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SERVICE DATE - JULY 7, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33876

STATE OF GEORGIA, DEPARTMENT OF TRANSPORTATION—ACQUISITION
EXEMPTION—GEORGIA SOUTHWESTERN RAILROAD, INC.

Decided: June 30, 2000

On May 15, 2000, the State of Georgia, Department of Transportation (GDOT), filed a verified notice of exemption under 49 CFR 1150.31 (notice) to acquire from Georgia Southwestern Railroad, Inc. (GSWR) certain railroad assets, including approximately 71.13 miles of rail line extending between Rochelle, GA (milepost 644.00), and a point near Preston, GA (milepost 713.00), and between Omaha, GA (milepost 753.00), and Mahrt, AL (milepost 755.13) (the line).¹ Simultaneously, GDOT filed a motion to dismiss the notice. In its motion, GDOT states that it will acquire certain rail line assets but that another entity has acquired a permanent easement to provide common carrier freight service over the line. GDOT asserts that neither it nor the State of Georgia will become a common carrier as a result of the transaction, and consequently the transaction is not subject to Board jurisdiction. The motion will be granted.

BACKGROUND

GDOT, a noncarrier, states that it will enter into an agreement with GSWR to acquire the rail line assets (the rail, ties, right-of-way, and associated rail property with regard to the line) but not the right or obligation to conduct common carrier freight operations over the line. GDOT states that the Heart of Georgia Railroad, Inc. (HOG) has acquired the exclusive rail freight service easement over the line pursuant to a separate agreement.² That acquisition was the subject of a separate notice of exemption in Heart of Georgia Railroad, Inc.—Acquisition and Operation Exemption—State of Georgia and Georgia Southwestern Railroad, Inc., STB Finance Docket No. 33867 (STB served May 4, 2000). According to GDOT, HOG acquired the entirety of the common carrier obligation for freight service over the line. GDOT maintains that, upon completion of the transaction, neither it nor GSWR will have a residual common carrier obligation to provide freight services to any person on the line.

¹ The notice was served and published in the Federal Register on May 25, 2000 (65 FR 33882).

² A copy of the Permanent Freight Railroad Operating Easement (easement agreement) between GSWR and HOG was attached as Exhibit B to GDOT's motion.

GDOT argues that the Board should dismiss the notice because GDOT's acquisition of the rail line assets will not make it a carrier, and the transaction is not subject to the Board's jurisdiction, citing Maine, DOT — Acq. Exemption, Me. Central R. Co., 8 I.C.C.2d 835 (1991) (State of Maine). GDOT avers that, as a noncarrier, it is merely purchasing the rail line assets exclusive of the right or obligation to conduct common carrier operations over the line. GDOT asserts that the only difference between this transaction and State of Maine is that GSWR has already transferred the permanent freight easement to HOG, which has both the intent, and the unconditional ability, to assume and exercise its common carrier rights and obligations.

DISCUSSION AND CONCLUSIONS

GDOT's motion will be granted and the proceeding discontinued. The sole issue is whether Board approval is required for the proposed transfer of rail line assets from GSWR, a rail carrier, to GDOT, a noncarrier. Ordinarily, acquisition of an active rail line by a noncarrier requires Board approval under 49 U.S.C. 10901 and the new owner is obligated to provide service over the line.

Here, however, the circumstances of this transaction do not require Board action. On the basis of the representations made by the parties, we find that GDOT will not conduct any operations over the line and will not hold itself out to do so. By merely acquiring rail line assets from GSWR, GDOT will not become a carrier or acquire a common carrier obligation. See State of Maine. Conversely, under the easement agreement, HOG has the ability to provide unrestricted freight service as a railroad common carrier over the line. Specifically, HOG's easement agreement enables it to carry out its common carrier obligation and gives it more than sufficient power over the operation and maintenance of the line to avoid any undue interference by GDOT. For these reasons, we will grant the relief sought by GDOT.

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

It is ordered:

1. GDOT's motion to dismiss the verified notice of exemption is granted.
2. The proceeding is discontinued.

3. This decision is effective on its date of service.

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

Vernon A. Williams
Secretary