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SERVICE DATE - NOVEMBER 16, 2001
SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34002

ALAMO NORTH TEXAS RAILROAD CORPORATION—CONSTRUCTION AND OPERATION EXEMPTION—WISE COUNTY, TX

Decided: November 8, 2001

By petition filed on August 28, 2001, Alamo North Texas Railroad Corporation (Alamo North) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 for authority to construct and operate a 2.25-mile line of railroad in Wise County, TX. The proposed line will extend from a connection with the Union Pacific Railroad Company (UP) to Alamo North's quarry near Chico, TX, which is operated by Alamo North's parent company, Martin Marietta Materials Southwest, Ltd. (MMM Southwest).¹ The purpose of the proposed construction is to provide rail service to the Chico quarry. The line would be available to serve other existing quarries in the area as well as other industries that might locate there in the future. Alamo North requests that we conditionally grant the exemption, subject to our environmental review. We will grant a conditional exemption and we will issue a final decision after completion of the environmental review process.

BACKGROUND

MMM Southwest and its subsidiaries produce aggregates from quarries in the southwestern United States. The Chico quarry, which is located about 50 miles northwest of Ft. Worth, TX, has been in operation for 14 years and produces limestone aggregates used for road and other construction projects. To date, all of the limestone aggregates produced at the quarry have been transported by truck to MMM Southwest's customers that are located primarily in the Dallas-Ft. Worth area. According to Alamo North, 90% of these customers are within 70 miles of the quarry. Alamo North submits that the truck transportation of stone products has become

¹ MMM Southwest, a Texas limited partnership, owns 995 of the 1,000 shares of common stock of Alamo North, with the remaining shares being held as director qualifying shares by the five directors of Alamo North, as required by Texas law. MMM Southwest, a successor at law to Redland Stone Products Company, is a wholly owned subsidiary of Martin Marietta Materials, Inc. MMM Southwest is also the parent of Alamo Gulf Coast Railroad, a shortline railroad, which operates 5 miles of rail line primarily serving MMM Southwest's Beckmann quarry in San Antonio, TX. Upon the commencement of rail operations over the line proposed here by Alamo North, MMM Southwest will control two Class III rail carriers whose lines are not connected to each other. MMM Southwest states that it will file a notice of exemption pursuant to 49 CFR 1180.2(d)(2) to exempt its control of the two rail carriers from the requirements of 49 U.S.C. 11323.

increasingly inefficient and uneconomical for distances over 50 miles. Construction and operation of the proposed line and its connection with UP will enable MMM Southwest to extend beyond its present market in the Dallas-Ft. Worth area to compete in other markets throughout east Texas, including the Houston market. It will also enable MMM Southwest to serve some of its existing customers by rail, and deliver to those customers not only limestone, but also sand and other products that it will be able to backhaul from Houston and other locations in cars used for outbound movements of limestone.

Alamo North states that MMM Southwest is in the process of installing new equipment that will increase the production capacity of the Chico quarry, and also has plans to develop a new quarry on leased property adjacent to the existing quarry.² According to Alamo North, MMM Southwest estimates that, when the proposed new line is operational, 40% of its product from the quarries will be transported by rail, which will amount to approximately 300 70-car trains a year (or about six trains a week).

DISCUSSION AND CONCLUSIONS

The construction and operation of railroad lines requires prior Board approval under 49 U.S.C. 10901. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued 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 necessary to protect shippers from the abuse of market power.

Based on the information provided, we conclude that detailed scrutiny of the proposed construction and operation under 49 U.S.C. 10901 is not necessary to carry out the rail transportation policy. The requested exemption will promote that policy by providing a rail service option to MMM Southwest, ensuring the development of a sound rail transportation system with effective competition among rail carriers and with other modes, fostering sound economic conditions in transportation, and reducing regulatory barriers to entry [49 U.S.C. 10101(4), (5), and (7)]. Exempting the proposed construction and operation will reduce the need for Federal regulation [49 U.S.C. 10101(2)]. Unless determined otherwise following the environmental analysis, nothing on the record indicates that other aspects of the rail transportation policy will be adversely affected.

Regulation of the transaction is not necessary to protect shippers from the abuse of market power. Rather, the proposed transaction will enhance competition by providing MMM Southwest, which is now served only by motor carriers, with a rail transportation option. Given

² Alamo North states that all but a few hundred yards of the right-of-way are currently owned or leased by MMM Southwest and UP. It states that it intends to acquire these few hundred yards, or an easement over them, by purchase or by eminent domain, pursuant to authority granted to it by Texas law.

our finding regarding the probable effect of the transaction on market power, we need not determine whether the transaction is limited in scope.

Alamo North has consulted with our Section of Environmental Analysis regarding the environmental review process. Pursuant to 49 CFR 1105.10(d), Alamo North has retained an independent third-party consultant to prepare the environmental documentation for this project. After a final environmental assessment is issued, we will issue a further decision addressing the environmental issues and making the exemption effective at that time, if appropriate, thereby allowing the construction to begin. See Missouri Mining, Inc. v. ICC, 33 F.3d 980 (8th Cir. 1994); Illinois Commerce Com'n v. ICC, 848 F.2d 1246, 1259 (D.C. Cir. 1988), cert. denied, 488 U.S. 1004 (1989).

As conditioned, 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, we conditionally exempt Alamo North's construction and operation of the above-described line from the prior approval requirements of 49 U.S.C. 10901, subject to our further consideration of the anticipated environmental impacts of the proposal.
2. On completion of the environmental review, we will issue a further decision addressing those matters and making the exemption effective at that time, if appropriate.
3. Notice will be published in the Federal Register on November 16, 2001.
4. Petitions to reopen must be filed by December 6, 2001.
5. This decision is effective 30 days from the date of service of this decision.

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

Vernon A. Williams
Secretary