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SERVICE DATE – SEPTEMBER 5, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34239

ST. LAWRENCE & ATLANTIC RAILROAD COMPANY–LEASE AND OPERATION
EXEMPTION–RAIL LINES OF FRASER N.H. LLC

Decided: August 28, 2002

By petition filed on August 1, 2002, St. Lawrence & Atlantic Railroad Company (SLR)¹ seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 11323-25 for SLR to lease and operate over: (1) 5.5 miles of rail line between milepost 154.6 at Berlin, NH, and milepost 149.1 at Gorham, NH; and (2) 0.5 miles of rail line in the vicinity of Berlin, a total distance of 6.0 miles in Coos County, NH. The lines are owned by Fraser N.H. LLC (Fraser), a Class III rail carrier. Fraser and its parent, Fraser Papers, Inc. (Fraser Papers), filed a letter in support of the exemption on August 7, 2002. SLR has asked for expedited consideration of its petition. We will grant the exemption and the request for expedited action.

BACKGROUND

SLR is a Class III rail carrier that provides freight service in New Hampshire, Vermont and Maine. SLR has leased and operated the above lines since November 1997, pursuant to an agreement with the former owner of the lines, Berlin Mills Railway, Inc. (Berlin Mills),² a subsidiary of American Tissue, Inc. (ATI). Fraser, the current owner of the lines, acquired them as part of a sale of the assets

¹ SLR is a subsidiary of Emons Railroad Group, Inc., which is controlled by Emons Transportation Group, Inc. (Emons). Emons was acquired by Genesee & Wyoming, Inc., in Genesee & Wyoming Inc.–Control Exemption–ETR Acquisition Corporation and Emons Transportation Group, Inc., STB Finance Docket No. 34148 (STB served Feb. 28, 2002).

² SLR was granted authority to operate over the lines pursuant to a lease and operation exemption in St. Lawrence & Atlantic Railroad Company–Lease and Operation Exemption–Berlin Mills Railway, Inc., STB Finance Docket No. 33485 (STB served Oct. 24, 1997).

of Berlin Mills, in a Chapter 11 reorganization of ATI. Following the acquisition of the lines by Fraser,³ SLR and Fraser entered into a lease agreement⁴ that provides for SLR's continued operation of the lines under new terms and conditions negotiated between SLR and Fraser. The agreement gives SLR the right to use the lines for the purpose of conducting freight operations, including the right to originate and/or terminate freight traffic on the lines, and for purposes of switching, storage of cars and equipment, and the making or breaking up of trains. The lease agreement has an initial term of 15 years with an automatic renewal term of 5 years unless terminated earlier by the parties.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 11323(a)(2), prior Board approval is required for a rail carrier to lease the property of another rail carrier. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find 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 of limited scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

Detailed scrutiny of the proposed lease through an application for review and approval under 49 U.S.C. 11323-25 is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101. Rather, an exemption will promote that policy by minimizing the administrative expense of the application process, thus reducing regulatory barriers to entry [49 U.S.C. 10101(7)]. An exemption will also expedite regulatory decisions [49 U.S.C. 10101(2)]; foster sound economic conditions in transportation [49 U.S.C. 10101(5)]; and encourage efficient management of railroads [49 U.S.C. 10101(9)]. Other aspects of the rail transportation policy will not be adversely affected.

Regulation of the transaction is not needed to protect shippers from the abuse of market power. SLR will continue to provide freight service on the lines pursuant to the terms and conditions of the new lease agreement, and will continue to provide rail service to its existing shipper, Fraser. The lines do not serve any other shippers. Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

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 involve only Class

³ Pursuant to a notice of exemption, Fraser became a Class III rail carrier in Fraser N.H. LLC—Acquisition Exemption—Rail Lines of Berlin Mills Railway, Inc., STB Finance Docket No. 34222 (STB served July 26, 2002).

⁴ The lease agreement replaces the prior lease agreement between SLR and Berlin Mills.

III rail carriers. Because all carriers involved in this transaction are Class III rail carriers, labor protective conditions may not be imposed under the statute.

The proposed lease will not result in any significant change in carrier operations, and, therefore, is exempt from environmental reporting requirements under 49 CFR 1105.6(c)(2)(i) and historic reporting requirements under 49 CFR 1105.8(b)(1).

SLR requests that any decision granting the exemption be made effective on the date of service so that the parties can conduct their commercial relationship under the terms and conditions of the new lease agreement, which will not become effective until it has been approved by the Board. The request is reasonable under the circumstances presented here, and will be granted.⁵

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 lease and operation by SLR of the above-described lines.
2. Notice will be published in the Federal Register on September 5, 2002.
3. This exemption will be effective on September 5, 2002. Petitions to reopen must be filed by September 25, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams
Secretary

⁵ We note that our class exemption at 49 CFR 1150.41 already provides expedited procedures for these types of transactions, and point out that the use of the class exemption for qualifying transactions in the future should ensure appropriate expedited handling.