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SERVICE DATE - LATE RELEASE OCTOBER 19, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-554X

PERRY COUNTY PORT AUTHORITY D/B/A HOOSIER SOUTHERN RAILROAD--
DISCONTINUANCE EXEMPTION--IN SPENCER COUNTY, IN

Decided: October 16, 1998

By petition filed July 1, 1998,¹ Perry County Port Authority d/b/a Hoosier Southern Railroad (HSR) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to discontinue service on a line of railroad known as the Rockport line extending north from milepost 0.0 at Rockport Junction to milepost 16.2 at Rockport, a distance of 16.2 miles in Spencer County, IN.² As part of the exemption, HSR also seeks to discontinue incidental trackage rights over approximately 1.1 miles of Norfolk Southern Railway Company's (NSR) main line extending from milepost 32.1-EB at Rockport Junction to milepost 33.2-EB at Lincoln City, also in Spencer County, IN.³ We will grant the discontinuance exemption, subject to standard employee protective conditions.

BACKGROUND

HSR is a Class III railroad owned by the Perry County Port Authority, a political subdivision of the State of Indiana. HSR currently operates over two rail lines which are in close proximity, but do not connect—the Tell City line, between Cannelton and Santa Claus, and the Rockport line.⁴

On April 11, 1998, pursuant to section 11 of their Lease Agreement and section 1 of their

¹ Notice of the filing was served and published in the Federal Register on July 21, 1998 (63 FR 39118).

² HSR also seeks exemption from the offer of financial assistance (OFA) subsidy provision of 49 U.S.C. 10904.

³ The trackage rights were used to reach the Lincoln City interchange while handling NSR traffic moving to and from the leased line.

⁴ There is a third line that HSR operates over, the Santa Claus line, which HSR apparently either leases or owns. See Perry County Port Authority d/b/a Hoosier Southern Railroad--Acquisition and Lease Exemption--Norfolk Southern Railway Company, STB Finance Docket No. 33045 (STB served Sept. 12, 1996). The Santa Claus line and the "incidental trackage rights" connect the Tell City line to the Rockport line.

Interchange Agreement, NSR notified HSR that it was terminating the lease governing the Rockport line and the trackage rights over the 1.1-mile segment, effective May 31, 1998. Subsequently, NSR advised HSR that it had resumed complete operation, maintenance and control of the Rockport line as of June 1, 1998.

According to HSR, traffic on the Rockport line in 1996, 1997, and the first five months of 1998, amounted to 125, 381, and 405 carloads, respectively, and included such commodities as fly ash, machinery, and company materials. HSR states that it has interchanged all of these loads with NSR, the only Class I railroad with which the line connects. HSR states that no shipper will lose service or routing options because NSR has resumed providing all common carrier service on the line.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail carrier may not discontinue operations without prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued 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 necessary to protect shippers from the abuse of market power.

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of a discontinuance application, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also promote a safe and efficient rail transportation system, foster sound economic conditions, ensure coordination between rail carriers and other modes, and encourage efficient management by allowing HSR to discontinue operations on a line over which NSR has resumed service [49 U.S.C. 10101(3), (5) and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Because NSR is providing service on the line and no shipper will be without service, we find that regulation is not necessary to protect shippers from an abuse of market power. Nevertheless, to ensure that the shippers are informed of our action, we will require HSR to serve a copy of this decision on all shippers on the Rockport line and the connecting 1.1-mile NSR segment within 5 days of the service date of this decision and certify to us that it has done so. Given our market power finding, we need not determine whether the proposed discontinuance is limited in scope.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, we will impose the employee protective conditions set forth in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979).

Because this is a discontinuance proceeding and not an abandonment, we need not consider OFAs to acquire the line for continued rail service, trail use requests, or requests to negotiate for

public use of the line. This proceeding is exempt from environmental reporting requirements under 49 CFR 1105.6(c)(6) and from historic reporting requirements under 49 CFR 1105.8(b)(3). As such, this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

HSR also seeks to be exempted from the OFA subsidy provision of 49 U.S.C. 10904. Exemptions from this provision are only rarely granted (i.e., there must be a compelling need to use the property for a valid public purpose and no overriding public need for continued rail service). See, e.g., Norfolk and Western Railway Company--Abandonment Exemption--In Cincinnati, Hamilton County, OH, STB Docket No. AB-290 (Sub-No. 184X), slip op. at 11 (STB served May 13, 1998). Here, NSR has exercised its option, contained in a private contractual agreement, to terminate its lease with HSR. Although service over the line has continued with NSR resuming service, Congress in section 10904 has established a procedure to address the need for continued rail service when a carrier is authorized to abandon or discontinue service over a line. It would be inappropriate for us to subordinate that process to a private agreement simply because interested parties find it preferable to use such a mechanism. Under section 10904 "any" financially responsible person has the right to offer financial assistance to avoid abandonment or discontinuance. Moreover, the statute specifically contemplates that multiple offers to subsidize a rail line may be made. Thus, HSR's request for an exemption from the OFA subsidy provision will be denied.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903 the discontinuance of service by HSR of its operations as described above, subject to the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979).
2. HSR is directed to serve a copy of this decision on all shippers on the Rockport line and the connecting 1.1-mile NSR segment within 5 days after the service date of this decision and certify to us that it has done so.
3. An OFA under 49 CFR 1152.27(b)(2) to subsidize continued rail service must be received by the railroad and the Board by October 29, 1998, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by a \$1,000 filing fee. See 49 CFR 1002.2(f)(25).
4. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: "**Office of Proceedings, AB-OFA.**"
5. Petitions to stay must be filed by November 3, 1998. Petitions to reopen must be filed by

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November 13, 1998.

6. Provided no OFA to subsidize continued rail service has been received, this exemption will be effective on November 18, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary