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SERVICE DATE – SEPTEMBER 25, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34955

BUFFALO & PITTSBURGH RAILROAD, INC.–
LEASE AND OPERATION EXEMPTION–
NORFOLK SOUTHERN RAILWAY COMPANY AND
CSX TRANSPORTATION, INC.

Decided: September 20, 2007

By petition filed on August 1, 2007, Buffalo & Pittsburgh Railroad, Inc. (BPRR), a Class II rail carrier, seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 11323-24 to enable BPRR to acquire from Norfolk Southern Railway Company (NSR), by assignment, NSR's lease of approximately 24.6 miles of a line of railroad that is owned by CSX Transportation, Inc (CSXT) (the Line). The Line extends from milepost BKC 2.0 near Cloe, PA, to milepost BKC 26.6 at Ridge Branch Junction near Creekside, PA. We will grant the exemption, subject to labor protective conditions, and BPRR's request for expedited handling.

BACKGROUND

In 1994 Consolidated Rail Corporation (Conrail) leased the Line from CSXT and granted overhead trackage rights back to CSXT. Conrail also acquired the adjacent Ridge Branch, extending from Ridge Branch Junction (Creekside) to Shelocta, PA, and the Ridge Subdivision, extending from Shelocta to Clarksburg, PA.¹ NSR succeeded to Conrail's rights as part of the acquisition and division of Conrail. Conrail, and subsequently NSR, used the Line and the other lines to serve a generating plant located in Shelocta. In 2006, NSR completed construction of a new rail line between Saltsburg and Clarksburg, PA (the Saltsburg Connection), that connected its Conemaugh Line to the Ridge Subdivision.² NSR then shifted its Shelocta traffic from the Line to the Saltsburg Connection.

¹ See Consolidated Rail Corporation–Purchase, Lease and Operation–CSX Transportation, Inc.–Rail Lines in Jefferson and Indiana Counties, PA, Finance Docket No. 32544 (ICC served Dec. 5, 1994).

² See Norfolk Southern Corporation and Norfolk Southern Railway Company–Construction and Operation–In Indiana County, PA, STB Finance Docket No. 33928 (STB served May 16, 2003).

According to the petition, BPRR has been operating CSXT's overhead trackage rights over the Line to connect with, and provide service to, the Homer City Branch, between Creekside and Homer City, PA, which it had acquired from CSXT in January 2004.³ There are no active shippers currently on the Line. BPRR states that it is willing to make substantial improvements to the Line for its overhead service to Homer City, but only if it becomes the lessee and acquires operating control. To that end, CSXT, NSR and BPRR will enter into an Assignment of Lease, Assumption and Consent Agreement, providing for the assignment of the lease by NSR, the assumption of the lease obligations by BPRR, and the consent to the transaction by CSXT. CSXT will retain its existing trackage rights over the Line for possible future use.⁴

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 11323(a)(2), the lease by a rail carrier to operate over a rail line of another rail carrier requires prior Board approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) 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 limited in scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

An exemption from the prior approval requirements of 49 U.S.C. 11323(a)(2) is consistent with the standards of 49 U.S.C. 10502. Detailed scrutiny of this transaction through an application for review and approval under 49 U.S.C. 11323-24 is not necessary to carry out the rail transportation policy. An exemption from the application process will minimize the need for Federal regulatory control [49 U.S.C. 10101(2)], foster sound economic conditions in transportation [49 U.S.C. 10101(5)], reduce regulatory barriers to entry into and exit from the rail industry [49 U.S.C. 10101(7)], and encourage efficient management of railroads [49 U.S.C. 10101(9)]. Other aspects of the rail transportation policy will not be adversely affected.

³ See Buffalo & Pittsburgh Railroad, Inc.—Acquisition and Operation Exemption—CSX Transportation, Inc., STB Finance Docket No. 34410 (STB served Nov. 19, 2003), noting that as part of BPRR's acquisition of the Homer City Branch, CSXT would assign to BPRR trackage rights over the Line involved here. According to footnote 3 of that decision, BPRR indicated that the assigned trackage rights were incidental to its acquisition of the Homer City Branch and did not require a separate filing.

⁴ The petition provides that, pursuant to the assignment, BPRR will also grant CSXT trackage rights over BPRR lines between New Castle and Cloe, PA, enabling CSXT to connect with its retained rights over the Line. The petition further provides that CSXT has no immediate need for the trackage rights, and before the trackage rights would become effective, CSXT would file a separate notice of exemption with the Board.

Regulation of the proposed transaction is not needed to protect shippers from the abuse of market power. Allowing BPRR to take over the lease of the Line will benefit shippers by enabling BPRR to better control the service that it is currently providing to the Homer City Branch, thereby justifying its making improvements to the Line, resulting in faster and more efficient service. As a locally based carrier, BPRR will also be able to develop local business on the Line, which currently has no shippers located on it. And CSXT will continue to have its trackage rights over the Line so that it can offer service if needed. Given our market power finding, we need not determine whether the transaction is limited in scope.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of adversely affected employees. Accordingly, as a condition to granting this exemption, we will impose the standard employee protective conditions in Mendocino Coast Ry., Inc.—Lease and Operate, 354 I.C.C. 732 (1978) and 360 I.C.C. 653 (1980), as clarified in Wilmington Term. RR, Inc.—Pur. and Lease—CSX Transp., Inc., 6 I.C.C.2d 799, 814-26 (1990).

This transaction is exempt from environmental reporting requirements under 49 CFR 1105.6(c)(2)(i) because it will not result in a significant change in carrier operations. Similarly, the transaction is exempt from the historic reporting requirements under 49 CFR 1105.8(b)(1) because it will not substantially alter railroad properties.

Petitioner has requested that the exemption become effective in 60 days, which would be on September 30, 2007, to enable it to assume the lease as soon as possible and to begin making improvements to the Line during the current construction season. BPRR also states that it has applied for state and federal grants to support the improvements and needs to control the Line to be eligible to receive the funds. The request is reasonable. Accordingly, this decision is being issued on an expedited basis, and the exemption will become effective on October 8, 2007, rather than the normal 30 days after publication.

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 exempt from the prior approval requirements of 49 U.S.C. 11323-24 the lease by BPRR of the above-described line, subject to the employee protective conditions in Mendocino Coast Ry., Inc.—Lease and Operate, 354 I.C.C. 732 (1978) and 360 I.C.C. 653 (1980), as clarified in Wilmington Term. RR, Inc.—Pur. and Lease—CSX Transp., Inc., 6 I.C.C.2d 799, 814-26 (1990).

2. Notice of the exemption will be published in the Federal Register on September 28, 2007.

3. This decision will be effective on October 8, 2007. Petitions to stay must be filed by October 3, 2007. Petitions to reopen must be filed by October 18, 2007.

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

Vernon A. Williams
Secretary