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SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33603

RICHARD B. WEBB AND SUSAN K. LUNDY--CONTROL EXEMPTION--
BLUE MOUNTAIN RAILROAD, INC. AND SOUTHEAST KANSAS RAILROAD COMPANY

Decided: August 7, 1998

By petition filed May 15, 1998, Richard B. Webb, Susan K. Lundy, South Kansas and Oklahoma Railroad Company (SKO), and the Palouse River & Coulee City Railroad, Inc. (PRCC) (collectively petitioners), seek an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 11323-25 for: (1) Mr. Webb and Ms. Lundy to acquire indirect control of Blue Mountain Railroad, Inc. (BMR), and Southeast Kansas Railroad Company (SEK), through their direct control of SKO and PRCC; and (2) SKO to acquire control of all of the outstanding stock of SEK, and PRCC to acquire control of all of the outstanding stock of BMR.

BACKGROUND

Mr. Webb and Ms. Lundy currently control two Class III rail carriers, SKO and PRCC, through stock ownership and management.[1] Mr. Webb owns 51% of the outstanding shares of SKO and PRCC, and his sister, Ms. Lundy, owns 49% of the shares of each company. Petitioners state that, once the acquisitions of SEK and BMR are consummated, a noncarrier holding company will be formed to become the parent of SKO and PRCC, and the indirect parent of SEK and BMR.[2]

SKO was formed at the end of 1990, when it acquired 286.77 miles of rail line from The Atchison, Topeka and Santa Fe Railway Company. As a result of subsequent line acquisitions, leases and abandonments, SKO currently operates over approximately 395 miles of rail lines as follows: (1) the Moline Subdivision, between Fredonia and Winfield, KS; (2) the Tulsa Subdivision, between Iola, KS, and Tulsa, OK; (3) the Coffeyville Subdivision, between Cherryvale and Coffeyville, KS; (4) between Owasso and Catoosa, OK; (5) between Columbus and Severy, KS; and (6) between Blackwell, OK, and Wellington, KS. The principal commodities handled by SKO

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[1] After the petition was filed, Mr. Webb and Ms. Lundy were authorized to acquire control of two additional Class III carriers, Stillwater Central Railroad, Inc., and Timber Rock Railroad, Inc. See Richard B. Webb and Susan K. Lundy--Continuance in Control Exemption--Stillwater Central Railroad, Inc., STB Finance Docket No. 33619 (STB served July 10, 1998), and Richard B. Webb and Susan K. Lundy--Continuance in Control Exemption--Timber Rock Railroad, Inc., STB Finance Docket No. 33623 (STB served July 15, 1998).

[2] At a later date, petitioners expect to merge SEK into SKO, and BMR into PRCC, and will seek appropriate Board approval for these transactions.

are grain and grain products. SKO interchanges traffic with SEK at Sherwin and Coffeyville, KS.

PRCC was formed in 1996, when it acquired approximately 277.3 miles of rail line from the Burlington Northern Railroad Company (BN). PRCC's rail lines are located in Washington and Idaho as follows: (1) between Cheney and Coulee City, WA; (2) between Marshall, WA, and Moscow, ID; and (3) between Palouse, WA, and Bovill, ID. The commodities handled by PRCC include fertilizer, grain, lumber, and liquefied petroleum gas (LPG).

BMR is a Class III rail carrier that was formed in 1992, when it acquired 112.8 miles and leased 94.3 miles of rail lines in Washington, Oregon and Idaho from the Union Pacific Railroad Company (UP). The rail lines that were acquired are located between: (1) Hooper Junction and Colfax, WA; (2) Winona and Thorton, WA; and (3) Colfax, WA, and Moscow, ID. The leased lines are located between: (1) Zanger Junction and Walla Walla, WA; (2) Dayton and Bolles, WA; and (3) Bolles, WA, and Weston, OR. In 1994, BMR leased a 6-mile line from BN between Walla Walla and Walair, WA. Subsequently, BMR obtained trackage rights over a 0.7-mile segment of BN line in Pullman, WA, and over two segments of UP line, totaling 10 miles, between Juniper, OR, and Wallula Heights, WA, and between Wallula and Attilia, WA.

BMR connects and interchanges traffic with the PRCC at Pullman, WA. According to petitioners, BMR and PRCC do not serve any common industries or compete directly for any traffic. BMR currently serves 38 customers on its lines that generate approximately 3,800 carloads of traffic annually. The commodities handled by BMR include grains, fertilizer, and LPG. BMR generated $2,100,000 in revenues in 1997.

