

29979
EB

SERVICE DATE - JUNE 23, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33690

STATE OF GEORGIA, DEPARTMENT OF TRANSPORTATION--ACQUISITION
EXEMPTION--LINE OF CENTRAL OF GEORGIA RAILROAD COMPANY

Decided: June 17, 1999

On December 11, 1998, the State of Georgia, acting by and through its Department of Transportation (GDOT), filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Central of Georgia Railroad Company (COG) certain railroad assets, including approximately 48.9 miles of rail line extending between milepost CC-445.4 near Chattanooga, Hamilton County, TN, and milepost CC-396.5 near Lyerly, Chattanooga County, GA. The notice was served on January 6, 1999, and published in the Federal Register on January 8, 1999 (64 FR 1270). Concurrently, GDOT filed a petition to dismiss the notice. In its petition, GDOT asserts that it will acquire certain rail assets and trackage, but not the right to conduct common carrier freight operations, that it will not become a common carrier as a result of the transaction, and that the transaction is not subject to Board jurisdiction. The petition will be granted.

BACKGROUND

The railroad assets that GDOT, a noncarrier, is purchasing will be operated by a third party, Chattooga and Chickamauga Railway Company (CCKY), a Class III rail carrier. In this regard, on December 10, 1998, CCKY filed a separate verified notice of exemption under 49 CFR 1150.41 in STB Finance Docket No. 33691, Chattooga and Chickamauga Railway Company--Acquisition and Operation Exemption--Line of Central of Georgia Railroad Company, to acquire from COG the right to conduct common carrier freight operations over the 48.9 miles of rail line.¹ The notice was served on January 6, 1999, and published in the Federal Register on January 8, 1999 (64 FR 1269).

GDOT states that it will enter into an agreement with COG to purchase certain railroad assets, including the subject rail line. GDOT also states that COG will retain a permanent easement for common carrier freight operations, and that the retained easement will be included in a deed which will be recorded in the appropriate county offices upon consummation of the acquisition. GDOT avers that, under the terms of the retained easement, it will not acquire the right to provide any common carrier freight service. Rather, COG will retain the right to continue all common carrier freight operations over the line. GDOT adds that, pursuant to a separate and concurrently

¹ CCKY currently leases and operates over the line. See Chattooga & Chickamauga Railway Co.--Lease and Operation--Central Of Georgia Railroad Company, et. al, Finance Docket No. 31517 (STB served Jan. 8, 1990).

executed agreement, COG will transfer its retained easement to CCKY, which will continue to conduct freight operations over the line and which will assume COG's common carrier obligation.

According to GDOT, because of the nature and terms of the transaction, the asset acquisition is not subject to Board jurisdiction. Thus, the consummation of the acquisition would not make GDOT a common carrier, citing Maine, DOT — Acq. Exemption, Me. Central R. Co., 8 I.C.C.2d 835 (1991) (State of Maine). GDOT avers that it will not conduct freight operations or hold itself out to the public as willing to perform these operations, but will merely own the real and personal property. CCKY will be the only common carrier on the subject line after the consummation of the transaction. GDOT states that the only difference between this transaction and the State of Maine is that COG plans to immediately transfer its retained easement to CCKY, which will have both the intent and unconditional ability to continue to assume and exercise its common carrier rights and obligations.

DISCUSSION AND CONCLUSIONS

GDOT's petition to dismiss will be granted and the proceeding discontinued. The primary issue under consideration is whether we must exercise jurisdiction over the proposed transfer of rail assets from COG, a rail carrier, to GDOT, a noncarrier. Ordinarily, acquisition of an active rail line by a noncarrier requires Board approval under 49 U.S.C. 10901. The new owner is then ordinarily obligated to provide service over the line.

Here, however, the circumstances of this transaction do not require Board action. On the basis of the representations made by the parties,² we find that GDOT will not conduct any operations over the line and will not hold itself out to do so. By merely acquiring certain rail assets from COG, GDOT will not become a carrier or acquire a common carrier obligation. Conversely, the evidence indicates that CCKY will have the ability to provide unrestricted freight service as a railroad common carrier over the subject line. Specifically, CCKY will receive a sufficient easement to enable it to carry out its common carrier obligation, and the pertinent agreements will give CCKY more than sufficient power over the operation and maintenance of the line to avoid any undue interference by GDOT. For these reasons, we will grant the relief sought by GDOT.³

² Although the parties' agreements are not before us, we will hold them to their representations regarding CCKY's full right to operate over the line without any interference from GDOT.

³ By letter submitted December 28, 1998, the United Transportation Union (UTU) protests GDOT's proposal, arguing that the Board lacks authority to exempt any railroad from the labor protective conditions of 49 U.S.C. 11326. Because we find that Board authorization (whether by approval or exemption) is not required for GDOT's acquisition, UTU's argument regarding conditions to such an authorization is moot. Moreover, as discussed above, even if Board authorization were required, the statutory provision that would govern would not be sections 11323,

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

It is ordered:

1. GDOT's petition to dismiss the verified notice of exemption is granted.
2. The proceeding is discontinued.
3. This decision is effective on its date of service.

By the Board, Chairman Morgan, Vice Chairman Clyburn and Commissioner Burkes.

Vernon A. Williams
Secretary

but rather section 10901, which expressly precludes the imposition of labor protective conditions. See 49 U.S.C. 10901(c).