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SERVICE DATE – JUNE 11, 2013

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35707

MCM RAIL SERVICES LLC—PETITION FOR RETROACTIVE EXEMPTION—IN
SPARROWS POINT, MD

Docket No. FD 35725¹

MCM RAIL SERVICES LLC D/B/A BALTIMORE INDUSTRIAL RAILROAD—
OPERATION EXEMPTION—HRE SPARROWS POINT, LLC

Digest:² This decision grants a petition to intervene by the Maryland Department of Transportation but denies MDOT's request to continue to hold the proceedings in abeyance.

Decided: June 10, 2013

BACKGROUND

These proceedings concern an approximately 12-mile line of railroad in Sparrows Point, Baltimore County, Md. (the Line). The former owner of the Line, RG Steel Railroad Holding, LLC (RG Steel R.R.), and a number of affiliate companies filed for bankruptcy in the United States Bankruptcy Court for the District of Delaware in late May 2012.³ In August 2012, the bankruptcy court authorized and approved the sale of certain Sparrows Point assets, including rail assets.⁴ On December 20, 2012, in MCM Rail Services LLC—Petition for Retroactive Exemption—In Sparrows Point, Md., Docket No. FD 35707, MCM Rail Services LLC, d/b/a Baltimore Industrial Railroad (MCM), a noncarrier, filed a petition for retroactive exemption (Petition) under 49 C.F.R. § 1121.1, requesting authority to operate as a common carrier over the

¹ These proceedings are not consolidated; they are being considered together for administrative purposes.

² The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

³ Pet. for Exemption 2.

⁴ Id. at 3.

Line. As noted later, the new owner of the Line separately sought acquisition authority from the Board.

On March 20, 2013, the Board instituted a proceeding and requested additional information. On the same day, in MCM Rail Services LLC, d/b/a Baltimore Industrial Railroad—Operation Exemption—HRE Sparrows Point, LLC, Docket No. FD 35725, MCM filed a verified notice of exemption (Notice) under 49 C.F.R. § 1150.31, requesting essentially the same authority it requested in the Petition.⁵ Although the Notice answered many of the questions raised by the Petition, details about the recent acquisition of the Line from RG Steel R.R. remained outstanding and needed to be resolved before the Board could properly evaluate the Notice.

By decision of the Director of the Office of Proceedings, served on April 5, 2013, the Board (1) held the publication and effectiveness of the Notice in abeyance, (2) ordered the owner of the Line⁶ to seek Board authority to acquire the Line or for MCM to explain why acquisition authority is not required, and (3) ordered MCM to withdraw either the Petition or the Notice, or explain why both proceedings are necessary. On April 9, 2013, MCM filed a letter seeking leave to withdraw the Petition. MCM's request will be granted.

On April 8, 2013, the Maryland Department of Transportation (MDOT) filed a petition for leave to intervene in the MCM Notice and Petition dockets (Petition to Intervene). MDOT expresses concern about whether MCM's proposed operations are consistent with the rail transportation policy of 49 U.S.C. § 10101, and whether an exemption proceeding is appropriate under the circumstances of this case.⁷ Specifically, MDOT is concerned that MCM and the Line's owner may ultimately intend to demolish and salvage the Line along with the rest of the

⁵ The Petition seeks retroactive authority from September 14, 2012, and the Notice seeks prospective authority with confirmation from the Board that it will not pursue enforcement action against MCM for failure to file for Board licensing authority prior to beginning operations. Because MCM's failure to obtain prior approval or an exemption for operating authority was inadvertent, the record does not show an intent to flout the law, and no harm has been shown, we will not pursue an enforcement action.

⁶ The Petition and Notice both named HRE Sparrows Point, LLC (HRE), as the owner of the Line. On April 12, 2013, MCM filed a letter with the Board seeking to amend its Notice to replace HRE Sparrows Point, LLC, with Hilco SP Rail, LLC (Hilco), as the name of the entity granting MCM the right to operate over the Line. On the same date, MCM filed a motion for protective order, along with a copy of the operating agreement between MCM and Hilco. This decision grants MCM's request to amend the Notice. The motion for protective order has been addressed in a separate decision.

