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SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35173

PACIFIC SUN RAILROAD, L.L.C.—LEASE AND OPERATION EXEMPTION—BNSF RAILWAY COMPANY

STB Finance Docket No. 35174[1]

WATCO COMPANIES, INC.—CONTINUANCE IN CONTROL EXEMPTION—PACIFIC SUN RAILROAD, L.L.C.

Decided: May 22, 2009

In this decision, we deny the request of the Brotherhood of Railroad Signalmen (BRS) to revoke the notices of exemption in these cases. In STB Finance Docket No. 35173, a notice of exemption was served and published in the Federal Register on October 3, 2008 (73 FR 57728-29), permitting Pacific Sun Railroad, L.L.C. (PSRR), a noncarrier, to acquire by lease and to operate approximately 21.5 miles of rail lines and freight rail easement of BNSF Railway Company (BNSF) in California (the lease exemption).[2] A notice of exemption in STB Finance Docket No. 35174 was served and published the same day (73 FR 57728), allowing Watco Companies, Inc. (Watco) to remain in control of PSRR upon PSRR's becoming a Class III rail carrier (the control exemption).[3] Both exemptions became effective on October 17, 2008; the parties intended to consummate the transactions on or about October 24, 2008.

In a pleading filed on October 31, 2008, BRS asks the Board to deny or revoke these exemptions because of the lack of conditions for the protection of employees whose jobs could be affected by the exempted transactions. PSRR filed a reply in opposition to that request on November 19, 2008.

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[1] These proceedings are not consolidated; they are handled together for administrative convenience.

[2] PSRR sought to lease: (1) BNSF's approximately 21.2-mile reserved rail freight service easement over the Escondido Subdivision between milepost 0.0 at Oceanside Junction, CA, and milepost 21.2 in Escondido, CA; and (2) BNSF's approximately 0.3-mile (not including yard tracks) Miramar Spur and rail yard located east of milepost 252.9 on BNSF's San Diego Subdivision.

[3] Watco, which owns 100% of the issued and outstanding stock of PSRR, controlled 18 Class III rail carriers at the time it filed the notice of exemption.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10502(d), the Board may revoke an exemption when it finds that application of a statutory provision is necessary to carry out the rail transportation policy of 49 U.S.C. 10101. The person seeking revocation has the burden of showing that criterion is met, 49 CFR 1121.4(f), and petitions to revoke must be based on reasonable, specific concerns demonstrating that reconsideration of the exemption is warranted and more detailed scrutiny of the transaction is necessary. See Consolidated Rail Corporation—Trackage Rights Exemption—Missouri Pacific Railroad Company, Finance Docket No. 32662 (STB served June 18, 1998). When the Board considers whether to revoke an exemption, it analyzes whether the underlying section of the statute—here 49 U.S.C. 10901 for the lease exemption and 49 U.S.C. 11324-26 for the control exemption—would require review of a particular issue.

BRS seeks revocation because the transactions lack employee protective conditions. One aspect of the rail transportation policy, 49 U.S.C. 10101(11), encourages fair wages and safe and suitable working conditions in the railroad industry. While this provision can be viewed as encouraging the imposition of conditions for the protection of employees whose jobs might be affected by a transaction, it is not a basis for relief here. Even if we were to grant revocation, there are more specific provisions in the Interstate Commerce Act that prohibit us from imposing conditions in these two transactions.

First, 49 U.S.C. 10901 would govern the Board's review of the lease if the exemption were revoked. That statutory section provides that the Board may not impose any employee protection conditions when a noncarrier leases a line from a carrier. See 49 U.S.C. 10901(c) (when approving an application, the Board may require compliance with conditions, "other than labor protection conditions," that are necessary in the public interest). BRS points out that BNSF is a Class I rail carrier.[4] But the prohibition against imposing employee protection contained in section 10901, which governs BNSF's lease to noncarrier PSRR, applies regardless of the class of the lessor railroad.

Second, 49 U.S.C. 11324-26 would govern the Board's review of the control transaction if the Board revoked the control exemption. BRS does not dispute that all of Watco's rail carrier subsidiaries, the only rail carriers involved in the control transaction, are Class III carriers. Under 49 U.S.C. 11326(c), we may not impose employee protective conditions in a control transaction involving only Class III carriers.

[4] Class I carriers have annual carrier operating revenues of $250 million or more after applying a specified "railroad revenue deflator formula;" Class II carriers have adjusted revenues less than $250 million but in excess of $20 million; and Class III carriers have adjusted revenues of less than $20 million. 49 CFR Part 1201, General Instruction 1-1(a).

Thus, even if the pre-approval requirements of the relevant statutory sections were to be applied, the Board could not impose employee protective conditions on either of these transactions. Therefore, in citing the lack of such conditions, BRS has not met its burden of proof that application of the relevant statutory provisions is necessary to carry out the rail transportation policy. Consequently, we must deny the request to revoke the exemptions in these cases.[5]

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

It is ordered:

1. The request to deny the exemptions in these cases is denied as moot, and the request to revoke the exemptions in these cases is denied.

2. This decision is effective on its service date.

By the Board, Acting Chairman Mulvey, and Vice Chairman Nottingham.

Anne K. Quinlan
Acting Secretary

[5] Because the exemptions have become effective, the request to deny the notices of exemption is moot.