

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. MCF 21060

ACADEMY BUS LLC—ACQUISITION OF THE PROPERTIES OF EVERGREEN TRAILS
INC. D/B/A HORIZON COACH LINES

Digest:¹ This decision addresses a late-filed comment in this proceeding but does not alter the Board's prior approval of a motor carrier transaction.

Decided: May 28, 2015

On February 3, 2015, Academy Bus LLC, a motor carrier of passengers (Academy), applied for approval under 49 U.S.C. § 14303 to acquire property in North Carolina held by Evergreen Trails, Inc. d/b/a Horizon Coach Lines (Evergreen), also a motor carrier of passengers. In a notice served and published in the Federal Register on March 5, 2015 (80 Fed. Reg. 12,056-57), the Board tentatively approved the application, subject to the filing of opposing comments, which were due on April 20, 2015. Academy Bus LLC—Acquis. of the Props. of Evergreen Trails, Inc., MCF 21060 (STB served March 5, 2015) (March Decision). Specifically, Academy would acquire from Evergreen the sublease to Evergreen's Durham, N.C. terminal, as well as equipment and materials related to the Durham operations.

On April 27, 2015, a comment was late-filed by Colorado Jitney, LLC (Colorado Jitney), in which Colorado Jitney opposes Academy's acquisition of certain properties of Evergreen. Academy did not file a reply.

Colorado Jitney states that it is a transportation carrier for hire in the State of Colorado subject to the regulations of the Colorado Public Utilities Commission (Commission). It argues that Evergreen provides unauthorized shuttle service in Red Rocks Park in violation of Commission rules. Colorado Jitney states that it filed a complaint with the Commission against Evergreen and the City and County of Denver (the City), which is pending.² According to Colorado Jitney, Evergreen has cancelled its contract with the City to provide shuttle service and is selling its assets in an attempt to evade the jurisdiction of the Commission and absolve itself from wrongdoing.

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 Colorado Public Utilities Commission Docket Number 14F-0806CP.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 14303(b), the Board must approve and authorize a transaction that it finds consistent with the public interest, taking into consideration at least: (1) the effect of the proposed transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of the affected carrier employees. Pursuant to 49 C.F.R. § 1182.6(a), the March Decision would have been automatically vacated if opposing comments had been filed by the April 20, 2015 deadline. Here, however, Colorado Jitney filed its comments on April 27, 2015. As no timely opposing comments were filed, the notice became effective on April 21, 2015.

Even if Colorado Jitney's comments had been timely filed, the concerns raised by Colorado Jitney do not demonstrate that the Board should alter its March Decision. Though Colorado Jitney alleges that Evergreen provided shuttle service in Colorado in violation of Commission regulations, it does not explain how this alleged violation would impact any of the factors that we are directed by § 14303(b) to consider for this transaction. Specifically, Colorado Jitney does not explain how Academy's acquisition of property in North Carolina has any connection to Colorado Jitney's operations in Colorado, or how it would adversely impact the adequacy of transportation to the public, the resulting total fixed charges, or the interest of Evergreen's employees.³

Colorado Jitney claims that Evergreen is seeking Board authority to avoid liability before the Commission, but Colorado Jitney also has stated that Evergreen has cancelled its contract to provide the shuttle service that is the basis of that complaint. Colorado Jitney has not explained how the transaction that is the subject of our approval here (which is limited to North Carolina) would prevent the Commission from taking action against Evergreen for any past wrongdoing in Colorado.

Colorado Jitney has neither filed timely opposing comments nor shown that Academy's acquisition of Evergreen's properties has an adverse impact on any of the factors that we are directed to consider for this transaction. For these reasons, the Board finds that the transaction is consistent with the public interest and reaffirms our approval of the transaction under 49 U.S.C. § 14303(b).

It is ordered:

1. Colorado Jitney's request that we either void or reverse the March Decision is denied.

³ The letter filed by Colorado Jitney does not specify what operations it conducts in Colorado.

2. This decision is effective on its service date.

By the Board, Acting Chairman Miller and Vice Chairman Begeman.