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SERVICE DATE – MAY 14, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-1029 (Sub-No. 1X)

SAN DIEGO & IMPERIAL VALLEY RAILROAD COMPANY, INC.—  
DISCONTINUANCE OF SERVICE EXEMPTION—  
IN SAN DIEGO COUNTY, CA

Decided: May 13, 2009

By petition filed on January 29, 2009, San Diego & Imperial Valley Railroad Company, Inc. (SDIV) 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 1.35-mile line of railroad between milepost 19.85 and milepost 21.2 in the vicinity of Escondido, in San Diego County, CA (the Line). Notice of the filing was served and published in the Federal Register on February 18, 2009 (74 FR 7639). No comments were filed in response to the notice.

BACKGROUND

SDIV leased and operated the Line, which is owned by BNSF Railway Company (BNSF), until BNSF terminated the lease, effective October 24, 2008. Since that date, a new operator, Pacific Sun Railroad, L.L.C. (Pacific Sun), has provided service over the Line pursuant to a lease with BNSF and Board authority for Pacific Sun's operation. See Pacific Sun Railroad, L.L.C.—Lease and Operation Exemption—BNSF Railway Company, STB Finance Docket No. 35173 (STB served Oct. 3, 2008) (authorizing Pacific Sun to lease and operate approximately 21.5 miles of BNSF's rail lines and freight rail easement, including the Line at issue here). SDIV seeks an exemption to permit it to discontinue service and thus end its common carrier obligation on the Line.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, service may not be discontinued on a rail line without the Board's prior approval. Under 49 U.S.C. 10502, however, the Board must exempt a transaction or service from regulation when it finds that: (1) continued regulation is not necessary to carry out the rail transportation policy of 40 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 in this case. By minimizing the administrative expense of discontinuing service on this line, an exemption will expedite regulatory decisions and reduce regulatory

barriers to exit. 49 U.S.C. 10101(2) and (7). In addition, granting this exemption will foster sound economic conditions and encourage efficient management [49 U.S.C. 10101(5) and (9)] by permitting SDIV to terminate its obligation to provide service over the Line, while Pacific Sun continues to serve the Line's shippers.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power because one rail carrier is being replaced by another that continues to provide service over the Line. Therefore, shippers will not be deprived of rail service as a result of SDIV's discontinuance. Given the finding regarding market power, it is not necessary to determine whether the proposed transaction is limited in scope.

Under 49 U.S.C. 10502(g), the Board may not use its 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, the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979), will be imposed.

SDIV expects that Pacific Sun will operate the Line (for which it has already received Board authority) and will not make significant changes in rail operations that would exceed the thresholds established by 49 CFR 1105.7(e)(4) or (5). Moreover, there are no plans to dispose of or alter potentially historic properties. Accordingly, the Board's Section of Environmental Analysis concluded that there was no need to prepare an Environmental and Historic Report and has not recommended any environmental conditions be placed on the authority to discontinue service.

Because this is a discontinuance of service by one carrier and a different carrier is continuing operations on the Line, the Board need not consider offers of financial assistance to subsidize the line for continued rail service (49 U.S.C. 10904), trail-use requests (16 U.S.C. 1247(d)), or requests to negotiate for public use of the line (49 U.S.C. 10905).

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 SDIV over the Line, subject to the employee protective conditions in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

2. This exemption will be effective on June 13, 2009.

By the Board, Acting Chairman Mulvey, and Vice Chairman Nottingham.

Anne K. Quinlan  
Acting Secretary