

SERVICE DATE - JULY 11, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34338

METRO REGIONAL TRANSIT AUTHORITY—ACQUISITION EXEMPTION—CERTAIN  
ASSETS OF AKRON BARBERTON CLUSTER RAILWAY COMPANY

Decided: July 9, 2003

On April 14, 2003, Metro Regional Transit Authority (METRO), a noncarrier, filed a verified notice of exemption under 49 CFR 1150.31, et seq. to acquire from Akron Barberton Cluster Railway Company (ABC) certain assets of a line of railroad extending between approximately milepost 11.49 in Akron, OH, and approximately milepost 8.00 in Cuyahoga Falls, OH, a distance of approximately 3.49 miles in Summit County, OH.<sup>1</sup> Subsequently, on June 5, 2003, METRO filed a motion to dismiss the notice, asserting that the transaction should not be subject to Board jurisdiction because METRO 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

METRO is a regional transit authority created and existing under Ohio Revised Code Chapter 306 to provide regional passenger transportation services for the citizens of Summit County, OH. METRO plans to explore the possibility of establishing a regional passenger rail transportation system on the subject line, and it acquired the line to preserve it for future transportation use. METRO states that it does not provide, and has no plans to provide, freight rail operations.

Pursuant to an agreement of sale between METRO and ABC, METRO acquired all of ABC's right, title, and interest in and to the subject line and associated track and railroad facilities. However, under the agreement, ABC retained an exclusive freight rail operations easement on the line to conduct or have third parties conduct freight rail service.<sup>2</sup> METRO asserts that, by virtue of the operations easement, ABC retained all common carrier rights and obligations on the subject line.

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<sup>1</sup> Notice was served and published in the Federal Register on May 8, 2003 (68 FR 24790), indicating that the parties intended to consummate the transaction on April 21, 2003.

<sup>2</sup> METRO submitted copies of the agreement of sale and a quitclaim deed containing the operations easement.

METRO states that the agreement of sale will give it the property and contract rights it requires to operate a passenger rail transportation system on the subject line, but that ABC will retain the property and contract rights it requires to conduct common carrier rail freight operations on the line.<sup>3</sup> METRO adds that, in fact, the agreement prohibits it from providing freight rail service on the subject line and it will not hold itself out as willing or able to do so. METRO further states that it does not have sufficient property or contract rights to unreasonably interfere with any such rail freight operations; therefore, according to METRO, ABC will have the ability to meet any common carrier freight rail obligations.

In support of its position that this transaction is outside the Board's jurisdiction, METRO cites the following cases: Massachusetts Port Authority–Acquisition Exemption–Certain Assets of Boston and Maine Corporation, STB Finance Docket No. 34276 (STB served Mar. 25, 2003); State of Georgia, Department of Transportation–Acquisition Exemption–Georgia Southwestern Railroad, Inc., STB Finance Docket No. 33876 (STB served July 7, 2000); and Maine, DOT–Acq. Exemption, ME Central R. Co., 8 I.C.C.2d 835 (1991) (State of Maine).

#### DISCUSSION AND CONCLUSIONS

The question here is whether the Board's regulatory approval is required for METRO to acquire and operate the subject line. The acquisition of an active rail line and the common carrier obligation that goes with it ordinarily requires Board approval under 49 U.S.C. 10901, 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 ABC is not transferring common carrier rights or obligations and that METRO will not hold itself out as a common carrier performing rail freight service. The agreement between METRO and ABC shows that METRO may provide passenger, but not freight, service over the line, ABC will retain all common carrier rights and obligations with respect to freight operations, and METRO will not have sufficient rights to materially interfere with ABC's freight operations. Moreover, METRO's statutory authorization is limited to passenger service. METRO will therefore not become a rail carrier subject to the Board's jurisdiction as a result of the transaction. Under these circumstances, this transaction does not require Board action, and the Board will not exercise jurisdiction over it.

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<sup>3</sup> METRO indicates that there are no freight rail customers presently located on the line and that there has been no local or overhead freight rail service for the past several years. It points out, however, that, if the need arises in the future, ABC will have the exclusive right and obligation to meet it.

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

It is ordered:

1. METRO'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.

Vernon A. Williams  
Secretary