

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34798

CITY OF ALAMEDA–ACQUISITION EXEMPTION–ALAMEDA BELTLINE RAILROAD

Decided: April 3, 2006

This decision denies a petition by Alameda Beltline Railroad (ABL or Petitioner) to stay the effectiveness of the notice of exemption filed in this proceeding by the City of Alameda, CA (the City). The decision also lifts a housekeeping stay entered by the Board on December 15, 2005, thereby removing an unnecessary obstacle to the disposition of the involved line of railroad.

BACKGROUND

The Belt Line. This proceeding concerns a line of railroad known as the Belt Line, purchased jointly by The Atchison, Topeka and Santa Fe Railway Company (ATSF) and the Western Pacific Railroad Company (WP) from the City on December 15, 1924, for \$30,000. The 1924 purchase agreement provided that the City had the option to repurchase the Belt Line, including “all extensions thereof,” for a sum equal to the original cost and the cost of any additional investments and additions. The City was merely required to give one year’s notice by city ordinance of its intention to repurchase the line.

ABL, jointly owned by ATSF and WP, was created for the sole purpose of operating the Belt Line. The original Belt Line was located along Clement Avenue, from a point 180 feet east of its intersection with Broadway, in a general westerly direction to the westerly line of Grand Street, a distance of 6,364.5 feet.¹ The Belt Line was subsequently extended to a length of 3.44 miles.² ABL is now jointly owned by the BNSF Railway Company (BNSF), as the successor to ATSF, and the Union Pacific Railroad Company (UP), as the successor to WP. In 1998, ABL granted local trackage rights to UP over 1.80 miles of the Belt Line, from milepost 0.00 to

¹ See Acquisition and Construction of Line by Alameda Belt Line, 105 I.C.C. 349, 350 (1926).

² In 1975, ABL received authorization to abandon 0.83 miles of the Belt Line, from milepost 2.61 to milepost 3.44.

milepost 1.80.³ The agreement called for UP to handle all rail cars as the operating agent for BNSF.

On October 6, 1999, the City's staff filed a report with the Mayor of Alameda alleging that ABL had cut back operations and sold parcels of its property. Based on the staff recommendation, on November 2, 1999, the Alameda City Council passed Ordinance 2817 N.S. and notified ABL of its intention to repurchase the remaining 2.61 miles of the Belt Line on December 4, 2000.

ABL filed suit in a California state court contesting the validity of the City's contractual repurchase option. The trial court granted ABL's motion for summary adjudication, and ruled that, as a matter of law, the repurchase option lacked the specificity required to comply with the Statute of Frauds. The California Court of Appeals reversed the trial court, and the case was remanded for trial, scheduled to begin in April 2006.⁴

The City's Exemption Notice. On December 9, 2005, the City, a noncarrier, filed a verified notice of exemption under 49 CFR 1150.31 to acquire the Belt Line from ABL. The City contends that, pursuant to the terms of the 1924 purchase agreement with ABL, it has an option to repurchase the rail line and associated property. The City states that the notice is intended to obtain the Board's permission to go ahead with the purchase of the Belt Line, should the California state court rule that it has such a right under the 1924 contract with ABL.

The Stay Petition. On December 15, 2005, ABL filed a petition to stay the City's notice of exemption. The Board issued a housekeeping stay that same day to allow time for the parties to provide additional information and for the Board to consider the issues presented in the stay request. Each party was asked to fully address the claims made by the other in its initial pleading, provide any other relevant information, and discuss the impact of any subsequent Board action on future rail service over the Belt Line. Both parties filed supplementary pleadings. The City moved for leave to file a limited reply, and ABL filed a reply to the reply.⁵

³ See Union Pacific Railroad Company–Trackage Rights Exemption–Alameda Belt Line, Finance Docket No. 33682 (STB served Nov. 24, 1998).

⁴ See Alameda Belt Line v. City of Alameda, 113 Cal.App.4th 15, 5 Cal.Rptr.3d 879, Cal.App. 1 Dist., 2003 (Nov. 4, 2003).

⁵ ABL seeks to have the City's reply rejected or, in the alternative, have the Board accept its pleading as a reply to a reply. Inasmuch as these pleadings add to the record and do not harm either party, they will be accepted for filing.

