

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35734

HILCO SP RAIL, LLC—ACQUISITION AND OPERATION EXEMPTION—RG STEEL  
RAILROAD HOLDING, LLC

Decided: May 10, 2013

This proceeding concerns an approximately 12-mile line of railroad in Sparrows Point, Baltimore County, Md. (the Line). Hilco SP Rail, LLC (Hilco), a noncarrier, acquired the Line on September 14, 2012, from RG Steel Railroad Holding, LLC (RG Steel R.R.). The acquisition followed the authorization and approval of an Asset Purchase Agreement between RG Steel R.R. and a group of purchasers<sup>1</sup> by United States Bankruptcy Judge Kevin J. Carey.<sup>2</sup>

On April 12, 2013, Hilco filed a verified notice of exemption under 49 C.F.R. § 1150.31 to acquire the Line and operate over it as a common carrier.<sup>3</sup> The notice was served and published in the Federal Register on April 26, 2013. The exemption is scheduled to become effective on May 12, 2013.

On May 3, 2013, the Maryland Department of Transportation (MDOT) filed a petition asking the Board to stay the effective date of the exemption, arguing that its stay request meets the traditional stay criteria. Based on filings in this and related dockets,<sup>4</sup> MDOT expressed concerns that Hilco's intent is not to continue to operate the Line, but rather to salvage the entire Sparrows Point property transferred in the bankruptcy proceeding, including the rail assets. It seeks clarifying information or assurances regarding Hilco's interests, including plans for continued operation of the Line following completion of the salvage of the Sparrows Point industrial facility.<sup>5</sup>

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<sup>1</sup> Notice 4.

<sup>2</sup> Id. at 5.

<sup>3</sup> Hilco acknowledges that it failed to timely obtain authority from the Board to acquire and operate the Line. Notice 3.

<sup>4</sup> Pet. 1; MCM Rail Services LLC—Petition for Retroactive Exemption—In Sparrows Point, Md., Docket No. FD 35707; MCM Rail Services LLC, d/b/a Baltimore Industrial Railroad—Operation Exemption—HRE Sparrows Point, LLC, Docket No. FD 35725. MDOT filed a petition to intervene in the aforementioned dockets on April 8, 2013.

<sup>5</sup> Pet. 4.

On May 8, 2013, Hilco filed a reply opposing the stay petition.<sup>6</sup> Among other things, Hilco states that it does not plan to discontinue service over,<sup>7</sup> abandon,<sup>8</sup> or salvage the Line,<sup>9</sup> and indeed represents that the Line “is a critical component” of its redevelopment plan for the property as an industrial and port complex.<sup>10</sup>

## DISCUSSION AND CONCLUSIONS

The request for a stay of the effective date of the exemption will be denied because MDOT has failed to demonstrate that irreparable harm will occur if a stay is not granted.<sup>11</sup> MDOT claims that both MDOT and the interests of the shipping public in Maryland will be irreparably harmed should Hilco seek to salvage the Line or otherwise render it inoperable after obtaining acquisition and operating authority from the Board.<sup>12</sup> It asserts that Hilco and MCM Rail Services LLC (MCM), the entity seeking authority to operate the Line for Hilco, could use the 42-month operating period described in MCM’s notice of exemption to allow the Line and service over the Line to deteriorate.<sup>13</sup> However, as previously noted, Hilco states that it does not plan to discontinue service over, abandon, or salvage the Line; to the contrary, Hilco represents that the Line is critical to its redevelopment plan for the site.

Should Hilco or MCM take specific actions that would threaten irreparable injury with regard to the Line’s operation, any party would have the ability to request emergency relief before this agency pursuant to 49 U.S.C. § 721(b)(4). Moreover, should MDOT wish to pursue these matters outside of the emergency context, MDOT (or any other interested party) may seek

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<sup>6</sup> Reply 6.

<sup>7</sup> Id. at 8.

<sup>8</sup> Id. at 9.

<sup>9</sup> Id. at 5.

<sup>10</sup> Id. at 8.

<sup>11</sup> A party seeking a stay must establish that (1) there is a likelihood that it will prevail on the merits of any challenge to the action sought to be stayed, (2) it will suffer irreparable harm in the absence of a stay, (3) other interested parties will not be substantially harmed, and (4) the public interest supports the granting of the stay. See, e.g., Eighteen Thirty Group, LLC—Acquis. Exemption—In Allegany Cnty., Md., FD 35438, et al. (STB served Nov. 17, 2010); Washington Metro. Area Transit Comm’n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977); Va. Petroleum Jobbers Ass’n v. Fed. Power Comm’n, 259 F.2d 921, 925 (D.C. Cir. 1958).

<sup>12</sup> Pet. 1, 8.

<sup>13</sup> Id. at 8.

revocation of Hilco's exemption pursuant to 49 U.S.C. § 10502(d) at any time. Finally, to ensure that shippers on the Line are aware of these issues, Hilco will be directed to serve a copy of this decision on all shippers on the Line by May 15, 2013, and to contemporaneously certify to the Board that it has done so.

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

It is ordered:

1. The petition for a stay will be denied.
2. Hilco shall serve a copy of this decision on all shippers on the Line by May 15, 2013, and contemporaneously certify to the Board that it has done so.
3. This notice will be effective on its date of service.

By the Board, Daniel R. Elliott III, Chairman.