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SERVICE DATE – MARCH 13, 2014

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35791

UNION PACIFIC RAILROAD COMPANY – ACQUISITION AND OPERATION
EXEMPTION – BROWNSVILLE AND MATAMOROS BRIDGE COMPANY

Docket No. AB 33 (Sub-No. 306X)

UNION PACIFIC RAILROAD COMPANY – ABANDONMENT AND DISCONTINUANCE
EXEMPTION – IN CAMERON COUNTY, TEX.

Docket No. AB 1091X

BROWNSVILLE AND MATAMOROS BRIDGE COMPANY – ABANDONMENT
EXEMPTION – IN CAMERON COUNTY, TEX.

Digest:¹ This decision allows the Union Pacific Railroad Company (UP) to acquire and operate a 0.8-mile rail line owned by Brownsville and Matamoros Bridge Company beginning at the connection to UP's Brownsville Subdivision and extending to the international border with Mexico. This decision is subject to standard employee protective conditions.

Decided: March 10, 2014

The three proceedings at issue here arise out of the Brownsville/Matamoros West Rail Relocation Project, an undertaking to relocate a portion of the rail operations of Union Pacific Railroad Company (UP) between Olmito Junction in Cameron County, Tex., and the border with Mexico. As part of its implementation of that project, UP filed a petition on December 16, 2013, pursuant to 49 U.S.C. § 10502, for an individual exemption from the prior approval requirements of 49 U.S.C. §§ 11323-25 to acquire and operate the 0.8-mile rail line owned by Brownsville and Matamoros Bridge Company (B&M) beginning at the connection to UP's Brownsville Subdivision at UP milepost 0.59 (B&M milepost 0.80), and running to the border with Mexico located at the center point of B&M's railroad bridge (B&M milepost 0.00) that crosses the Rio Grande River (B&M Bridge Line).² The B&M Bridge Line connects with UP's Brownsville

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 UP Pet. 2, Dec. 16, 2013.

Subdivision, which extends from UP milepost 7.60 at Olmito Junction to milepost 0.59 at Brownsville, Cameron County, Tex. (collectively, the Line).³ UP intends to relocate the overhead traffic currently moving on the Line to the newly constructed West Rail Relocation Project running from UP milepost 7.60 at Olmito Junction to the border with Mexico over UP's new international rail bridge at UP milepost 1.7, a distance of approximately 6 miles. UP's stated purpose is not to open up new traffic routes or extend into new territory, but to continue to serve the same shippers more safely and efficiently on the acquired and relocated lines.

UP and B&M had previously filed petitions for exemption to abandon and discontinue service on the Line on December 20, 2012, but UP indicates that it now believes the planned relocation of its traffic to the newly constructed line and bridge has made those proceedings unnecessary if UP obtains authority to acquire and operate over the B&M Bridge Line.⁴ Accordingly, UP requests that its December 16, 2013 petition for exemption to acquire and operate the B&M Bridge Line be considered in lieu of the previously filed abandonment and discontinuance petitions, and argues that the Board should permit the abandonment and discontinuance petitions to be withdrawn.⁵ We will grant UP's petition for exemption in FD 35791, subject to standard employee protective conditions. We will also allow UP and B&M to withdraw their petitions for exemption in AB 33 (Sub-No. 306X) and AB 1091X, because abandonment and discontinuance authority is unnecessary here.

BACKGROUND

UP is a Class I rail carrier with operations in 24 states.⁶ UP states that B&M is a common carrier with authority to operate over the B&M Bridge Line, but that UP conducts all of B&M's common carrier operations in the United States.⁷ UP states that, through a series of mergers and acquisitions, it currently owns 50 percent of B&M, with the government of Mexico owning the other 50 percent.⁸ UP explains that it is currently the sole provider of rail service on the B&M Bridge Line (overhead movements to and from Mexico).⁹ UP further notes that BNSF Railway Company (BNSF) has unexercised overhead trackage rights that would permit it to operate on the B&M Bridge Line as a result of the Board's decision in Union Pacific Corporation – Control and Merger – Southern Pacific Rail Corporation (Decision No. 44),

³ Id. at 5.

⁴ Notice of the proposed abandonment and discontinuance in Docket Numbers AB 33 (Sub-No. 306X) and AB 1091X was served and published in the Federal Register on January 9, 2013. (78 Fed. Reg. 1,935). At the request of the parties, those proceedings were subsequently held in abeyance by a decision served on April 9, 2013.

⁵ UP Letter 1, Dec. 16, 2013.

⁶ UP Pet. 6, Dec. 16, 2013.

⁷ Id.

⁸ Id. at 2.

⁹ Id.

