

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35022

NEW HAMPSHIRE CENTRAL RAILROAD, INC.—LEASE AND OPERATION  
EXEMPTION—LINE OF THE NEW HAMPSHIRE DEPARTMENT OF  
TRANSPORTATION

Decided: May 31, 2007

On May 2, 2007, New Hampshire Central Railroad, Inc. (NHCR), a Class III rail carrier, filed a verified notice of exemption under 49 CFR 1150.41 to acquire by lease and to operate approximately 8.47 miles of rail line (the line) owned by the State of New Hampshire Department of Transportation (NHDOT) on the Mountain Division corridor, between Engineering Station 5060+25, Valuation Section 17 NH Map 53, in Whitefield, NH, and Station 5503, Valuation Section 18 VT Map 3, in Lunenburg, VT. Notice of the exemption was served and published in the Federal Register at 72 FR 27361 on May 15, 2007. The effective date of the exemption is June 1, 2007.

On May 25, 2007, Twin State Railroad Corporation (Twin State) and Trans Rail Holding Company (Trans Rail) jointly filed a petition for a stay of the effectiveness of the notice of exemption. In support of their stay request, Twin State and Trans Rail argue that: (1) Twin State has an exclusive right to operate the line, making the line unavailable for NHCR to operate unless Twin State's operating rights are first terminated; (2) petitioners would suffer irreparable harm if NHCR were permitted to operate over the line, because NHCR's operation would result in the diversion of traffic from Twin State, thereby devaluing the company, which Trans Rail has obtained an option to purchase for \$450,000; (3) no interested party will suffer substantial harm from a stay, because NHCR does not expect to commence operations earlier than August 1, 2007; and (4) the public interest supports issuance of a stay. Twin State and Trans Rail ask the Board to stay the effectiveness of NHCR's exemption until there has been a discontinuance of Twin State's operating rights and a determination by an appropriate court that NHDOT has the right to designate an operator for this line.<sup>1</sup> NHCR replied in opposition to the request for stay on May 31, 2007.

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<sup>1</sup> On May 9, 2007, Twin State also filed a petition to revoke the exemption, to which NHCR replied on May 21, 2007. The Board will address that petition in a separate decision. The State of Vermont Agency of Transportation (VTrans) filed comments and a request for revocation on May 9, 2007.

## DISCUSSION AND CONCLUSIONS

An interested party seeking a Board-ordered stay must establish that: (1) there is a strong likelihood that it will prevail on the merits; (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. Hilton v. Braunskill, 481 U.S. 770, 776 (1987); Washington Metro. Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977); Virginia Petroleum Jobbers Ass'n v. Fed. Power Comm'n, 259 F.2d 921, 925 (D.C. Cir. 1958). 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'n, 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 Auth. of Fla. v. Callaway, 489 F.2d 567, 573 (5th Cir. 1974).

Twin State and Trans Rail have not met the criteria for granting a stay. Petitioners have not come forward with sufficient evidence to show that they will suffer irreparable harm if NHCR obtains operating authority. The harm that petitioners allege is strictly monetary in nature. For example, petitioners claim that if NHCR receives authority to operate on the line, Twin State will lose revenue from any diverted traffic. Petitioners also claim that Twin State will be worth less if it does not have exclusive operating rights over the line, thereby affecting the value of the bargain between Twin State and Trans Rail. These alleged monetary damages, if proven, do not constitute irreparable harm.<sup>2</sup> Neither the Board nor the courts have found economic injuries of this nature to be irreparable, because they are compensable through reparations. See Delaware and Hudson Railway Co.—Lease and Trackage Rights Exemption—Springfield Terminal Railway Company, Finance Docket No. 30965 (Sub-No. 1) (ICC served July 15, 1988). “Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.” Sampson v. Murray, 415 U.S. 61 (1974) at 88-92 (quoting Virginia Petroleum Jobbers Ass'n v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958)). Here, the licensing of NHCR’s operating authority is no bar to Twin State’s seeking redress in an appropriate state court for its monetary losses.

Petitioners have not shown that they are likely to prevail on the merits of their argument that NHCR has no right to operate over the line until Twin State’s operating rights have been discontinued; nor are they making such arguments in the proper venue. Twin State has not directed the Board to any provision in its lease that clearly establishes that it has the exclusive rights to operate over the line. Moreover, the issue of whether the lease agreement grants such exclusive rights lies within the purview of the courts, not with this agency. As noted above, the

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<sup>2</sup> Petitioners’ argument that such losses will be difficult to prove and quantify is unpersuasive. The calculation of damages related to lost profits and devalued assets is standard fare in most business tort litigation. Courts are well-equipped to resolve these issues.

Board's grant of authority to NHCR to operate over the line is permissive in nature and does not prohibit petitioners from seeking enforcement of their contractual rights in state court.

Petitioners have also not shown that they are likely to prevail on their argument that NHCR's notice of exemption is false or misleading. Board regulations do not proscribe authorization of two operating carriers over a line. 49 CFR 1150.41 *et seq.* Nor do Board regulations require that an existing operator be named in the new operator's notice of exemption.<sup>3</sup> Thus, NHCR's notice naming itself as the operator of the property was not patently false or misleading based on the information before the Board at this time.

Twin State and Trans Rail have not justified the remaining elements required for a stay. Accordingly, petitioners' request will be denied.

Twin State's petition to revoke NHCR's exemption remains pending (along with VTrans' petition). The Board will consider the issues raised in the petitions to revoke in a subsequent decision.

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 stay is denied.
2. This decision is effective on its date of service.

By the Board, Charles D. Nottingham, Chairman.

Vernon A. Williams  
Secretary

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<sup>3</sup> See Lackawanna County Railroad Authority—Acquisition Exemption—F&L Realty, Inc., STB Finance Docket No. 33905 (embracing Delaware—Lackawanna Railroad Co., Inc.—Operation Exemption—Lackawanna County Railroad Authority, STB Finance Docket No. 33906) (STB served Oct. 22, 2001) at 5-6.