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SERVICE DATE – OCTOBER 27, 2014

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35812

CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY—ACQUISITION
EXEMPTION—CERTAIN ASSETS OF CITY OF TACOMA IN PIERCE COUNTY, WASH.

Digest:¹ The Central Puget Sound Regional Transit Authority (Sound Transit) does not need Board authorization to acquire certain assets of the City of Tacoma in Pierce County, Wash. Tacoma Rail, a rail carrier owned and operated by the City of Tacoma, will retain the legal obligation and ability to provide freight rail service, and Sound Transit will not be able to interfere unreasonably with that service.

Decided: October 24, 2014

The Board is granting the motion filed by Central Puget Sound Regional Transit Authority (Sound Transit) to dismiss its notice of exemption filed in this proceeding to acquire the right-of-way and physical assets of a one-mile rail line segment from the City of Tacoma (City). We find that 49 U.S.C. § 10901 does not apply to this sale because Tacoma Rail, a Class III rail carrier owned and operated by the City, will retain an exclusive, perpetual freight rail operating easement to fulfill its freight rail common carrier obligations on the rail line, and Sound Transit cannot unduly interfere with freight rail service.

BACKGROUND

The City, through its Department of Public Utilities, owns and operates Tacoma Rail, a Class III rail carrier,¹ which has over 204 miles of track comprising three operating divisions: the Tidelines Division, the Capital Division, and the Mountain Division, located in Pierce, Thurston, and Lewis Counties. Sound Transit, a noncarrier, is a Washington regional transit authority that operates the Sounder commuter rail service that serves Pierce, King, and Snohomish Counties. Its commuter service currently operates on the Mountain Division pursuant to an operating agreement with the City.

On April 15, 2014, Sound Transit filed a verified notice of exemption under 49 C.F.R. § 1150.31 to acquire from the City the physical assets and right-of-way of the Tacoma Dome

¹ See Belt Line Div. of Tacoma Pub. Utils.—Operation Exemption—in Pierce, Thurston & Lewis Cntys., Wash., FD 33666 (STB served Nov. 6, 1998).

Segment, an approximately one-mile segment of the Mountain Division, located between milepost 1.0, at the BNSF Railway Company (BNSF) mainline near the Port of Tacoma, and milepost 1.99, at East D Street in the City of Tacoma, Pierce County, Wash.² Simultaneously, Sound Transit filed a motion to dismiss the notice, asserting that the transaction is not subject to the Board's jurisdiction because Sound Transit will not become a common carrier as a result of the transaction.

On August 4, 2014, the Board served a decision stating that it lacked certain information about the existing and future freight rail service provided by Tacoma Rail necessary to make a determination as to whether, after the acquisition, Tacoma Rail would maintain sufficient control of the Tacoma Dome Segment to continue fulfilling its common carrier obligation. The Board was particularly concerned about Tacoma Rail's ability to meet the needs of its shippers during the course of Sound Transit's normal commuter operations, as well as during the construction of capital improvements that Sound Transit plans to make. Consequently, the Board directed Sound Transit and Tacoma Rail to submit a statement clarifying those issues. The Board also directed Tacoma Rail to serve a copy of the decision on all shippers for which it has provided service in the past two years, and to certify that it had done so. The shippers were invited to submit comments.

On August 21, 2014, Sound Transit filed a supplemental statement that addressed the concerns raised by the Board. No shippers filed comments. For the reasons discussed below, we will grant Sound Transit's motion to dismiss.