DISCUSSION AND CONCLUSIONS

The standards governing disposition of a petition for stay are: (1) whether petitioner is likely to prevail on the merits; (2) whether petitioner will be irreparably harmed in the absence of a stay; (3) whether issuance of a stay would substantially harm other parties; and (4) whether issuance of a stay is in the public interest. Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977). On a motion for stay, “it is the movant’s obligation to justify the . . . exercise of such an extraordinary remedy.” Cuomo v. United States Nuclear Regulatory Comm., 772 F.2d 972, 978 (D.C. Cir. 1985). The party seeking a stay carries the burden of persuasion on all of the elements required for such extraordinary relief. Canal Authority of Fla. v. Callaway, 489 F.2d 567, 573 (5th Cir. 1974).

Because ABL has not satisfied the standards for a stay, its stay petition will be denied. The City’s notice of exemption will be permitted to become effective.

The Merits. ABL has not demonstrated a likelihood of success on the merits regarding any of the issues raised in its stay petition and supplemental pleadings.

ABL argues that a stay is required because the class exemption process is procedurally inadequate to permit the Board to compile a record sufficient to resolve the issues raised by the City’s notice of exemption. Specifically, ABL relies on Board precedent that the class exemption process “is typically reserved for uncomplicated and noncontroversial matters.”⁶ The fact that ABL and the City are litigating the validity of the repurchase option in state court, however, does not make the City’s notice complicated or controversial insofar as use of the exemption is concerned.

The contractual dispute in state court does not bring into question the appropriateness of the exemption process so as to warrant a stay of the City’s notice of exemption. The South Dakota case that ABL cites concerned abandoned rail lines (the Core Lines) owned by the State of South Dakota (the State). Pursuant to a Modified Certificate of Public Convenience and Necessity issued under 49 CFR 1150.21, The Burlington Northern and Santa Fe Railway Company (BNSF) provided rail service over the Core Lines. BNSF filed a notice of exemption under 49 CFR 1150.31 to acquire the Core Lines, and argued that it had the right to purchase the Core Lines under the terms of its operating agreements with the State. The parties litigated the

⁶ The Burlington Northern and Santa Fe Railway Company—Acquisition and Operation Exemption—State of South Dakota, STB Finance Docket No. 34645 (STB served Jan. 14, 2005) (South Dakota). Accord Riverview Trenton Railroad Company—Acquisition and Operation Exemption—Crown Enterprises, Inc., STB Finance Docket No. 33980, and Riverview Trenton Railroad Company—Petition for an Exemption from 49 U.S.C. 10901 to Acquire and Operate a Rail Line in Wayne County, MI, STB Finance Docket No. 34040 (STB served Feb. 15, 2002) (Riverview Trenton).

contractual purchase option in state court, while the State filed a petition to stay the notice of exemption. The Board rejected BNSF's exemption notice (rendering the stay petition moot), because issues regarding what level of service would be provided over the line, and competitive access for small carriers that the State was likely to raise before the Board, complicated the transaction beyond the bounds intended for the class exemption procedure. In this case, by contrast, the City's notice of exemption does not involve major changes in the use of the Belt Line, and it does not involve complicated issues of competitive access for local small carriers. Therefore, the situation is not comparable.

Likewise, the City's notice of exemption does not mirror the complication or controversy of Riverview Trenton. In that case the Riverview Trenton Railroad Company (RTR) filed a notice of exemption under 49 CFR 1150.31 to acquire and operate a rail line in Wayne County, MI, that was also the subject of a potential condemnation action by Wayne County. The transaction required the creation of several interchange agreements with other carriers as part of the Consolidated Rail Corporation Detroit Shared Assets Area. The Board revoked RTR's notice of exemption because the effects of the transaction were broad enough to warrant fuller regulatory scrutiny. The transaction involved the conversion of private carrier operations into for-hire common carrier service, and would have removed the line from local control. The controversy and opposition regarding the issue of local control required additional scrutiny and the development of a more complete record. Here, by contrast, the City's notice of exemption simply involves a transfer of a line from one party to another, a transaction more limited in scope than Riverview Trenton, and therefore a stay is unnecessary.

Thus, the City's notice of exemption does not involve the complications or controversies that existed in South Dakota or Riverview Trenton. We believe the housekeeping stay has provided ample opportunity for the parties to build a sufficient record. To require the City to seek an individual exemption or file a full application would only lead to unnecessary fees and additional delays.

ABL argues that the City's true motivation is to turn the Belt Line into a trail.⁷ It argues that a stay is proper because: (1) the City's notice contains false and misleading statements regarding the continuation of freight rail service; and (2) the City cannot achieve its goal of a trail through either the class exemption procedure for acquiring the rail line or the ongoing state court action, because the City would need to follow the Board's abandonment procedures to obtain the necessary authority to remove the railroad from the interstate rail network.

