

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34633

WISCONSIN & SOUTHERN RAILROAD CO.–ACQUISITION
EXEMPTION–UNION PACIFIC RAILROAD COMPANY

Decided: January 19, 2005

By petition filed on December 20, 2004, the Wisconsin & Southern Railroad Co. (WSOR or petitioner) seeks an exemption pursuant to 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10902 to purchase and lease from the Union Pacific Railroad Company (UP) and operate approximately 14 miles of rail line (the Line) between milepost 1.2 at Sheboygan and milepost 14.95 at Plymouth, WI. WSOR proposes to: (1) lease the Kohler Industrial Lead between milepost 8.0 near Kohler and milepost 1.2;¹ and (2) purchase the portion between milepost 8.0 and milepost 14.95 at Plymouth. The Board will grant the exemption subject to labor protective conditions and subject to a condition that WSOR notify the shippers on the Line of the proposed purchase and lease.

BACKGROUND

WSOR, a Class II rail carrier that operates over 600 miles of trackage in Wisconsin and northern Illinois, indicates that it wants to acquire the Line as part of a project to acquire trackage north of Milwaukee, WI, and connect that trackage to its system. Petitioner was recently authorized to operate the 37-mile Plymouth Line between Saukville and Kiel, WI,² and to acquire overhead trackage rights over a 19.62-mile rail line of the Wisconsin Central Ltd. between Saukville and North Milwaukee, WI.³ The Line connects with the Plymouth Line at milepost 14.95 in Plymouth.

WSOR states that the line needs to be rehabilitated, but that UP's traffic projections do not currently warrant the expenditure of funds to rehabilitate it. Petitioner indicates that, unlike UP, it has

¹ The track to be leased also includes the lead to the former Cargill Malting Plant at 704 S. 15th Street and the connecting track to UP's Sheboygan Cutoff.

² See Wisconsin Central Ltd.–Abandonment–In Ozaukee, Sheboygan, and Manitowoc Counties, WI, STB Docket No. AB-303 (Sub-No. 27) (STB served Dec. 3, 2004).

³ See Wisconsin & Southern Railroad Co.–Trackage Rights Exemption–Wisconsin Central Ltd., STB Finance Docket No. 34621 (STB served Dec. 20, 2004).

access to state funding that will enable it to rehabilitate the line. WSOR indicates further that it is a smaller, locally based carrier that can provide more frequent and customer-centered service on the Line.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10902, the purchase, lease and operation of a rail line by a Class II carrier would require an application to, and authorization by, the Board. Under 49 U.S.C. 10502, however, the Board must exempt a transaction or service from regulation upon finding 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.

An exemption from the prior approval requirements of 49 U.S.C. 10902 is consistent with the standards of 49 U.S.C. 10502. Detailed scrutiny of this transaction is not necessary to carry out the rail transportation policy. An exemption from the application process will minimize the need for Federal regulatory control [49 U.S.C. 10101(2)], foster sound economic conditions in transportation [49 U.S.C. 10101(5)], reduce regulatory barriers to entry into and exit from the rail industry [49 U.S.C. 10101(7)], 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 this transaction is not needed to protect shippers from the abuse of market power. As stated, WSOR is a smaller, locally based carrier that should be able to provide more frequent and improved service. This could attract potential shippers who have used other forms of transportation. WSOR also states that its service would increase the competitive options of the shippers on the Line and benefit the local economy. WSOR does not indicate that it has served its petition on the shippers on the Line. We will require WSOR to service a copy of this decision on any party that has tendered or received a shipment on the Line during the past 12 months and to certify to us that it has done so. Given the market power finding, it is not necessary to determine whether the transaction is limited in scope.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of adversely affected employees. Section 10902(d) provides for labor protection in line acquisitions by Class II rail carriers. As a condition to this exemption, any employees affected by the acquisition will be protected as required by section 10902(d), subject to the standards and procedures established in Wisconsin Central Ltd.–Acquisition Exem. Union Pac. RR, 2 S.T.B. 218 (1997), aff'd in relevant part sub nom. Association of American

Railroads v. STB, 162 F.3d 101 (D.C. Cir. 1998).⁴ As required by 49 CFR 1121.4(h), on December 8, 2004, WSOR has certified to the Board that, on December 5, 2004, it has posted a notice of the transaction at the workplace of potentially affected employees and served the same on the national organizations representing them.

This transaction is exempt from environmental reporting requirements under 49 CFR 1105.6(c)(2)(i) because it will not result in a significant change in carrier operations. Similarly, the transaction is exempt from the historic reporting requirements under 49 CFR 1105.8(b)(1) because it will not substantially alter railroad properties.

Petitioner requests expedited consideration, asking that the Board issue a decision on or before February 5, 2005, and make the exemption effective on the date of service. WSOR asserts that expedited consideration will allow it to begin operating over the line as soon as possible to maximize the benefits of its newly acquired operating rights over the Plymouth Line. WSOR indicates further that it wants to commence badly needed track rehabilitation. The request is reasonable. Accordingly, the exemption will be effective on February 6, 2005, rather than the normal 30 days after service of the decision and publication in the Federal Register.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, the above-described transaction is exempted from the prior approval requirements of 49 U.S.C. 10902, subject to the employee protective conditions in Wisconsin Central Ltd.–Acquisition Exem. Union Pac. RR, 2 S.T.B. 218 (1997), aff'd in relevant part sub nom. Association of American Railroads v. STB, 162 F.3d 101 (D.C. Cir. 1998).

2. WSOR is directed to serve a copy of this decision on any party that has tendered or received a shipment on the Line during the past 12 months within 5 days after the service of this decision and to certify to us that it has done so.

⁴ In its petition, WSOR agrees to these labor protective conditions.

⁵ As noted, WSOR had asked that the exemption become effective February 5, 2005. However, under 49 CFR 1121.4(h), the earliest possible effective date would be February 6, 2005, which is 60 days after WSOR certified to the Board that it had complied with the advance notice requirements.

3. Notice will be published in the Federal Register on January 26, 2005.
4. The exemption will be effective on February 6, 2005.
5. Petitions to stay must be filed by January 24, 2005. Petitions to reopen must be filed by January 31, 2005.

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

Vernon A. Williams
Secretary