and in the earlier proceedings before us involving this line contain ample evidence that the Lake Sammamish line would require extensive rehabilitation in order to make the line operable. TLC claims that the cost of rehabilitating the line to carry traffic at 10 miles per hour under FRA Class 1 standards will amount to almost \$1,000,000, and it has submitted a detailed analysis to support its argument.⁽¹⁹⁾ TLC has claimed in its

abandonment petition that it would cost in excess of \$650,000 to rehabilitate the line and, in light of the recent washout of a bridge, TLC states that it would now cost \$971,000 to bring the line up to either FRA Class I standards or to FRA "excepted" standards.

RIRPA claims that it would only cost \$77,110⁽²⁰⁾ to rehabilitate the line to FRA "excepted" track standards, and submits a verified statement in support of the claim. However, the one-page statement is not a contract to perform the work for the amount stated and is not supported by any real analysis.

This track has been in excepted status--less than FRA Class 1 status--for more than 4 years. The track was embargoed for safety reasons in August 1996 and no traffic has moved over it since that time. The inspection conducted for TLC by R.L. Banks identifies significant deficiencies in the track, which is hardly surprising in view of the history of the line in recent years. Thus, even if the appraisal conducted by TLC may be somewhat high, the record leaves no doubt that substantial rehabilitation would have to be undertaken to again make the line operable.

The record indicates that no traffic has moved over the line in almost 2 years, that any prospect for future traffic is highly speculative, and that the cost to rehabilitate the line is substantial. In short, given all the circumstances, it is not reasonable to believe that the offeror would make the substantial investments required to rehabilitate the track (including the replacement of a bridge) in order to pursue rail traffic that ceased long ago and that, based on the shipper statements submitted by RIRPA itself, does not show any real likelihood of returning. This is particularly true where, as here, the offeror is not an entrepreneur with a track record of running short lines and a sound business plan to attract new shippers, but rather is an association consisting mostly of landowners who live along the line. RIRPA's expression of willingness to haul traffic that seems unlikely to materialize does not provide a sufficient basis for invoking section 10904.

In support of its OFA, RIRPA relies on an ICC decision allowing an offeror, over the objections of the abandoning railroad, to subsidize a rail line that had been out of service. Illinois Central Railroad Company--Abandonment Exemption--In Perry County, IL, Docket No. AB-43 (Sub No. 164X) (ICC served Nov. 8, 1994 and Jan. 12, 1995) (Perry County). RIRPA specifically cites language in the November 8 decision in Perry County, stating, at 3,

The Commission has never required there to be recent actual service for transportation availability to be continued through an OFA. Rather, it has viewed its task under 49 U.S.C. 10905 [now 10904] as preserving the potential for transportation.

RIRPA's reliance on Perry County is misplaced. There, the owner of an inactive coal mine was willing to make payments to the railroad to preserve a line from which the mine owner received no immediate benefit whatever. The offeror's willingness to do so manifested a strong intent to use the line for rail service in the future if the mine were again to become active. No other reason existed for the mine's owner to make the payments. Here, there is no evidence to suggest that RIRPA has a similar interest in acquiring the line to preserve the line for future rail service. The issue is not whether service is currently being provided, but whether the circumstances in their entirety indicate that the financial assistance is being offered for rail service. The evidence in Perry County indicated that the answer was yes. The evidence here indicates that the answer is no.

Given all of these circumstances, we cannot conclude that the offer of financial assistance filed by RIRPA is for continued rail service. That being the case, we will not institute a proceeding under section 10904, and, accordingly, we need not determine whether RIRPA is a financially responsible person.

King County and TLC have requested that interim trail use/railbanking be imposed under 16 U.S.C. 1247(d). They have also submitted statements of willingness to assume financial responsibility for the right-of-way and acknowledged that use of the right-of-way is subject to possible future reconstruction and reactivation of the right-of-way for rail service, as required under 49 CFR 1152.29. The requests comply with the requirements for interim trail use/railbanking.

As noted, however, BNSF has not notified the Board whether it is going to exercise its abandonment exemption authority. Therefore, we will defer action on the trail use requests of King County and TLC pending BNSF's notifying us whether it is going to exercise its abandonment exemption authority and, if so, whether it is willing to negotiate for trails use.

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

It is ordered:

1. The offer of financial assistance submitted by RIRPA is rejected.
2. Action on the trail use requests of King County and TLC is deferred.

3. This decision is effective on its service date.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams

Secretary

1. This proceeding previously was handled on a consolidated record with The Land Conservancy of Seattle and King County--Acquisition and Operation Exemption--The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 33389 (TLC Acquisition), and The Land Conservancy of Seattle and King County--Abandonment Exemption--In King County, WA, STB Docket No. AB-508X (TLC Abandonment).

2. The notice of exemption was published on April 29, 1997 (62 FR 23291) and served on April 30, 1997.

3. The decision was issued in TLC Acquisition and was prompted by a petition to revoke filed by the United Transportation Union, which withdrew its opposition after the decision was issued.

4. In a subsequent decision served October 22, 1997, the Chairman ordered the reconveyance requirement held in abeyance pending resolution of petitions to reconsider the September 26 decision.

5. Petitions for review of the May 13, 1998 decision, are pending in The Land Conservancy of Seattle and King County v. STB, No. 98-70776 (9th Cir. filed July 10, 1998) and in Burlington Northern v. STB, No. 98-60432 (5th Cir. filed July 10, 1998).

6. We also gave the BNSF proceeding the new docket number and title shown in the heading of this decision.

7. See Modern Handcraft, Inc.--Aban., 363 I.C.C. 969 (1981); Kansas City Pub. Ser. Frgt. Operation--Exempt.--Aban., 7 I.C.C.2d 216, 224-226 (1990); and Chelsea Property Owners--Aban.--The Consol. R. Corp., 8 I.C.C.2d 773, 778 (1992), aff'd sub nom. Consolidated Rail Corp. v. ICC, 29 F.3d 706 (D.C. Cir. 1994); and Norfolk and W. Ry.--Aband. Exemption--In Cincinnati, Hamilton County, OH, STB Docket No. AB-290 (Sub-No. 184X) (STB served May 13, 1998).

8. On June 12, 1998, RIRPA filed an objection to interrogatories propounded by BNSF and received by RIRPA on May 27, 1998. On June 24, 1998, RIRPA asked that the Board grant an exemption from 49 U.S.C. 10904(e) to provide for at least 25 days after any alternative Board finding under 49 U.S.C. 10904(d)(2) for RIRPA to request the Board to set terms and conditions for financial assistance, rather than 30 days after the OFA was made as required under section 10904(e). On July 2, 1998, RIRPA asked the Board to set terms and conditions for financial assistance. BNSF and TLC replied to RIRPA's request. Subsequently, several additional pleadings relating to the request and replies were filed. In light of our action here, we need not act on these pleadings.
9. On June 26, 1998, BNSF filed a motion to compel RIRPA to respond expeditiously to certain specified interrogatories so that the railroad may respond fully to the Board's May 13 directive that any opponents of an OFA "be prepared to address why the OFA is not bona fide". In view of our rejection of the OFA here, we need not act on this motion.
10. Another entity received 7 carloads in 1994 and 1995 but none in 1996.
11. King County's pleading was submitted by the County's Department of Parks and Recreation. For simplicity, we will continue to refer to the entity as "King County."
12. The FRA has adopted standards governing track safety. See 49 CFR Part 213. Class 1 standards require that track be maintained at levels that permit operating speeds of up to 10 m.p.h.; Class 2 standards require maintenance that will permit 25 m.p.h. speeds; and so on. In certain limited circumstances where their track quality will not even permit maximum train speeds of 10 m.p.h., track owners may seek to be "excepted" from class 1 standards. FRA is currently considering changes to its regulations concerning "excepted" track.
13. Hearings before the Committee on Commerce, Science and Transportation, United States Senate, 96th Congress, First Session in S.1946, "To Reform the Economic Regulation of Railroads, And For Other Purposes", at 47.
14. BNSF has declined to indicate whether it will exercise the abandonment authority granted. If BNSF declines to consummate the abandonment authority, the OFA would be moot. But we will issue a decision on this OFA here to resolve the unique issues which it raises.
15. See TLC Motion to Dismiss, Appendices I, J, K, and L; King County Objections, Enclosure C; and BNSF's Petition to Reject, Exhibit A.
16. TLC Motion to Dismiss, Exhibit I, August 26, 1996 letter of the East Sammamish Property Owners Association, p. 3: "After acquisition we would then contract out with a company that specializes in running short line railroads. As long as Darigold still ships butter, we should be able to break even running the line and recoup our money when and if we later abandon the line when Darigold stops shipping."

17. Letter from Douglass C. Marshall, Vice President Public Affairs, Darigold, June 4, 1998.

18. The Board has jurisdiction over rate complaints only if the complainant demonstrates that the carrier is "market dominant," 49 U.S.C. 10707, a showing that cannot be made if the rail carrier faces effective intermodal competition, i.e., competition from trucks. Here, of course, Lakeside uses truck extensively and exclusively, and there is nothing in the record to suggest that it could not continue to do so.

19. BNSF also indicates that the cost of restoring the line is substantial and unjustifiable.

20. The estimate notes that it does not include the construction of track that would be needed to interchange cars. This construction would cost \$39,477, according to RIRPA's witness. The witness states that the construction would not be necessary if the BNSF made its facilities available for that purpose. But apparently, BNSF has not agreed to such an arrangement.