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SERVICE DATE – FEBRUARY 10, 2011

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35446

CITY OF TEMPLE, TEX.—ACQUISITION EXEMPTION—GEORGETOWN RAILROAD
COMPANY

Digest:¹ This decision permits the City of Temple, Tex., to acquire a 6.277-mile line of railroad in Bell County, Tex. Through the acquisition, the City will become a rail carrier, but a different rail carrier will operate trains over that line.

Decided: February 9, 2011

On December 15, 2010, the City of Temple, Tex. (Temple), a noncarrier, filed a petition under 49 U.S.C. § 10502 for exemption from the provisions of 49 U.S.C. § 10901 to acquire from the Georgetown Railroad Company (Georgetown) an approximately 6.277-mile line of railroad, between milepost 0.00, near Belton, and milepost 6.277, in Smith, Bell County, Tex. (the line), and the trackage rights granted to Georgetown to operate over the line. In a notice served and published in the Federal Register on January 13, 2011 (76 Fed. Reg. 2,446-47), the Board requested comments on Temple's request to acquire the line.² Comments were due by February 2, 2011, and replies were due by February 9, 2011. No comments were filed. The Board will grant the exemption.

BACKGROUND

Temple is a political subdivision of the State of Texas. On April 8, 2010, Temple filed a verified notice of exemption (April 2010 notice) under 49 C.F.R. § 1150.31 to acquire the line from Georgetown, and to operate the line.³ At that time, Temple stated that there had not been any traffic on the line for at least 20 years. By decision served on April 23, 2010, the Director of

¹ 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).

² The Board issued a protective order pursuant to 49 C.F.R. § 1104.14(b) to allow Temple to file the unredacted Purchase and Sale Agreement between Temple and Georgetown under seal. City of Temple, Tex.—Acquis. Exemption—Georgetown R.R. Co., FD 35446 (STB served Jan. 24, 2011).

³ Temple concurrently sought to acquire trackage rights granted to Georgetown. Georgetown acquired the line and the trackage rights from the Belton Railroad Co. in 1991.

the Board's Office of Proceedings rejected the notice without prejudice, because Temple's stated purposes in acquiring the line were to construct a water pipeline beneath the surface of the right-of-way and to convert the right-of-way to a recreational trail under the National Trails System Act, 16 U.S.C. § 1247(d), rather than to provide common carrier rail service over the line.⁴ In that decision, the Director stated that the acquisition of the line for the purpose of abandoning it, rather than for that of operating over it, constituted a misuse of Board procedures.

After the April 2010 notice was rejected, Temple reached an agreement with Temple & Central Texas Railway, Inc. (TCTR), a Class III carrier which operates over other rail lines owned by Temple, to operate over the line. TCTR subsequently filed a verified notice of exemption under 49 C.F.R. § 1150.41 to operate over the line. That notice was served and published in the Federal Register on December 10, 2010 (75 Fed. Reg. 77,044).⁵ According to Temple, the Railroad License and Operating Agreement between Temple and TCTR requires TCTR to solicit business over the line and to provide common carrier service for remunerative business. Temple states that, in the event that TCTR is unable to provide rail service over the line, Temple will assume the residual common carrier obligation to provide rail service.

PRELIMINARY MATTER

Temple has requested expedited action on its petition. According to Temple, if it cannot close the acquisition by February 10, 2011, it will be required to pay an additional fee to Georgetown. To avoid this fee, Temple requests that the Board's decision be effective by February 10, 2011. Given the lack of objection to this transaction, this request is reasonable, and, accordingly, this decision will be effective on its service date.

DISCUSSION AND CONCLUSIONS

The acquisition of a line of railroad by a noncarrier requires prior approval by the Board under 49 U.S.C. § 10901(a)(4). Under 49 U.S.C. § 10502(a), however, the Board must exempt a transaction or service from regulation upon finding that: (1) regulation is not necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. § 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

⁴ City of Temple, Tex.—Acquis. and Operation Exemption—Georgetown R.R. Co., FD 35369 (STB served Apr. 23, 2010).

⁵ Temple & Central Tex. Ry.—Operation Exemption—City of Temple, Tex., FD 35447 (STB served Dec. 10, 2010).

In this case, an exemption from the prior approval requirements of 49 U.S.C. § 10901 is consistent with the standards of 49 U.S.C. § 10502.⁶ Detailed scrutiny of the proposed transaction through an application for review and approval under 49 U.S.C. § 10901 is not necessary to carry out the RTP. Rather, an exemption will promote that policy by: minimizing the need for Federal regulatory control over the proposed transaction; promoting a safe and efficient rail transportation system; and ensuring the development and continuation of a sound rail transportation system that will continue to meet the needs of the shipping public. 49 U.S.C. §§ 10101(2), (3), and (4). By allowing Temple to acquire a previously inactive rail line for operation by TCTR, an exemption would: foster sound economic conditions in transportation; reduce regulatory barriers to entry into the rail transportation industry; and encourage efficient management of the line. 49 U.S.C. §§ 10101(5), (7), and (9). An exemption also would allow for the expeditious handling and resolution of this transaction. 49 U.S.C. § 10101(15). Other aspects of the RTP will not be adversely affected.

Regulation of this transaction is not needed to protect shippers from an abuse of market power. By reactivating a previously unused rail line, the proposed transaction could result in increased competition. Given our finding regarding the probable effect of the transaction on market power, we need not determine whether the transaction is limited in scope.

Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. However, under § 10901(c), labor protective conditions are not imposed in acquisitions by noncarriers such as Temple.

The acquisition of control is exempt from environmental reporting requirements under 49 C.F.R. § 1105.6(c)(2)(i) because it will not result in any significant change in carrier operations. Similarly, the transaction is exempt from the historic reporting requirements under 49 C.F.R. § 1105.8(b)(1) because it will not substantially change the level of maintenance of railroad properties.

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

⁶ In light of the parties' previously stated plans to convert the line into a recreational trail, Temple is reminded that, by obtaining this exemption, it is now a regulated rail carrier under the Interstate Commerce Act, and is expected to comply with all obligations, including the common carrier obligation, that being a rail carrier entails. See City of Temple, Tex.—Acquis. and Operation Exemption—Georgetown R.R. Co., FD 35369 (STB served Apr. 23, 2010).

It is ordered:

1. Under 49 U.S.C. § 10502, the Board exempts from the prior approval requirements of 49 U.S.C. § 10901 Temple's acquisition of the line.
2. This exemption will be effective on its date of service. Petitions to reopen must be filed by March 2, 2011.

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