

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35707

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

Digest:¹ This decision institutes a proceeding and requests additional information regarding a petition for an operation exemption.

Decided: March 20, 2013

By petition filed December 20, 2012, MCM Rail Services LLC (MCM) seeks an exemption pursuant to 49 U.S.C. § 10502 and 49 C.F.R. § 1121.1 from the prior review and approval requirements of 49 U.S.C. § 10901 to operate 12 miles of rail line in Sparrows Point, Md. (the Line). The Line, formerly known as the Patapsco & Back Rivers Railroad, and currently named the Baltimore Industrial Railway, is located at 1430 Sparrows Point Boulevard, Sparrows Point, Baltimore County, Md.² MCM states in its petition that it seeks retroactive operating authority because it inadvertently failed to seek prior authorization before it began operating on the Line.³ The Board generally disfavors granting licensing authority retroactively. See, e.g., Turtle Creek Indus. R.R.—Acquis. & Operation Exemption—Consol. Rail Corp., FD 35678, slip op. at 1 n.1 (STB served Oct. 26, 2012); New Brunswick Ry.—Continuance in Control Exemption—Me. N. Ry., FD 35518 et al., slip op. at 3 n.2 (STB served Sept. 26, 2011). We will institute a proceeding and, pursuant to 49 C.F.R. § 1121.4(c)(1)(i), request additional information about the transaction.

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 On November 2, 2012, in ISG Railways, Inc.—Acquis. of Control Exemption—Assets of Keystone Railroad LLC, Docket No. FD 34344, the Baltimore Industrial Railroad filed a letter with the Board stating that MCM Management Corporation (the parent of MCM) had purchased the Patapsco and Back Rivers Railroad, through the purchase of R.G. Steel Corporation, and would operate the railroad under the new name.

³ Pet. 1, 5.

BACKGROUND

According to MCM, MCM is a noncarrier that owns, operates or controls the assets of the approximately 12 miles of railroad in Sparrows Point, Md., that is the subject of its petition. MCM states that the Line was previously owned and operated by R.G. Steel Railroad Holdings, LLC (R.G. Steel R.R.), which was an affiliate of the owner of steel operations located at Sparrows Point.⁴ R.G. 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 2012.⁵ In August 2012, the bankruptcy court authorized and approved the sale of certain Sparrows Point assets to a group of purchasers.⁶ According to MCM, the court-approved Asset Purchase Agreement and a second, related agreement,⁷ granted HRE Sparrows Point, LLC an exclusive “license” to operate the railroad⁸ and its associated equipment for 42 months.⁹ MCM also states that “[u]pon the closing of the transaction contemplated by the Asset Purchase Agreement, MCM was requested to operate the [Line].”¹⁰ MCM began operating on the Line in September 2012, following the sale of assets from the bankruptcy proceeding.¹¹ According to MCM, the Line is entirely on private property and connects to CSX Transportation, Inc., and Norfolk Southern Railway.¹² In addition to serving the former steel property sold in the bankruptcy proceeding, the Line serves 12 other shippers who also occupy Sparrows Point: AMG, Amtrol, Chesapeake Specialties, Clark Diedrich, Lafarge, Fritz Enterprises, Maryland Metals, Kinder Morgan, Phoenix Services, Heidman Steel, Maryland Pig, and Nelson Lumber.¹³

⁴ Pet. 1, 2.

⁵ Id. at 2.

⁶ Id. at 3.

⁷ MCM refers to this second agreement as the Designation of Purchased Assets. Pet. 3. It is unclear whether the bankruptcy court approved this agreement. It is also unclear who the parties to this agreement are and how the agreement relates to MCM’s operation of the Line.

⁸ We note that only the Board has the authority to grant a license to operate a line of railroad. See 49 U.S.C. § 10901.

⁹ Pet. 3.

¹⁰ Id.

¹¹ Id. at 5.

¹² Id.

¹³ Id. at 5 n.1.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 10901, the operation of a rail line by a noncarrier requires an application to, and authorization by, the Board. However, under 49 U.S.C. § 10502(a), we must exempt a transaction or service from regulation if we find that (1) 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 limited in scope, or (b) regulation is not needed to protect shippers from abuse of market power. Based on the information provided in the petition, the Board determines whether the criteria of § 10502(a) are met for the proposed exemption. 49 C.F.R. § 1121.4. If the impact of the proposed exemption cannot be ascertained from the information contained in the petition, the Board may direct that additional information be filed. § 1121.4(c)(1).

At this time, the record is not sufficient for the Board to determine whether an exemption in this case is consistent with the standards of § 10502. The relationship between the bankruptcy proceeding, the entities that purchased the Line in that proceeding, and MCM is unclear, as are the details of the transaction that provides MCM with its operating interest in the Line. While there is no set of specific information required for MCM to make its case-in-chief, the petition must include sufficient information for the Board to meet its obligations under § 10502. To meet those obligations here, the Board must have a better understanding of the attendant transactions before it can evaluate whether an exemption in this case is appropriate. As an initial matter, the Board needs to understand the relationship of MCM to the owner of the Line, if MCM is not the owner, and whether the current owner had acquisition authority from the Board.

We will institute a proceeding to address this matter and determine the merits of the petition pursuant to § 10502. MCM must provide additional information sufficient for the Board to meet its § 10502 obligations before we can proceed with a decision on the merits of the petition. This information should include: (1) the relationship of MCM to the owner of the Line or whether MCM is the owner of the Line; (2) the current owner's acquisition authority from the Board; (3) who the operator of the property will be; (4) a statement that an operating agreement has been reached or details about when it will be reached; (5) the names and relationships of the parties to any operating or other relevant agreement; (6) the name and address of the railroad transferring the subject property in the bankruptcy proceeding; (7) mileposts of the subject property, if applicable; and (8) a detailed description of any interchange commitments on the Line. If an interchange commitment exists, MCM must file with the Board a confidential and complete version of the document containing or addressing that provision.¹⁴

MCM also must notify the shippers on the Line of the proposed transaction by providing them with a copy of the complete petition on the same date that it files the supplemental information with the Board.

¹⁴ See 49 C.F.R. § 1121.3(d) for guidance on filing confidential documents.

We also stress that, under 49 U.S.C. § 10903 and 49 C.F.R. pt. 1152, if Baltimore Industrial Railway, MCM, or any other operator decides to abandon or discontinue service on the Line, it must file with the Board for authority to abandon or discontinue operations before doing so.

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

It is ordered:

1. An exemption proceeding is instituted.
2. Under 49 C.F.R. § 1121.4, MCM must file with the Board additional information sufficient for the Board to meet its 49 U.S.C. § 10502 obligations, as described above. MCM's additional information is due April 19, 2013.
3. MCM must notify shippers on the Line of the proposed transaction, as described above.
4. Notice of this decision will be published in the Federal Register.
5. This notice will be effective on its date of service.

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