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SERVICE DATE - FEBRUARY 15, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33731

ELLIS COUNTY RURAL RAIL TRANSPORTATION DISTRICT--CONSTRUCTION AND  
OPERATION EXEMPTION--ELLIS COUNTY, TX

Decided: February 8, 2000

Ellis County Rural Rail Transportation District (Rail District) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 to construct and operate a 4.8-mile line of railroad in Ellis County, TX. To expedite its arrangements for financing the proposed construction, Rail District requests that we conditionally grant the exemption, subject to our environmental review. We will grant a conditional exemption, and will issue a final decision after completion of the environmental review process.

BACKGROUND

In 1998, the City of Midlothian, TX, which is located in the north-central part of the state, created a Tax Increment Reinvestment Zone (TIRZ) development area on the outskirts of Midlothian to spur economic growth and to create jobs. The centerpiece of TIRZ is a new 1,700-acre business and industrial park known as RailPort, which is adjacent to a rail line of The Burlington Northern and Santa Fe Railway Company (BNSF).<sup>1</sup> The line that Rail District proposes to construct<sup>2</sup> would connect RailPort with a nearby line of the Union Pacific Railroad Company (UP).<sup>3</sup> The construction of the new track is intended to benefit existing shippers and to provide industries choosing to locate their facilities in RailPort with competitive, two-carrier rail service.<sup>4</sup> The proposed line will have to cross BNSF's line in order to reach UP. Rail District states that it is trying to reach agreement with BNSF on construction of a grade-separated crossing, failing which it

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<sup>1</sup> Rail District refers to this line as being "operated" by BNSF.

<sup>2</sup> Rail District, created under Texas law to preserve, promote, and expand the availability of rail service within Ellis County, is empowered to build and/or operate new rail lines and related facilities when it concludes that doing so is in the best interests of the citizens of Ellis County.

<sup>3</sup> Rail District refers to this line as being "operated" by UP.

<sup>4</sup> According to Rail District, the availability of competitive, two-carrier rail service is a key attraction for rail-dependent shippers considering locating their facilities in RailPort and will also benefit existing shippers like Chaparral Steel and TXI Cement whose rail-dependent facilities are located adjacent to RailPort.

will file a supplemental crossing application to obtain the necessary authorization.<sup>5</sup>

In addition to constructing<sup>6</sup> and owning the line, Rail District seeks authorization to operate the line after it is completed. In due course, however, Rail District expects to assign its responsibility for common carrier operations to an experienced, as-yet-unidentified operator. Once an operator is selected, Rail District states that an appropriate filing will be made to the Board.

#### DISCUSSION AND CONCLUSIONS

The construction and operation of railroad lines requires prior Board approval under 49 U.S.C. 10901. However, under 49 U.S.C. 10502, 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. The proposed construction and operation will give shippers located in or adjacent to the RailPort access to additional rail service via UP. As a consequence, the construction and operation will increase competition [49 U.S.C. 10101(1) and (4)]. Exempting the proposed construction and operation will reduce the need for Federal regulation, ensure the development of a sound transportation system, foster sound economic conditions, and reduce regulatory barriers to entry [49 U.S.C. 10101(2), (4), (5), and (7)]. Unless determined otherwise following the environmental analysis or in a decision on an application under 49 U.S.C. 10901(d)(1), other aspects of the rail transportation policy will not 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 RailPort and adjacent shippers with an additional rail transportation option. Given our finding regarding the probable effect of the transaction on market power, we need not determine whether the transaction is limited in scope.

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<sup>5</sup> Any exemption granted in this proceeding is permissive only and does not relieve the petitioner from legal impediments to the proposed construction, relating to crossing rights and compensation under 49 U.S.C. 10901(d)(1). An agreement to permit the crossing must be reached or section 10901(d)(1) authority must be sought and obtained before a crossing may be constructed. See Kansas City Southern Railway Company--Construction and Operation Exemption--Geismar Industrial Area Near Gonzales and Sorrento, LA, Finance Docket No. 32530, slip op. at 7 (ICC served June 30, 1995).

<sup>6</sup> Construction of the new line is to be financed through revenue bonds issued by Rail District and backed by a tax increment fund administered by local government agencies.

The Rail District has consulted with our Section of Environmental Analysis (SEA) regarding the environmental review process. Once an environmental assessment or impact statement is issued and comments are received, we will issue a further decision based on the environmental document and the comments. Granting the requested conditional exemption will not diminish our capacity to consider environmental matters when we issue a final decision addressing the environmental issues and making the exemption effective at that time, if appropriate. See 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 the Rail District'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 February 15, 2000.
4. Petitions to reopen must be filed by March 6, 2000.

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

Vernon A. Williams  
Secretary