1 S.T.B. 233 (1996), but explains that these rights would continue under the proposed transaction.¹⁰

UP states that the West Rail Relocation Project and the new international bridge were authorized by Presidential Permit 04-1, issued on October 1, 2004.¹¹ According to UP, the goals of the West Rail Relocation Project are to enable:

(1) removal of the existing rail system from residential and downtown areas of Brownsville and Matamoros, thereby improving safety and reducing congestion and noise; (2) elimination of at-grade road crossings, reducing air pollution from vehicles idling while awaiting passage of trains; and (3) reduction in the communities' immediate exposure to potential derailment-related hazmat accidents and rail car explosions.¹²

As described above, the B&M Bridge Line connects directly to UP's Brownsville Subdivision. UP is seeking to establish exclusive operating authority over the B&M Bridge Line, which together with its authority over the Brownsville Subdivision, would mirror its exclusive operations on the West Rail Relocation Project and would thereby qualify as a relocation of its current rail operations on the Line. To implement its plans, UP entered into a Letter Agreement with B&M on October 30, 2013, by which UP agreed to acquire all of B&M's common carrier authority on the B&M Bridge Line subject to regulatory approval.¹³

UP states that there are no shippers or local traffic on the B&M Bridge Line, only overhead traffic moving to and from Mexico.¹⁴ UP claims that its proposed acquisition of B&M's authority on the B&M Bridge Line and the subsequent relocation of the Line will have no adverse impact on any rail-served customers. Rather, the stated purpose of the proposed acquisition is to permit use of the West Rail Relocation Project to handle this traffic, thereby making UP's current operations more efficient and safer and benefitting communities in the Brownsville area.¹⁵

According to UP, no anticompetitive effects would result from the proposed transaction.¹⁶ UP asserts that under the West Rail Relocation Project, "the northern and eastern portions of Brownsville, Tex. areas, including the port of Brownsville, will continue to receive

¹⁰ Id. at 6 n. 2.

¹¹ Id. at 3; see also UP Pet. Ex. 3, Dec. 16, 2013.

¹² Id. at 3; see also id. at Ex. 4.

¹³ Id.; see also id. at Ex. 3.

¹⁴ Id. at 6.

¹⁵ UP Pet. 6, 10, Dec. 16, 2013.

¹⁶ Id. at 10.

rail service from UP, BNSF and the Brownsville and Rio Grande International Railroad.”¹⁷ Moreover, BNSF’s existing authority for overhead trackage rights on the Line pursuant to Decision 44 would continue.¹⁸ UP also states that the proposed transaction is of limited scope because its acquisition of B&M’s common carrier operating authority would maintain the continuity of rail service when UP relocates traffic to the West Rail Relocation Project.¹⁹ In addition, all routings and services available currently to shippers using the Line and the B&M Bridge Line would continue to be available via the West Rail Relocation Project.²⁰ UP argues that even if the proposed transaction were not of limited scope, the proposed transaction would not result in an abuse of market power.²¹ UP explains that it and its predecessors have managed operations on the B&M Bridge Line since rail operations began over it, and that the proposed transaction would maintain the continuity of that service, using the new West Rail Relocation Project.²² No shippers or other parties have filed any objections or opposition to the proposed transaction.

DISCUSSION AND CONCLUSIONS

Pursuant to 49 U.S.C. § 11323(a)(2), prior Board approval is required for a rail carrier to acquire and operate the property of another rail carrier. Under 49 U.S.C. § 10502, however, the Board must exempt a transaction or service from regulation if it finds 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 the abuse of market power.

An exemption from the prior approval requirements of 49 U.S.C. §§ 11323-25 is consistent with the standards of 49 U.S.C. § 10502. Detailed scrutiny of this transaction is not necessary here to carry out the rail transportation policy of 49 U.S.C. § 10101. UP would acquire the common carrier obligations of B&M, an entity in which it maintains 50 percent ownership and for which it has historically performed all rail operations. The stated purpose of the proposed transaction is to maintain the continuity of these operations and facilitate the relocation of rail services to the new West Rail Relocation Project. UP has demonstrated that there would be no anticompetitive effects as a result of the proposed transaction. Specifically, UP has shown that there would not be a loss of rail competition or a reduction in service. As no shippers are located on the B&M Bridge Line, there would be no adverse impact on local shippers. An exemption from the application process would expedite regulatory action and reduce regulatory barriers to entry and exit, in accordance with 49 U.S.C. §§ 10101(2) and (7). An exemption would also foster sound economic conditions and encourage efficient rail

¹⁷ Id. at 6-7.

¹⁸ Id. at 6 n.2.

¹⁹ Id. at 11.

²⁰ Id. at 11-12.

²¹ UP Pet. 12, Dec. 16, 2013.

²² Id.

operations by relocating overhead rail operations to and from Mexico away from the downtown area of Brownsville. Other aspects of the rail transportation policy would not be adversely affected by use of the exemption process.