ABL's arguments are without merit. The City has given no indication that, if allowed to purchase the Belt Line, it would not make every effort to continue rail operations. The fact that

⁷ ABL relies on: (1) a July 2004 draft memorandum prepared by the nonprofit Rails-To-Trails Conservancy, for a "Cross Alameda Trail"; and (2) a 2005 feasibility study for a "Cross Alameda Trail."

the City, and other organizations such as the Rails-To-Trails Conservancy have dedicated time and resources to study potential trail use for the Belt Line does not make the City's notice false and misleading. The City states that it will honor UP's 1998 trackage rights agreement. Indeed, those trackage rights are valid unless and until UP obtains discontinuance authority from the Board. Should the City, if it were to acquire the Belt Line, be unable to continue rail operations, it would have to come before the Board for abandonment authority, and only then could any alternative uses for the property proceed.

ABL argues that the City improperly seeks to have the Board resolve the contract dispute. That dispute is properly before the court, and we see no merit to ABL's effort to use the Board's processes to undercut the court case, and leave the City with no forum to resolve its contract dispute with ABL, by arguing both that: (1) the Board cannot allow the notice of exemption to take effect because of the ongoing state court litigation; and (2) the California state court cannot exercise jurisdiction over the contractual dispute because of federal preemption. It is true that the Board does not generally resolve contract disputes. It is also true that state courts generally lack authority over transactions regulated by the federal government. However, in this case the Board's role is clearly distinct from that of the California state court. The California court's power to determine rights and duties of the parties under the 1924 contract is not circumscribed by federal preemption, as the effectiveness of the City's notice of exemption would have no bearing on the outcome of the pending state court litigation. Nor is the Board's power to authorize transactions covered by the class exemption in 49 CFR 1150.31, including the repurchase of the Belt Line from ABL by the City, limited by the pendency of the state court litigation, as Board authorization merely permits, but does not require, the transaction to proceed.

In summary, the Board will not be the final arbiter of rights and duties under the 1924 contract. That task falls to the California state court. Allowing the City to invoke the class exemption does not involve the Board in the parties' contractual dispute.

Harm to Petitioner. ABL argues that, absent a stay, the notice of exemption will allow the California state court to order the sale of the Belt Line to the City, leaving unresolved significant transportation and regulatory issues that are within the Board's jurisdiction. However, petitioner has failed to demonstrate that it will be irreparably harmed by our authorizing the City to proceed with the repurchase of the Belt Line. If the California state court decides that there is no repurchase option under the 1924 contract, then the City's notice of exemption will have no effect. Petitioner has failed to show why it should be protected from sale of the line, should the court decide that the City has a right under the contract to purchase all or some portion of the Belt Line.

Harm to Others. Granting a stay could substantially harm the City. The City seeks the Board's permissive authority to buy the line, in anticipation of ABL arguing in the upcoming state court proceeding, that, if the City has not obtained Board authority to acquire the Belt Line, the City has no right to exercise the repurchase option. It should not fall to the California court to speculate whether or not the Board would allow the City to repurchase the Belt Line. The

City has satisfied the requirements for the exemption, and allowing the exemption to take effect should have no bearing on the contractual dispute at issue in the California court. As discussed above, delaying the transaction could adversely affect the City in the pending state court litigation.

The Public Interest. ABL has failed to demonstrate that a stay would further the public interest. The City's proposed acquisition of the Belt Line would result in no detrimental change to the level of service. The City's notice states its intention to honor the 1998 trackage rights agreement with UP. If UP were to discontinue its service under the trackage rights, the City has stated that it would attempt to find another carrier to provide rail service. Thus, the City's plan for the Belt Line, should it be allowed to repurchase it, would serve the public interest.

In sum, ABL has not met its burden of showing that its request for a stay of the effectiveness of this exemption should be granted. The stay request will, accordingly, be denied. As observed above, in denying the stay request, the Board takes no position on the merits of the contract issue before the California court.

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

It is ordered:

1. The City's motion to file a limited reply is granted.
2. ABL's motion to file a reply to the City's reply is granted.
3. The stay petition is denied.
4. This decision is effective upon the service date.

By the Board, Chairman Buttrey and Vice Chairman Mulvey.

Vernon A. Williams
Secretary