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SERVICE DATE – DECEMBER 3, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35247

GRENADA RAILWAY, LLC—ACQUISITION AND OPERATION EXEMPTION—
ILLINOIS CENTRAL RAILROAD COMPANY AND WATERLOO RAILWAY COMPANY

Decided: December 2, 2009

This decision denies a petition by Mississippi State Representative Sidney Bondurant to revoke a notice of exemption for the acquisition and operation of two lines by Grenada Railway, LLC (Grenada). Rep. Bondurant argues that Grenada's notice of exemption contains inaccurate and misleading information. We are denying the petition to revoke because the petition does not satisfy the burden of proof required for revocation.

BACKGROUND

Grenada, a noncarrier, filed a verified notice of exemption under 49 CFR 1150.31 to acquire (by purchase) from the Illinois Central Railroad Company (ICR) and to operate a rail line approximately 175.4 miles between milepost 403.0, at Southhaven, MS, and milepost 703.8, near Canton, MS, and to acquire from Waterloo Railway Company and to operate a connecting rail line approximately 11.42 miles long between milepost 603.0, at Bruce Junction, MS, and milepost 614.42, at Water Valley Junction, MS.¹ All of the rail lines are located in the State of Mississippi.

Pursuant to the purchase agreement, ICR granted Grenada the right to operate on its tracks to Memphis, TN, on the north, and to Canton on the south for the sole purpose of interchanging traffic with ICR. Also, ICR will retain overhead trackage rights on the line of railroad it is selling to Grenada.²

¹ Grenada's notice had described this line as extending from milepost 603.0, at Water Valley Junction, to milepost 614.42, at Bruce Junction. In a letter received on June 3, 2009, the attorney for Grenada informed the Board that the milepost termini were inadvertently transposed in Grenada's notice, and that the milepost termini should have been identified as milepost 603.0, at Bruce Junction, and milepost 614.42, at Water Valley Junction. On June 8, 2009, the Board issued a Notice to the Parties with the correct milepost termini (74 FR 27860).

² This transaction is related to a concurrently filed verified notice of exemption in STB Finance Docket No. 35249, Kern W. Schumacher—Continuance in Control Exemption—Grenada Railway, LLC and Natchez Railway, LLC, wherein Kern W. Schumacher seeks to continue in control of Grenada and Natchez Railway, LLC (Natchez), upon their becoming Class
(continued . . .)

On May 29, 2009, a notice of exemption (May 2009 Notice) was served and published in the Federal Register (74 FR 25799-800) in this proceeding for Grenada's acquisition and operation of the two lines. On June 9, 2009, Rep. Bondurant filed a petition to revoke the May 2009 Notice, to which Grenada replied.³

POSITIONS OF THE PARTIES

Rep. Bondurant argues that Grenada's notice is misleading because it does not divulge that Grenada is an affiliate of A&K Railroad Materials (A&K). Rep. Bondurant states his beliefs that A&K is a salvage company and that this information should have been included in Grenada's notice. He notes that shippers using the ICR line have expressed concern that Grenada is unlikely to provide adequate service to shippers in an attempt to rid itself of any opposition to subsequent abandonment of the lines. Rep. Bondurant also notes that Grenada's notice is inaccurate because it mislabeled the milepost termini of one of the lines, transposing the mileposts at Water Valley Junction and Bruce Junction. For these reasons, Rep. Bondurant argues that the May 2009 Notice should be revoked.

Grenada argues that there are no grounds for granting the petition to revoke. Grenada claims that its notice is not misleading because it completely and accurately provided all of the information required by 49 CFR 1150.33. Grenada states that it is committed to working with shippers and communities to improve the rail operations on the lines. Grenada acknowledges that its notice inadvertently transposed the names of the milepost termini but that issue has already been addressed by the Board's June 8, 2009 Notice to the Parties.

DISCUSSION AND CONCLUSION

Under 49 U.S.C. 10502(d), we may revoke an exemption, in whole or in part, if the Board finds that: (1) the notice of exemption (or request for exemption) contained false and/or misleading information;⁴ (2) regulation is necessary to carry out the rail transportation policy of

(. . . continued)

III rail carriers. STB Finance Docket No. 35249 is also related to STB Finance Docket No. 35248, Natchez Railway, LLC—Acquisition and Operation Exemption—Illinois Central Railroad Company, wherein Natchez seeks to acquire from ICR and to operate approximately 65.6 miles of rail line in Natchez, MS.

