

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-331 (Sub-No. 1X)

BI-STATE DEVELOPMENT AGENCY OF THE MISSOURI-ILLINOIS METROPOLITAN
DISTRICT—DISCONTINUANCE OF SERVICE EXEMPTION—IN THE CITY OF
ST. LOUIS, MO

Decided: February 19, 2010

By petition filed on November 2, 2009, Bi-State Development Agency of the Missouri-Illinois Metropolitan District (Bi-State) 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 1.43-mile line of railroad extending from milepost 1.8 in St. Louis, MO, to milepost 3.23 in St. Louis, MO. Notice of the filing was served and published in the Federal Register on November 20, 2009 (74 FR 60307). We will grant the petition for exemption, subject to standard employee protective conditions.

BACKGROUND

According to petitioner, Bi-State operates a 46-mile light rail public transportation system known as MetroLink that is a component of an urban mass transit system for the St. Louis, MO region. It also provides bus service and specialized transportation for the disabled. Petitioner states that it has never owned equipment for the movement of freight and indicates that it has never itself performed operations as a common carrier of freight.

Petitioner explains that an 8.14-mile segment of the right-of-way over which MetroLink operates was acquired by Bi-State from the Wabash Railroad Company and the Norfolk and Western Railroad company pursuant to a notice of exemption filed June 6, 1989 in Bi-State Development Agency of the Missouri-Illinois Metropolitan District—Acquisition and Operation Exemption—Norfolk and Western Railway Company and Wabash Railroad Company, Finance Docket No. 31425 (Sub-No. 1) (ICC served July 6, 1989), partial revocation denied (ICC served Sept. 7, 1989). Due to the purchase, Bi-State assumed the obligation of a common carrier on the 8.14-mile line.

Petitioner points out that on August 27, 1990, the Interstate Commerce Commission (ICC), the Board's predecessor, authorized it to discontinue service over a 6.71-mile portion of the 8.14-mile line. See Bi-State Development Agency of the Missouri-Illinois Metropolitan District—Discontinuance Exemption—in City and County of St. Louis, MO, Docket No. AB-331X (ICC served Aug. 27, 1990). Although the ICC authorized Bi-State to discontinue service

over that portion of the acquired line, Bi-State retained a common carrier obligation for the remaining 1.43-mile line of railroad. It is this 1.43-mile line that is the subject of the discontinuance petition before us.

Currently, two active shippers remain on the line: Ray-Carroll County Grain Growers, Inc. (Ray-Carroll), and U.S. Metals Company (U.S. Metals). An industrial concern, Federal Mogul, also is located on the line, but its connecting track to the line has been removed.

Bi-State asserts that from June 1989 it fulfilled its common carrier obligation to the line's shippers, including the two shippers remaining on the line, by utilizing contract operators, including Rail Switching Services of Missouri, Inc., and Respondek Railroad Corporation (RRC). RRC through its subsidiary, Squaw Creek Railroad, has provided the most recent switching services for the two shippers. According to Bi-State, its contract with RRC expired on December 1, 2008, and RRC declined to continue services for the final option year of the contract because RRC determined that servicing the two shippers was no longer profitable. Bi-State also states that after the contract expired, RRC removed its freight equipment from the line. Petitioner indicates that 89 cars moved over the line in 2008. Of those, 20 were grain cars moved for Ray-Carroll and 69 were cars carrying metal products for U.S. Metals. Collectively, those movements generated less than \$22,000 in revenue. There were no freight movements made on behalf of the two shippers during the months of September and November 2008.

Petitioner states that, in an effort to continue to fulfill its common carrier obligation on the line, it solicited new contractors, but it received no new proposals by its June 12, 2009 due date. Petitioner also states that two prospective bidders indicated that the cost of providing service to the two shippers would be greater than the freight revenue generated by the services. Bi-State states that, due to its strict budgetary limitations and the low traffic volume, it cannot afford to purchase equipment to perform freight service on the line. On August 3, 2009, Bi-State embargoed the line because it could not provide the switching services itself and because no contractors were willing to do so under an arrangement financially acceptable to Bi-State.

Petitioner states that the two shippers on the line will not be without service because they have alternative transportation available. According to Bi-State, both shippers are situated close to major highways and both have extensively used truck transportation, with U.S. Metals owning its own fleet of trucks. The Missouri Department of Transportation (MDOT) submitted comments regarding the relocation of crossing signals on the line.¹

¹ MDOT states that, if this track is ever abandoned, proper steps would need to be taken to provide that the light and gate systems at the street crossings at Boyle Street and Sarah Street are retained and brought into conformity with state regulations. If and when Bi-State seeks authority from this agency to abandon this line, MDOT may seek the imposition of those conditions at that time.

Bi-State indicates that it served a copy of its petition on Ray-Carroll, U.S. Metals, and Federal Mogul. None of these shippers has filed comments or opposition to the proposed discontinuance.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail carrier may not discontinue operations without the Board's 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.

Here 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 allowing Bi-State to discontinue its service obligation [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be adversely affected.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power. Although service is being discontinued over the line by Bi-State, the two shippers will have alternative transportation. And no shipper has opposed the proposed discontinuance. Nevertheless, to ensure that the shippers on the line and Federal Mogul are informed of our action, we will require Bi-State to serve a copy of this decision on those shippers so that it is received by the shippers within 5 days of the service date of this decision and to certify contemporaneously 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), 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.

Because this is a discontinuance proceeding and not an abandonment, the Board need not consider offers of financial assistance (OFAs) to acquire the line for continued rail service (the OFA provisions for a subsidy to provide continued rail service under 49 U.S.C. 10904 do apply to discontinuances), trail use requests under 16 U.S.C. 1247(d), or requests to negotiate for public use of the line. This proceeding is also exempt from environmental reporting requirements under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8(b). Because our decision grants authority only to discontinue rail freight service affecting a small amount of traffic, we find that this decision will not significantly affect either

It is ordered:

1. Under 49 U.S.C. 10502, the Board exempts from the prior approval requirements of 49 U.S.C. 10903 the discontinuance of service by Bi-State of its operations over the above-described line, subject to the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

2. Bi-State is directed to serve a copy of this decision on Ray-Carroll, U.S. Metals, and Federal Mogul so that they receive a copy within 5 days of the service date of this decision and certify to the Board contemporaneously 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 March 1, 2010, 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 \$1,500 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 March 8, 2010. Petitions to reopen must be filed by March 25, 2010.

6. Provided no OFA to subsidize continued rail service has been received, this exemption will be effective on March 19, 2010.

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