

30447  
EB

SERVICE DATE - MARCH 17, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33362

PADUCAH & LOUISVILLE RAILWAY, INC.  
— CONTROL EXEMPTION —  
PADUCAH & ILLINOIS RAILROAD COMPANY

Decided: March 13, 2000

In a Board decision served on August 25, 1997 (the exemption decision), Paducah & Louisville Railway, Inc. (P&L), was granted an exemption from the prior approval requirements of 49 U.S.C. 11323(a)(6)<sup>1</sup> for its acquisition of a partial ownership interest in Paducah & Illinois Railroad Company (P&I). In a further decision served on July 9, 1999 (July 9 decision), we denied P&L's petition for an order to show cause or otherwise to establish terms and conditions for an operating agreement to permit P&L to operate over P&I's railroad line<sup>2</sup> on terms comparable to those available to The Burlington Northern and Santa Fe Railway Company (BNSF) and Illinois Central Railroad Company (ICR), the two other railroads holding equal ownership interests in P&I. P&L has petitioned for reconsideration of our July 9 decision, and ICR has replied. We will deny the petition for reconsideration.

DISCUSSION AND CONCLUSIONS

Under 49 CFR 1115.3, a petition for reconsideration is discretionary and will be granted only upon a showing of new evidence, changed circumstances, or material error. P&L alleges material error in our July 9 decision, asserting that it conflicts with the exemption decision by characterizing it as an exemption for P&L's joint ownership of P&I as a corporate entity, rather than P&L's joint ownership of P&I's line (and hence the bridge). We find that there was no error in our July 9 decision because P&L does not have a right to operate over P&I's line and the exemption

---

<sup>1</sup> Section 11323(a)(6) reads, in pertinent part, as follows:

(a) The following transactions involving rail carriers providing transportation subject to the jurisdiction of the Board under this part may be carried out only with the approval and authorization of the Board:

\* \* \*

(6) Acquisition by a rail carrier of trackage rights over, or joint ownership in or joint use of, a railroad line (and terminals incidental to it) owned or operated by another rail carrier.

<sup>2</sup> The line includes a bridge over the Ohio River between Paducah, KY, and Metropolis, IL.

does not give it that right. To the extent that error exists, it was in the exemption decision, which may have been unnecessary given the nature of the interest that P&L was able to acquire.

In discussing whether P&L acquired the right to conduct operations through its exemption authority, we stated in our July 9 decision that P&L did not acquire a line of railroad (i.e., P&I's line, including the Ohio River bridge), but acquired only a non-controlling interest in the carrier that owns that line. July 9 decision, slip op. at 3. We reaffirm this statement. P&L argues that, in granting an exemption from 49 U.S.C. 11323(a)(6), we must have been exempting P&L's joint ownership of a line of railroad. That is not what was intended and overlooks the fact that we could not have used this exemption process to confer on P&L legal rights over property that P&L otherwise lacked. The exemption from 49 U.S.C. 11323(a)(6) was intended to alleviate BNSF's concern that prior Board approval was necessary for P&L's stock purchase. This was done out of an abundance of caution after granting P&L's motion to dismiss its control petition for exemption.<sup>3</sup> To the extent that such an exemption was unnecessary or inappropriate under 49 U.S.C. 11323(a)(6), we are prepared to revoke it.<sup>4</sup>

P&L also alleges error in our failure to act to enable it to meet its asserted common-carrier obligation to interchange with Union Pacific Railroad Company. Because P&L has accomplished no transaction giving it a common-carrier obligation with respect to the line of railroad crossing the Ohio River bridge, this point is moot.<sup>5</sup>

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

---

<sup>3</sup> The control petition for exemption was dismissed because none of the three owning carriers controlled P&I either before or after the acquisition.

<sup>4</sup> Under 49 U.S.C. 10502(d), we may revoke an exemption upon a finding that regulation is necessary to carry out the transportation policy of 49 U.S.C. 10101.

<sup>5</sup> P&L also argues that we erred in suggesting that our approval would be required for it to operate under such rights as may be concurrently granted by another agency pursuant to section 3 of the Bridge Act of 1906. We made no such finding, and the point is likewise moot in light of the decision of the Federal Railroad Administrator (FRA) dismissing P&L's petition for relief under the Bridge Act of 1906. See Petition of Paducah & Louisville Railway, Inc. to Establish Terms and Conditions for Operation over the Paducah Illinois Railroad Company Pursuant to Section 3 of the Bridge Act of 1906, 33 U.S.C. §493, Docket No. FRA-1999-6138 (Jan. 13, 2000). Moreover, while the decision of the FRA forecloses one avenue of relief sought by P&L, we reiterate what we said in the July 9 decision, slip op. at 4, that "P&L may renew its request for operating authority under 49 U.S.C. 10901 upon a showing that it has . . . a contractual . . . right to operate over the bridge."

It is ordered:

1. The petition for reconsideration is denied.
2. This decision is effective on its service date.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams  
Secretary