SEK is a Class III rail carrier that, through a series of separate transactions, acquired and leased approximately 171.7 miles of rail line. Initially, SEK acquired a 104-mile line between Nassau Junction, MO, and Coffeyville, KS. In 1990, SEK acquired from Missouri Pacific Railroad Company (MP), pursuant to the offer of financial assistance (OFA) procedures, a 35.99-mile line between Tulsa and Barnsdale, OK.[3] Subsequently, SEK leased 31.7 miles of MP lines in two noncontiguous segments that extend from South Coffeyville, KS, to Bartlesville, OK. In 1996, SEK acquired from BN, through the OFA procedures, a 3.38-mile line in Pittsburg, KS. As a result of the recent abandonment of two line segments, SEK currently operates approximately 115 miles of rail lines in northeastern Oklahoma, southeastern Kansas, and southwestern Missouri.

SEK connects and interchanges traffic with SKO at Sherwin and Coffeyville, KS. According to petitioners, SEK and SKO do not serve any common industries and do not compete for any traffic. SEK currently serves 12 customers on its lines and handles approximately 5,700 carloads of traffic annually, the vast majority of which is interlined with other carriers. The primary commodities

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[3] That line is to be acquired by Sunbelt Railroad Historical Trust and is the subject of a notice of exemption in Sunbelt Railroad Historical Trust--Acquisition Exemption--Lines of the Southeast Kansas Railroad Company, STB Finance Docket No. 33634 (STB filed July 14, 1998).

handled by SEK include fertilizer, grain, coke and flour. SEK generated approximately $2,200,000 in revenues in 1997.

DISCUSSION AND CONCLUSIONS

The acquisition of control of a rail carrier by any number of rail carriers and the acquisition of control of a rail carrier by a person that is not a rail carrier but that controls any number of rail carriers requires prior approval by the Board under 49 U.S.C. 11323(a)(3) and (5), respectively. Under 49 U.S.C. 10502(a), 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 (RTP) 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 of the proposed transactions through an application for review and approval under 49 U.S.C. 11323-25 is not necessary to carry out the RTP of 49 U.S.C. 10101. Rather, an exemption will promote that policy by minimizing the need for Federal regulatory control over these transactions and reducing regulatory barriers to entry into and exit from the rail industry [49 U.S.C. 10101(2) and (7)]; ensuring that a sound rail transportation system will continue to meet the needs of the shipping public [49 U.S.C. 10101(4)]; and fostering sound economic conditions in transportation, ensuring effective coordination among carriers and encouraging efficient management [49 U.S.C. 10101(5) and (9)]. Other aspects of the RTP will not be affected adversely.

Regulation of the transactions is not necessary to protect shippers from the abuse of market power. According to petitioners, BMR and SEK do not have any customers in common with PRCC and SKO and the proposed transactions will improve the competitive options for shippers served by BMR and SEK by providing them extended single-line hauls and more interchange opportunities. Also, according to petitioners, the proposed transactions will similarly benefit the shippers using PRCC and SKO. The additional interline connections available for BMR and SEK shippers should result in expanded service options, improved service and competitive rates. Petitioners state that, while BMR and SEK will initially continue to be operated as separate carriers, the proposed transactions will enable petitioners to coordinate the operations of PRCC and BMR and the operations of SKO and SEK and, accordingly, produce operating efficiencies and economies that will benefit the shippers served by all four carriers.[4] Nevertheless, to ensure that the shippers are informed of our action, we will require petitioners to serve a copy of this decision on all shippers within 5 days of the service date of this decision and certify to us that they have done so.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Under 49 U.S.C. 11326(c), however, we may not impose labor protection for transactions under 49 U.S.C. 11324-25 that

[4] Given our market power finding, we need not determine whether the proposed transactions are limited in scope.

involve only Class III rail carriers. Because these transactions involve Class III rail carriers only, labor protective conditions may not be imposed under the statute.

These control transactions are exempt from environmental reporting requirements under 49 CFR 1105.6(c)(2)(i) because they will not result in any significant change in carrier operations. Similarly, the transactions are exempt from the historic reporting requirements under 49 CFR 1105.8(b)(3) because they will not substantially change the level of maintenance of railroad properties.

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, we exempt from the prior approval requirements of 49 U.S.C. 11323-25, the acquisition of control by petitioners as described above.

2. Petitioners must serve a copy of this decision on all shippers within 5 days after the service date of this decision and certify to the Board that they have done so.

3. Notice will be published in the Federal Register on August 18, 1998.

4. This exemption will be effective on September 17, 1998. Petitions to stay must be filed by September 2, 1998. Petitions to reopen must be filed by September 14, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary