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SERVICE DATE – NOVEMBER 18, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34747

CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY—ACQUISITION
EXEMPTION—BNSF RAILWAY COMPANY

Decided: November 17, 2005

On August 29, 2005, the Central Puget Sound Regional Transit Authority (Sound Transit), a noncarrier, filed a verified notice of exemption under 49 CFR 1150.31 to acquire from BNSF Railway Company (BNSF) two lines of railroad, totaling approximately 17.73 miles, on the Lakeview Subdivision located in Pierce County, WA. The rail lines are as follows: (1) the Lakeview North Segment, between milepost 2.15 in Tacoma and milepost 9.34 in Lakeview, which includes a .44 mile segment of connecting track between milepost 0.00 and milepost 0.44, and (2) the Lakeview South Segment, between milepost 0.44 in Lakeview and milepost 10.98 in Nisqually.

Notice was served and published in the Federal Register on September 26, 2005 (70 FR 56208-09).¹ Simultaneously with its notice, Sound Transit filed a motion to dismiss the notice, asserting that the transaction is not subject to Board regulation because Sound Transit will not become a common carrier as a result of the transaction. There is no opposition to the motion. The motion to dismiss will be granted.

¹ In its notice of exemption and in the motion to dismiss at issue here, Sound Transit initially described the line segments using incorrect milepost designations. On October 4, 2005, Sound Transit filed a verified correction to the notice of exemption and motion to dismiss, providing revised mileposts. The notice that was served and published on September 26, 2005, therefore contains incorrect milepost designations, but to the extent the notice might have been misleading, it has been corrected here.

BACKGROUND

Sound Transit states that it has executed purchase and sale agreements with BNSF with respect to both segments. Sound Transit explains that it acquired the Lakeview North Segment on September 28, 2004, and that it plans to acquire the Lakeview South Segment on September 28, 2005. It adds that, although BNSF initially retained an exclusive common carrier easement with respect to operation of freight trains on the two line segments, BNSF subsequently transferred its easement with respect to both segments to the City of Tacoma, WA, d/b/a Tacoma Rail, subject to retained trackage rights along a portion of the lines it conveyed to the City. City of Tacoma, Department of Public Utilities, Beltline Division, d/b/a Tacoma Rail or Tacoma Municipal Beltline or TMBL—Acquisition and Operation Exemption—Lakeview Subdivision, Quadlok-St. Clair and Belmore-Olympia Rail Lines in Pierce and Thurston Counties, WA, STB Finance Docket No. 34555 (STB served Oct. 19, 2004).

Sound Transit states that it is acquiring the two line segments for the purpose of providing wholly intrastate commuter rail passenger operations, and that it will not be providing rail freight service over the lines. Concurrently with the purchase and sale agreements, Sound Transit indicates that it entered into a joint use agreement with BNSF under which the latter retains the exclusive common carrier obligation to provide freight service to all existing and new customers and retains responsibility for dispatching the commuter operations on the lines, while Sound Transit will be responsible for maintenance activities.²

Sound Transit maintains that its acquisition does not constitute an acquisition of a railroad line subject to the Board's jurisdiction. According to Sound Transit, because it has not acquired either rights or obligations that implicate in any way the freight common carrier operations that remain attached to the lines, it has not become a rail carrier providing transportation subject to the Board's jurisdiction. Sound Transit cites a number of cases in support of its position that this transaction is not subject to Board regulation.³

² Sound Transit attached to its motion copies of the purchase and sale agreements and the joint use agreement.

³ Maine, DOT—Acq. Exemption, ME. Central R. Co., 8 I.C.C.2d 835 (1991) (State of Maine); Utah Transit Authority—Acquisition Exemption—Certain Assets of Union Pacific Railroad Company, STB Finance Docket No. 34170 (STB served May 22, 2002); Metro-North Commuter Railroad Company—Acquisition and Operation Exemption—Line of Norfolk Southern Railway Company and Pennsylvania Lines LLC, STB Docket No. 34293 (STB served May 13, 2003); Sacramento-Placerville Transportation Corridor Joint Powers Authority—Acquisition Exemption—Certain Assets of Southern Pacific Transportation Company, STB Finance Docket No. 33046 (STB served Oct. 28, 1996); Los Angeles County Transportation Commission—Petition for Exemption—Acquisition from Union Pacific Railroad Company, et al., STB Finance Docket No. 32374, et al., (STB served July 23, 1996).

DISCUSSION AND CONCLUSIONS

The question here is whether the Board's regulatory approval is required for Sound Transit to acquire the subject lines. The acquisition of an active rail line and the common carrier obligation that goes with it ordinarily require Board approval under 49 U.S.C. 10901, even if the acquiring entity is a noncarrier, including a state. See Common Carrier Status of States, State Agencies, 363 I.C.C. 132, 133 (1980), aff'd sub nom. Simmons v. ICC, 697 F.2d 326 (D.C. Cir. 1982). Board authorization is not required, however, when the common carrier rights and obligations that attach to the lines will not be transferred. See State of Maine, 8 I.C.C.2d at 836-37.

The record shows that BNSF is not transferring common carrier rights or obligations and that Sound Transit will not hold itself out as a common carrier performing rail freight service. The agreements between Sound Transit and BNSF show that Sound Transit acquired only the physical assets but not the contractual rights necessary to conduct, control or interfere with common carrier freight operations on the lines. BNSF or its transferee (the City of Tacoma) will provide freight service over the lines. Under these circumstances, we find that Sound Transit will not become a rail carrier subject to the Board's jurisdiction as a result of the transaction. Therefore, this transaction does not require Board authorization, and Sound Transit's notice of exemption will be dismissed and this proceeding will be discontinued.

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

It is ordered:

1. Sound Transit's motion to dismiss its notice of exemption is granted.
2. The proceeding is discontinued.
3. This decision is effective on its date of service.

By the Board, Chairman Nober, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams
Secretary