⁷ Pet. to Intervene 1, 7-8.

property acquired in the bankruptcy sale.⁸ It believes the short duration of the operating agreement suggests that MCM and the owner are not interested in maintaining service over the Line beyond the period of time necessary for demolition.⁹ MDOT asserts that the Board should continue to hold the proceedings in abeyance until MCM provides further information about its proposed operations.¹⁰

On April 29, 2013, MCM filed a reply to the Petition to Intervene (Reply). It does not oppose intervention but opposes all other relief requested by MDOT, asserting that MDOT's position is without any factual basis.¹¹ According to MCM, it was created for the purpose of operating the Line and MCM recognizes that "it must continue to provide rail service until authorized to discontinue service by the Board or until the common carrier obligation is assigned to another operator."¹² MCM also states that, as the operator, it does not have the right to scrap the Line.¹³ MCM represents that it has no intent to scrap the Line and it will comply with all of the Board's requirements.¹⁴ It also states that it has been aggressively marketing rail service and has four new shippers since it began operating.¹⁵

DISCUSSION AND CONCLUSIONS

The request to continue to hold these proceedings in abeyance will be denied. MCM has provided additional information about its intent to operate the Line, as MDOT requested, and the Board is satisfied that MCM has met our notice requirements. MCM has represented to the Board that it does not intend to salvage the Line, it was created to operate the Line, and it will comply with

⁸ Id. at 7.

⁹ Id. at 6-7.

¹⁰ Pet. to Intervene 2. On April 12, 2013, in Hilco SP Rail, LLC—Acquisition & Operation Exemption—RG Steel Railroad Holding, LLC, Docket No. FD 35734, Hilco filed a verified notice of exemption to acquire the Line from RG Steel R.R. and to operate as a common carrier. Hilco states that MCM will be the operator of the Line. The Board published Hilco's notice on April 26, 2013, with an effective date of May 12, 2013. On May 3, 2013, MDOT filed a petition to stay the effective date of Hilco's exemption. By decision served May 10, 2013, the Board denied that petition.

¹¹ Reply 10.

¹² Id. at 6.

¹³ Id.

¹⁴ Id.

¹⁵ Id. at 8.

the Board's common carrier requirements.¹⁶ MDOT has immediate and long term remedies should MCM act in violation of our regulations, harm shippers, or threaten the rail infrastructure at Sparrows Point. In the short term, as with any notice, MDOT may file a stay request at least seven days before the exemption becomes effective, and a petition to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time.

Further, should MCM's actions indicate that it is permitting the Line or service over the Line to deteriorate, any party may request emergency relief to prevent irreparable harm pursuant to 49 U.S.C. § 721(b)(4). We also note that common carriers have an obligation to provide service to shippers on reasonable request. For example, if a carrier provides inadequate service, shippers have recourse before the Board under 49 U.S.C. § 11101 or, in emergency situations, under § 11123. Similarly, should MCM later seek discontinuance authority, there are statutory protections for shippers in discontinuance and abandonment procedures under 49 U.S.C. § 10903. In short, operating authority exposes rail carriers to a variety of regulatory responsibilities and provides shippers with mechanisms to request remedies from the Board. Therefore, it is no longer necessary to hold these proceedings in abeyance to consider further the arguments raised by MDOT. Accordingly, the request to hold these proceedings in abeyance to seek further information will be denied.

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

It is ordered:

1. MDOT's petition to intervene is granted.
2. MCM's request to withdraw the Petition is granted and the Petition proceeding in Docket No. FD 35707 is dismissed.
3. MCM's request to amend the Notice is granted.
4. The Notice proceeding in Docket No. FD 35725 is no longer held in abeyance and MCM's notice of exemption will be published in the Federal Register.
5. This decision is effective on its service date.

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

¹⁶ Reply 6.