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SERVICE DATE - JULY 21, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-566X

GATEWAY WESTERN RAILWAY COMPANY--DISCONTINUANCE OF SERVICE
EXEMPTION-- IN JACKSON COUNTY, MO

Decided: July 12, 2000

By petition filed on April 3, 2000,¹ Gateway Western Railway Company (Gateway) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to discontinue service over a line of railroad that it operates under a lease agreement with The Burlington Northern and Santa Fe Railway Company (BNSF). The line, known as the Coburg Line, extends 5.45 miles from milepost 0.0 at Sheffield Interlocking to milepost 5.45 near BV Junction, in Jackson County, MO. We will grant the exemption, subject to standard employee protective conditions.

BACKGROUND

Gateway, a Class II rail carrier, operates approximately 460 miles of rail line in Illinois, Missouri, and Kansas. It has operated BNSF's Coburg Line pursuant to a lease that took effect on August 1, 1997.² Initially, Gateway provided service to four shippers on the line: Aspen Products, Inc.; Havens Steel; KC Reload Center, Inc. (Reload); and Wabash Fibre Box Company. Shortly after service began, however, Reload relocated its operations to another BNSF line. Thus, there are three remaining shippers on the Coburg Line and no overhead traffic moves over the line.

On June 1, 1999, Gateway served timely notice on BNSF that it was terminating the lease agreement effective July 31, 1999.³ According to Gateway, BNSF then resumed exclusive

¹ Notice of the filing was served and published in the Federal Register on April 21, 2000 (65 FR 21502).

² See Gateway Western Railway Company--Lease Exemption--The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 33408 (STB served Oct. 8, 1997).

³ The initial term of the lease was for 2 years, subject to automatic extensions for successive 3-year terms, unless either party served written notice of termination 60 days prior to the expiration of any given term. Gateway states that it decided to terminate the lease agreement because it has been unable to expand the traffic on the line beyond levels historically moved by
(continued...)

service on the line. Consequently, Gateway contends that no shippers will lose rail service as a result of the discontinuance.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail carrier may not discontinue operations without our 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 the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions and encourage efficient management by allowing Gateway to discontinue operations on a line over which BNSF has resumed service [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Because service is being continued by the owner of the line, regulation is not necessary to protect shippers from the abuse of market power. Nevertheless, to ensure that the shippers are informed of our action, we will require Gateway to serve a copy of this decision on all shippers on the line 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 offers of financial assistance (OFA) to acquire the line for continued rail service, trail use requests, or requests to negotiate for public use of the line. This proceeding is also exempt from environmental reporting requirements under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8(b). As such, it will not significantly affect either the quality of the human environment or the conservation of energy resources.

³(...continued)
BNSF.

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 Gateway 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. Gateway is directed to serve a copy of this decision on all shippers on the line within 5 days after the service date of this decision and to 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 July 31, 2000, 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 August 7, 2000. Petitions to reopen must be filed by August 15, 2000.

6. Provided no OFA to subsidize continued rail service has been received, this exemption will be effective on August 20, 2000.

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

Vernon A. Williams
Secretary