DISCUSSION AND CONCLUSIONS

The question is whether our regulatory approval is required for Sound Transit to acquire the track, right-of-way and other physical assets comprising the Tacoma Dome Segment, where Tacoma Rail would retain a permanent, exclusive, and irrevocable easement to conduct common carrier freight rail operations. The acquisition of an active rail line and the common carrier obligation that goes with it ordinarily requires Board approval. Where the acquiring entity is a noncarrier, the standard for approval is set out in 49 U.S.C. § 10901, even if the acquiring entity, including a state, is a noncarrier. See Common Carrier Status of States, State Agencies & Instrumentalities, & Political Subdivisions, 363 I.C.C. 132, 133 (1980), aff'd sub nom. Simmons v. ICC, 697 F.2d 326 (D.C. Cir. 1982). But when the carrier selling a rail line retains an exclusive, permanent easement to provide common carrier freight service and has sufficient control over the line to carry out its common carrier obligations, the Board (and its predecessor agency, the Interstate Commerce Commission (ICC)) typically has found that authorization is not required, and that ownership of the line remains with the selling carrier for purposes of § 10901(a)(4). See Me. Dep't of Transp.—Acquis. & Oper. Exemption—Me. Cent. R.R. (State of Maine), 8 I.C.C. 2d 835, 836-37 (1991); Mich. Dep't of Transp.—Acquis. Exemption—Certain Assets of Norfolk S. Ry., FD 35606, slip op. at 3 (STB served May 8, 2012); Mass. Dep't of Transp.—Acquis. Exemption—Certain Assets of CSX Transp., Inc., FD 35312, slip op.

² Notice of the exemption was served and published in the Federal Register on May 1, 2014 (79 Fed. Reg. 24,811).

at 6 (STB served May 3, 2010) aff'd sub nom. Bhd. of R.R. Signalmen v. STB, 638 F.3d 807 (D.C. Cir. 2011).

In its motion to dismiss, Sound Transit states that it intends to acquire the physical assets and associated right-of-way from the City in order to continue its commuter operations over the Tacoma Dome Segment and to initiate capital improvements associated with its commuter rail service. Sound Transit states that, pursuant to a Purchase and Sale Agreement and Joint Use Agreement for the Tacoma Dome Segment, Tacoma Rail would retain a permanent, exclusive freight rail easement and would continue to provide all common carrier rail service to existing and new customers on the line. Sound Transit claims that it would not become a rail carrier subject to the regulatory authority of the Board because it would not acquire any rights or obligations that implicate existing freight common carrier operations on the Tacoma Dome Segment. Sound Transit therefore seeks a determination from the Board that its acquisition transaction is not subject to the Board's jurisdiction under 49 U.S.C. § 10901.

Sound Transit reasserts in its supplemental statement that its acquisition of the Tacoma Dome Segment would not adversely affect Tacoma Rail's ability to provide freight service and fulfill its common carrier obligation. According to the supplemental statement, Tacoma Rail serves 15 freight customers on the Tacoma Dome Segment twice a week, currently operates four trains per week, and conducts freight operations outside the commuter operating windows of 4:00 AM – 8:00 AM and 4:00 PM – 8:00 PM. Tacoma Rail states that it has no plans to change this schedule. The supplemental statement further indicates that, should construction activities related to its capital improvements render the Tacoma Dome Segment unavailable during the day, Tacoma Rail may also operate during overnight hours when construction activities have ceased (specifically, from 11:00 PM and 7:00 AM on weekdays and 11:00 PM and 9:00 AM on weekends). The supplemental statement notes that, during construction periods, Tacoma Rail may work with BNSF to make available an alternative access point should construction activities temporarily prevent operation over the Tacoma Dome Segment.

Because Tacoma Rail would continue to have sufficient access to the Tacoma Dome Segment to conduct its freight operations, we are satisfied that it would be able to continue to fulfill its common carrier obligation once the Purchase and Sale Agreement and Joint Use Agreement terms take effect. We are also satisfied that those agreements are consistent with the Board's State of Maine precedent. Therefore, no Board authorization for Sound Transit's purchase of the right-of-way and trackage of the Tacoma Dome Segment is required. Sound Transit's motion to dismiss the notice will be granted.

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

It is ordered:

1. The motion to dismiss the notice filed by Sound Transit is granted and the notice is dismissed.

2. This decision will be effective on its service date.

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