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SERVICE DATE - SEPTEMBER 6, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-837X

LONG ISLAND RAIL ROAD COMPANY—DISCONTINUANCE OF SERVICE
EXEMPTION—IN GARDEN CITY, LONG ISLAND, NY

Decided: September 4, 2002

By petition filed on May 21, 2002,¹ The Long Island Rail Road Company (LIRR)² seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to discontinue service over a line of railroad, known as the Garden City Line, between milepost 18.8 and milepost 21.0 in Garden City, Nassau County, NY, a distance of 2.2 miles. We will grant the exemption, subject to standard employee protective conditions.

BACKGROUND

LIRR, a Class II rail carrier, states that, for the last 7 years, there has been only one rail user on the line, the Ringling Brothers Barnum & Bailey Circus (Ringling Brothers or Circus). LIRR avers that Ringling Brothers uses the line once a year to access the Garden City Yard where it parks the circus train and related equipment during the Circus' annual performances for 7 days at the Nassau Coliseum, located approximately 1.5 miles from the Yard. According to LIRR, other than Ringling Brothers, to its knowledge LIRR's freight operator³ has not received any requests for service over this line for 7 years. LIRR adds that a contract between it and Ringling Brothers permitted the latter access to the line in March 2002, but LIRR indicates that there is no contractual arrangement for such use beyond that date.

¹ Notice of the filing was served and published in the Federal Register on June 10, 2002 (67 FR 39787).

² LIRR is owned by the Metropolitan Transportation Authority (MTA). LIRR and MTA are State of New York public authorities and public benefit corporations.

³ In 1996, LIRR and Southern Empire State Railroad Company (Southern Empire), whose name was changed to New York & Atlantic Railway Company (NY&AR), entered into a Transfer Agreement under which Southern Empire [NY&AR] currently conducts freight operations over designated lines of LIRR. The Garden City Line and Garden City Yard were not included in the transfer of operations to Southern Empire.

LIRR asserts that there are currently no active users on this line segment other than Ringling Brothers. LIRR further asserts that it does not have any present plans to remove the track or otherwise dispose of the easements and rights-of-way, but instead will utilize the Garden City Line strictly for internal MTA or LIRR rail purposes. Finally, LIRR indicates that, if necessary, it will make arrangements with Ringling Brothers to permit the Circus to use the line for its annual performances at the Coliseum.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned or service discontinued 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 LIRR of the costs of maintaining and operating the line [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation is not necessary to protect shippers from the abuse of market power. Although service is being discontinued over the line, LIRR has stated that it intends to provide service once a year to the line's only shipper, Ringling Brothers. We also note that Ringling Brothers has not objected to the proposed discontinuance. Nevertheless, to ensure that the shipper is informed of our action, we will require LIRR to serve a copy of this decision on Ringling Brothers within 5 days of the service date of this decision and to certify to us that it has done so. Given our market power finding, we need not determine whether the proposed discontinuance is limited in scope.

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 set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

Because this is a discontinuance proceeding and not an abandonment, we need not consider offers of financial assistance (OFA) to acquire the line for continued rail service,⁴ trail use requests, or requests to negotiate for public use of the line. This proceeding is exempt from environmental reporting requirements under CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8(b). As such, the proposed discontinuance 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 exempt from the prior approval requirements of 49 U.S.C. 10903 the discontinuance of service by LIRR of its operations as described above, subject to the employee protective conditions in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).
2. LIRR is directed to serve a copy of this decision on Ringling Brothers within 5 days after the service date of this decision and to certify to us that it has done so.
3. An OFA under 49 CFR 1152.27(b)(2) to subsidize continued rail service must be received by the railroad and the Board by September 16, 2002, 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 \$1,100 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. Petitions to stay must be filed by September 23, 2002. Petitions to reopen must be filed by October 1, 2002.

⁴ The OFA provisions for a subsidy to provide continued rail service do apply to discontinuances.

6. Provided no OFA to subsidize continued rail service has been received, this exemption will be effective October 6, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams
Secretary