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SERVICE DATE - NOVEMBER 19, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34410

BUFFALO & PITTSBURGH RAILROAD, INC. — ACQUISITION AND
OPERATION EXEMPTION — CSX TRANSPORTATION, INC.

Decided: November 12, 2003

By petition filed October 23, 2003, Buffalo & Pittsburgh Railroad, Inc. (BPR or petitioner) seeks an exemption pursuant to 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10902 to acquire and operate a 16.82-mile line of railroad between Creekside and Homer City, PA, owned by CSX Transportation, Inc. (CSXT). The Board will grant the exemption subject to labor protective conditions.

BACKGROUND

BPR is a Class II rail carrier that owns or operates approximately 280 miles of rail line in New York and Pennsylvania. Petitioner indicates that it leased and operated CSXT's subject line (the Homer City line) from 1988 to 1993. Because of declines in traffic, BPR and CSXT jointly sought and received authority to discontinue operations over the line.¹ No service has been provided since that time. BPR states that after June 2004, it expects to operate 60 to 65 coal trains a year (one or two trains per week) to a utility located at Homer City. Each train will consist of 40 carloads.

Because no service has been provided since 1993, BPR states that the line will require rehabilitation such as rail and tie replacement, surfacing, brush control, and crossing renewal. This work activity, according to petitioner, will not change the character of the line, but must be completed as soon as possible. BPR's acquisition of the line will be subject to trackage rights

¹ See Buffalo & Pittsburgh Railroad, Inc.—Discontinuance and Abandonment Exemption, Docket No. AB-369 (Sub-No. 2X), and CSX Transportation, Inc.—Discontinuance of Service Exemption, Docket No. AB-55 (Sub-No. 457X) (ICC served Nov. 17, 1993). Although rail service has been discontinued, CSXT apparently has not sought to abandon the line.

that CSXT is retaining over the line.² Petitioner indicates, however, that CSXT has no immediate plans to operate over the line and that CSXT intends to assign to BPR trackage rights over an adjoining rail line leased by Norfolk Southern Railway Company (between Cloe and Ridge Branch Junction, PA) to enable BPR to reach the Homer City line.³

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10902, the acquisition and operation of a rail line by a Class II carrier would require an application to, and authorization by, the Board. Under 49 U.S.C. 10502, 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 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.

An exemption from the prior approval requirements of 49 U.S.C. 10902 is consistent with the standards of 49 U.S.C. 10502. Detailed scrutiny of this transaction is not necessary to carry out the rail transportation policy. An exemption from the application process will minimize the need for Federal regulatory control [49 U.S.C. 10101(2)], foster sound economic conditions in transportation [49 U.S.C. 10101(5)], reduce regulatory barriers to entry into and exit from the rail industry [49 U.S.C. 10101(7)], and encourage efficient management of railroads [49 U.S.C. 10101(9)]. Other aspects of the rail transportation policy will not be adversely affected.

Regulation of this transaction is not needed to protect shippers from the abuse of market power. There has been no service on the line since 1993 when BPR and CSXT were authorized to discontinue rail service. The proposed restoration of rail service to Homer City will increase shippers' transportation alternatives. Given the market power finding, it is not necessary to 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 adversely affected employees. Section 10902(d) provides for labor protection in line acquisitions by Class II rail carriers. As a condition to this exemption, any employees affected by the acquisition will be protected as required by section 10902(d), subject to the standards and procedures established in Wisconsin Central Ltd.–Acquisition Exem.–Union Pac. RR, 2 S.T.B. 218 (1997), rev'd in part sub nom.

² Because CSXT is retaining the trackage rights as part of the proposed acquisition, BPR states that a separate trackage rights filing by CSXT is not required, citing Minnesota Northern Railroad, Inc.–Exemption, STB Finance Docket No. 33315 (STB served Aug. 14, 1997).

³ According to BPR, the trackage rights to be assigned by CSXT are incidental to this transaction and require no separate filing.

Association of American Railroads v. STB, 162 F.3d 101 (D.C. Cir. 1998).⁴ As required by 49 CFR 1121.4(h), BPR has certified to the Board that it has posted a notice of the transaction at the workplace of potentially affected employees and served the same on the national organizations representing them.⁵

BPR states that this transaction is exempt from environmental reporting requirements under 49 CFR 1105.6(c)(2)(i) and that an historic report is not required under 49 CFR 1105.8(b)(1). The Board's Section of Environmental Analysis has reviewed the transaction and has concluded that this transaction is exempt from the environmental and historic reporting requirements.

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

It is ordered:

1. Under 49 U.S.C. 10502, the above-described transaction is exempted from the prior approval requirements of 49 U.S.C. 10902, subject to the employee protective conditions implementing 49 U.S.C. 10902(d) as provided in this decision.
2. Notice will be published in the Federal Register on November 19, 2003.
3. The exemption will become effective on December 19, 2003.
4. Petitions to stay must be filed by December 1, 2003. Petitions to reopen must be filed by December 9, 2003.

By the Board, Chairman Nober.

Vernon A. Williams
Secretary

⁴ BPR indicates that, although no employees of CSXT are expected to be adversely affected by the transaction, it agrees to these labor protective conditions.

⁵ In its request for expedited consideration, petitioner asks that the exemption be effective on the earliest date possible, i.e., by December 19, 2003, 60 days after its filing of the labor notice certification. The Board has attempted to satisfy this request.