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SERVICE DATE – LATE RELEASE MAY 3, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34609

STATE OF WASHINGTON, DEPARTMENT OF TRANSPORTATION
– ACQUISITION EXEMPTION –
PALOUSE RIVER AND COULEE CITY RAILROAD, INC.

Decided: May 3, 2005

On October 29, 2004, the State of Washington, Department of Transportation (WSDOT), a noncarrier, filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Palouse River and Coulee City Railroad, Inc. (PRCC), certain physical assets of seven rail lines, including the underlying rights-of-way, totaling approximately 188 miles in the State of Washington. The rail lines are as follows: (1) the Hooper Jct.-Winona line, between milepost 26.6 at Hooper Junction and milepost 52.3 at Winona; (2) the Thornton-Winona line, between milepost 0.0 at Winona and milepost 31.7 at Thornton; (3) the Winona-Endicott line, between milepost 52.3 at Winona and milepost 57.9 at Endicott; (4) the Endicott-Colfax line, between milepost 57.9 at Endicott and milepost 77.7 at Colfax; (5) the Colfax-Moscow line (a) between milepost 0.0 at Colfax and milepost 18.7 at Pullman, and (b) between milepost 75.9 at Pullman and milepost 84.05 at the Washington-Idaho State line; (6) the WIM line, between milepost 0.0 at Palouse and milepost 3.85 at the Washington-Idaho State line; and (7) the P&L line, between milepost 1.0 at Marshall and milepost 75.9 at Pullman.

Notice was served on December 3, 2004, and published in the Federal Register on December 9, 2004 (69 FR 71469). Subsequently, on February 14, 2005, WSDOT filed a motion to dismiss the notice, asserting that the transaction is not subject to Board regulation because WSDOT will not become a common carrier as a result of the transaction. There is no opposition to the motion. The motion to dismiss will be granted.

BACKGROUND

WSDOT states that it finalized a purchase and sale agreement with PRCC on November 5, 2004, whereby: (1) WSDOT acquired PRCC's right, title and interest in certain tracks, track materials and the underlying rights-of-way of seven rail lines; and (2) PRCC retained a permanent, exclusive rail freight easement to provide service over the lines. WSDOT states that it did not acquire any rights to act as a common carrier from PRCC and will not be providing service over the lines. Concurrently with the

purchase and sale agreement, WSDOT entered into a lease with PRCC under which PRCC will continue to provide service using its exclusive permanent easement.¹

PRCC is owned by Watco Companies, Inc., a noncarrier that controls 11 Class III rail carriers in addition to PRCC. According to WSDOT, the parties envision that PRCC will likely assign its rights under the lease and the retained freight easement to its affiliate, Great Northwest Railroad.² The lease provides for that assignment “subject to applicable Surface Transportation Board approval,” and for other assignment of operating rights with written permission of WSDOT, provided that WSDOT “will not unreasonably withhold its consent.” (Section 15).

WSDOT maintains that its acquisition does not constitute an acquisition of a railroad line subject to the Board’s jurisdiction. According to WSDOT, because it does not have the right to control freight rail service and will not hold itself out as willing or able to provide service on the line, its ownership of the line does not make it a rail carrier. WSDOT cites a number of cases in support of its position that this transaction is not subject to Board regulation.³

DISCUSSION AND CONCLUSIONS

The question here is whether the Board’s regulatory approval is required for WSDOT to acquire the subject line. The acquisition of an active rail line and the common carrier obligation that goes with it ordinarily require Board approval under 49 U.S.C. 10901, even if the acquiring entity is a noncarrier, including a state. See Common Carrier Status of States, State Agencies, 363 I.C.C. 132, 133 (1980), aff’d sub nom. Simmons v. ICC, 697 F.2d 326 (D.C. Cir. 1982). Board authorization is not required, however, when the common carrier rights and obligations that attach to the line will not be transferred. See State of Maine, 8 I.C.C.2d at 836-37.

The record shows that PRCC is not transferring common carrier rights or obligations and that WSDOT will not hold itself out as a common carrier performing rail

¹ WSDOT attached to its motion copies of the purchase and sale agreement, quitclaim deed, and lease agreement.

² WSDOT included, as attachments to the purchase and sale agreement, unsigned documents describing this anticipated transfer.

³ Maine, DOT—Acq. Exemption, ME. Central R. Co., 8 I.C.C.2d 835 (1991) (State of Maine); Metro Regional Transit Authority—Acquisition Exemption—Certain Assets of Akron Barberton Cluster Railway Co., STB Finance Docket No. 34338 (STB served July 11, 2003); State of Vermont—Acquisition Exemption—Certain Assets of Newport and Richford Railroad Company, Northern Vermont Railroad Company Incorporated and Canadian American Railroad Company, STB Finance Docket No. 34294 (STB served May 22, 2003).

freight service. The agreements between WSDOT and PRCC show that WSDOT acquired certain real property and related improvements but not the property and contractual rights necessary to conduct, control or interfere with common carrier freight operations on the line. PRCC or its assignee will provide freight service over the line. Under these circumstances, we find that WSDOT will not become a rail carrier subject to the Board's jurisdiction as a result of the transaction. Because this transaction does not require Board authorization, WSDOT's notice of exemption will be dismissed and this proceeding will be discontinued.

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

It is ordered:

1. WSDOT's motion to dismiss its notice of exemption is granted.
2. The proceeding is discontinued.
3. This decision is effective on its date of service.

By the Board, Chairman Nober, Vice Chairman Buttrey, and
Commissioner Mulvey.

Vernon A. Williams
Secretary