Regulation of the proposed transaction is not needed to protect shippers from the abuse of market power.²³ The proposed transaction would give UP operating authority on the B&M Bridge Line, which would permit a relocation of service to the West Rail Relocation Project. All service that is currently conducted over the B&M Bridge Line would continue when operations begin on the West Rail Relocation Project, and UP anticipates no material change in the level or nature of the rail service currently provided to shippers. According to UP, all operations would continue to run as they currently do, albeit in a more efficient and safe manner. Thus, shippers would not be adversely impacted by this transaction.

As noted above, BNSF has authority for overhead trackage rights on the Line, which includes the B&M Bridge line, pursuant to the conditions imposed by the Board in Decision No. 44.²⁴ These rights would continue under the proposed transaction because, as part of the relocation, all of BNSF's operating rights would transfer from the Line to the West Rail Relocation Project.²⁵ Therefore, BNSF would continue to have identical overhead trackage rights on the new line.

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 employees. Accordingly, as a condition to granting this exemption, the Board will impose the standard employee protective conditions established in New York Dock Railway—Control—Brooklyn Eastern District Terminal, 360 I.C.C. 60 (1979), as modified by Wilmington Terminal Railroad—Purchase & Lease—CSX Transportation, Inc., 6 I.C.C.2d 799, 814-26 (1990).

This transaction is exempt from the environmental reporting requirements under 49 C.F.R. § 1105.6(c)(2)(i) because it will not result in a significant change in carrier operations.²⁶ Similarly, the transaction is exempt from the historic reporting requirements under 49 C.F.R. § 1105.8(b)(1) because there are no plans to alter railroad properties 50 years old or older.

²³ Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

²⁴ Hence UP's request for exclusive operating rights on the B&M Bridge Line would continue to be subject to the BNSF trackage rights.

²⁵ See UP Pet. 6 n.2, Dec. 16, 2013.

²⁶ We note that significant environmental review with respect to the West Rail Relocation Project was undertaken by the Department of State, which prepared an Environmental Assessment finding no significant impact. (69 Fed. Reg. 35,698). See also UP Pet. Ex. 4, Dec. 16, 2013.

Finally, the Board will grant UP's request to withdraw its petitions for abandonment and discontinuance of the Line (Docket Nos. AB 33 (Sub-No. 306X) and AB 1091X). As UP notes, our decision to authorize its proposal to acquire and operate over the B&M Bridge Line means that the planned shift of operations from the Line to the West Rail Relocation Project would be a relocation that does not require separate authorization from the Board because the new line will not invade or penetrate new territory. See Union Pac. R.R. – Pet. For Declaratory Order – Rehabilitation of Mo.-Kan.-Tex. R.R., 3 S.T.B. 646 (1998); City of Detroit v. Canadian Nat'l Ry., 9 I.C.C.2d 1208, 1218-1219 (1993), aff'd sub nom. Detroit/Wayne Cnty. Port Auth. v. ICC, 59 F.3d 1314 (D.C. Cir. 1995). The Board only requires authority for the abandonment, construction, or sale components of a relocation project such as this where the removal of track affects service to shippers or the construction of new track or transfer of existing track involves the extension of a line or an expansion into new territory. City of Detroit, 9 I.C.C.2d at 1217-19; Flats Indus. R.R. & Norfolk S. Ry.—Joint Relocation Project Exemption—in Cleveland, Ohio, FD 34108 (STB served Nov. 15, 2001). Under this standard, the relocation of the Line to the West Rail Relocation Project does not require Board authority. The new line of rail is located outside the City of Brownsville and crosses the border with Mexico approximately 15 river miles north and west on the Rio Grande River from the B&M Bridge Line. UP has demonstrated that no shippers are located on the Line and that the shippers using the Line for overhead traffic would continue to receive the same level of service. Nor would the relocation of the Line allow UP to enter new markets or serve new shippers—UP's stated purpose here is to continue to serve the same markets and the same shippers more efficiently and safely via the new overhead route.

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. § 11323-25, subject to the employee protective conditions in New York Dock Railway—Control—Brooklyn Eastern District Terminal, 360 I.C.C. 60 (1979), as modified by Wilmington Terminal Railroad—Purchase & Lease—CSX Transportation, Inc., 6 I.C.C.2d 799, 814-26 (1990).
2. UP's request to withdraw the proceedings in AB 33 (Sub-No. 306X) and AB 1091X is granted.
3. Notice will be published in the Federal Register on March 13, 2014.
4. The exemption will become effective on April 2, 2014.
5. Petitions to stay must be filed by March 21, 2014. Petitions to reopen must be filed by March 28, 2014.

By the Board, Chairman Elliott and Vice Chairman Begeman.