³ On June 10, 2009, Grenada filed a reply to Rep. Bondurant's petition and stated that it would file a more detailed reply at a later date. Grenada filed its second reply on June 29, 2009. Both of Grenada's responses were filed by the regulatory deadline, and are considered together as one reply.

⁴ See, e.g., SF&L Railway, Inc.—Acquisition and Operation Exemption—Toledo, Peoria and Western Railway Corporation between La Harpe and Peoria, IL, STB Finance Docket No. 33995 et al. (STB served Oct. 17, 2002) (SF&L).

49 U.S.C. 10101;⁵ or (3) revocation is necessary to ensure the integrity of the Board's processes.⁶ The party seeking revocation has the burden of proof and petitions to revoke must be based on reasonable, specific concerns. I&M Rail Link, LLC—Acquisition and Operation Exemption—Certain Lines of Soo Line Railroad Company d/b/a Canadian Pacific Railway, STB Finance Docket No. 33326 *et al.* (STB served Apr. 2, 1997), *aff'd sub nom. City of Ottumwa v. STB*, 153 F.3d 879 (8th Cir. 1998). Rep. Bondurant's allegations in support of revocation here do not satisfy these standards.

Pursuant to 49 CFR 1150.42(c), if a verified notice contains false or misleading information, the exemption is void ab initio, but Grenada's notice meets the Board's requirements under 49 CFR 1150.33 and is neither false nor misleading. Grenada had no duty, pursuant to the Board's rules, to disclose that it is an affiliate of A&K. Furthermore, the mislabeling of the termini milepost in the notice was a clerical error that Grenada has since remedied, and the public has had notice of the correction from the Board's June 8, 2009 Notice to the Parties. See *supra* note 1. Grenada's exemption, therefore, is not void ab initio.

Nor do we find grounds to revoke the exemption here. The Petition does not cite specific concerns that require revocation to carry out the rail transportation policy (RTP) of 49 U.S.C. 10101. While Rep. Bondurant expresses concerns that Grenada might provide inadequate service to shippers and eventually abandon the lines, he does not provide specific evidence to substantiate his claims. The facts of this case are therefore distinguishable from SF&L, a proceeding involving another A&K affiliate, in which the Board revoked an acquisition exemption because the acquiring party was abusing the Board's processes. In SF&L, there was ample evidence on the record to demonstrate that the carrier was not legitimately attempting to provide service, but had acquired the right-of-way to abandon the line and salvage the track material.⁷ While the Board is sensitive to Rep. Bondurant's concerns, and all concerns regarding service to shippers, revocation of Grenada's exemption is not proper at this time because no one

⁵ See, e.g., SF&L.

⁶ See, e.g., Land Conservancy—Acq. & Oper.—Burlington Northern, 2 S.T.B. 673 (1997), *reconsideration denied*, STB Finance Docket No. 33389 (STB served May 13, 1998), *petition for judicial review dismissed sub nom. The Land Conservancy of Seattle and King County v. STB*, 238 F.3d 429 (9th Cir. 2000); Minnesota Comm. Ry., Inc.—Trackage Exempt.—BN RR. Co., 8 I.C.C.2d 31 (1991).

⁷ In SF&L, the Board found that the buyer had abused the class exemption process based on a variety of indicia: the disjointed and incomplete structure of the sale; the buyer's obvious lack of interest in the operational aspects of the line, as evidenced by its failure even to inspect the line before the sale; confusion concerning whether certain essential components of the line (bridges, trestles, and culverts) were even bought; confusion over whether the buyer or the seller had the responsibility to quote rates; the understanding that the seller would support the buyer's future abandonment of the line; and the unstructured financing of the line.

has brought evidence to us that revocation is necessary to carry out the RTP of 49 U.S.C. 10101 and there is nothing in the record to indicate that Grenada is abusing the Board's processes.

In this regard, we note that common carriers – and Grenada will become a Class III rail carrier as a result of this transaction – have a common carrier obligation to provide service to shippers. If a carrier provides inadequate service, shippers have recourse before the Board under 49 U.S.C. 11101 and 11102. Similarly, there are statutory protections for shippers in abandonment procedures under 49 U.S.C. 10903. In short, acquisition and operation authority exposes rail carriers to a variety of regulatory responsibilities.

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

It is ordered:

1. The petition to revoke the May 2009 Notice is denied.
2. This decision is effective on its date of service.

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