

33886
EB

SERVICE DATE - OCTOBER 10, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34341

WHEELING & LAKE ERIE RAILWAY COMPANY—
ACQUISITION AND OPERATION EXEMPTION—
CSX TRANSPORTATION, INC.

Decided: October 8, 2003

By petition filed on August 1, 2003, Wheeling & Lake Erie Railway Company (W&LE) seeks an exemption pursuant to 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10902 to acquire the rail freight operating easement of CSX Transportation, Inc. (CSXT) over a 17.77-mile rail line between approximately milepost 15.93 at Canton, OH, and approximately milepost 33.70 at Krumroy, OH (the Canton Line), owned by Metro Regional Transit Authority (METRO). The petition will be granted subject to employee protective conditions.

BACKGROUND

The Canton Line consists of two segments—the Canton-Aultman segment, which extends from approximately milepost 15.93 at Canton to approximately milepost 25.55 at Aultman, OH, and the Aultman-Krumroy segment, which extends from approximately milepost 25.55 at Aultman to approximately milepost 33.70 at Krumroy.

In 1992, W&LE, a Class II carrier, leased from CSXT an approximately 10.25-mile segment extending north from Canton to Aultman.¹ In 1997, CSXT abandoned, and W&LE discontinued service over, a short segment of this leased line in Canton.² The part of this line

¹ Also in that transaction, W&LE purchased from CSXT an approximately 12.26-mile rail line extending south from Canton to Sandyville, OH. See Wheeling & Lake Erie Railway Company—Lease, Purchase and Operation Exemption—CSX Transportation, Inc., Finance Docket No. 32083 (ICC served Oct. 15, 1992).

² See CSX Transportation, Inc.—Abandonment Exemption—In Stark County, OH, STB Docket No. AB-55 (Sub-No. 535X) (STB served Apr. 1, 1997). Following the abandonment and discontinuance of this short segment, W&LE reached the current Canton-Aultman segment via
(continued...)

that CSXT retained constitutes the Canton-Aultman segment involved in this proceeding. In 1993, CSXT discontinued service over, but did not abandon, the Aultman-Krumroy segment.³ No rail freight service of any kind has been conducted on this segment since the discontinuance.⁴

In May 2000, CSXT sold to METRO the assets of the Canton Line and a segment of rail line extending from Krumroy north to Akron, OH.⁵ As part of that transaction, CSXT retained an exclusive rail freight easement over all three segments, subject to W&LE's pre-existing lease of the Canton-Aultman segment. Also as part of that transaction, CSXT agreed to transfer its freight easement over the Canton Line to METRO or its designee.

According to W&LE, METRO designated it to receive the rail freight easement over the Canton Line from CSXT. Therefore, pursuant to a July 1, 2003 Purchase and Sale Agreement between W&LE and CSXT, W&LE proposes to acquire CSXT's rail freight easement over the Canton Line. Under the agreement, W&LE will continue to provide service to shippers on the Canton-Aultman segment in the same manner that it does today. As to the Aultman-Krumroy segment, W&LE will acquire CSXT's freight operating rights and obligations on that segment in its current, discontinued state, and will seek further, appropriate Board authority should W&LE wish to reinstate rail freight operations thereon in the future.

W&LE currently provides rail service on the Canton-Aultman segment approximately two days per week. No other carrier provides rail freight service on that segment.

²(...continued)

trackage rights over the Reed Runner track and via the former wye track leased from CSXT at McKinley, OH.

³ See CSX Transportation, Inc.—Abandonment Exemption—Summit County, OH, Docket No. AB-55 (Sub-No. 447X) (ICC served Jan. 12, 1993).

⁴ W&LE states that, although no freight service has been provided on this segment for 10 years, the track remains in place and is expected to be utilized for the operation of excursion trains and commuter passenger service under the auspices of METRO.

⁵ On May 24, 2000, METRO filed a verified notice of exemption for authority to acquire the assets of all three segments from CSXT. It simultaneously filed a motion to dismiss the notice of exemption on jurisdictional grounds. On June 23, 2000, the Board served notice of METRO's notice of exemption, indicating that the Board would address the motion to dismiss in a separate decision. See Metro Regional Transit Authority—Acquisition Exemption—CSX Transportation, Inc., STB Finance Docket No. 33838 (STB served June 23, 2000). A separate Board decision will address that motion.

Approximately four active shippers exist on the segment, accounting for approximately 340 carloads per year of kaolin clay, synthetic rubber, lumber, plastics, and other commodities.

According to W&LE, this transaction will not change existing rail freight operations or service. W&LE states that it will simply become the owner rather than the lessee of the freight common carrier interests in the rail line on which it has operated since 1992, thereby enhancing effective rail management and the long-term stability of its operations.⁶

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10502, 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 warranted under 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. W&LE has stated that shippers will continue to have the same service options that they have now. Indeed, no shipper has opposed the transaction. Nevertheless, to ensure that shippers are informed of the Board's actions here, W&LE will be required to serve all shippers on the line with a copy of this decision within 5 days after its service date and to certify to the Board that it has done so. Given this 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 employees. Accordingly, as a condition to granting this exemption, the employee protective conditions set forth in Wisconsin Central Ltd.–Acquisition Exem.–Union Pac. RR, 2 S.T.B. 218 (1997), rev'd in part sub nom.

⁶ In a prior decision in this proceeding, the Board granted W&LE a waiver of the 60-day labor notice requirement of 49 CFR 1121.4(h). See Wheeling & Lake Erie Railway Company–Acquisition and Operation Exemption–CSX Transportation, Inc., STB Finance Docket No. 34341 (STB served Sept. 2, 2003).

Association of American Railroads v. Surface Transp. Bd, 162 F.3d 101 (D.C. Cir. 1998), will be imposed.

This transaction is exempt from environmental reporting requirements under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8(b).

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 set forth in Wisconsin Central Ltd.—Acquisition Exem.—Union Pac. RR, 2 S.T.B. 218 (1997), rev'd in part sub nom. Association of American Railroads v. Surface Transp. Bd, 162 F.3d 101 (D.C. Cir. 1998).

2. Within 5 days of service of this decision, W&LE shall serve a copy of the decision on all shippers on the line and certify to the Board that it has done so.

3. This decision will be published in the Federal Register on October 16, 2003.

4. The exemption will become effective on November 9, 2003.

5. Petitions to stay must be filed by October 27, 2003. Petitions to reopen must be filed by November 4, 2003.

By the Board, Chairman Nober.

Vernon A. Williams
Secretary