SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 32977

BURLINGTON NORTHERN RAILROAD COMPANY--OPERATION EXEMPTION--IN MILLS AND POTTAWATTAMIE COUNTIES, IA

Decided: February 25, 1997

By petition filed May 30, 1996, Burlington Northern Railroad Company (BN or petitioner)[1] seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 to reinstitute operations over approximately 14.0 miles of an abandoned line, the P-Jct Line, formerly owned and operated by BN, between Pacific Junction (MP 475.01) and Council Bluffs, IA (MP 489.01).[2] MidAmerican Energy Company (MidAmerican)[3] has filed a comment.[4] In a letter-protest, the United Transportation Union (UTU) requests imposition of labor protective conditions. We will grant the exemption.

BACKGROUND

BN abandoned the line in 1985. According to BN, it retained the right-of-way intact and used the abandoned line for storage

[1] On December 31, 1996, The Atchison, Topeka and Santa Fe Railway Company merged with and into Burlington Northern Railroad Company. The name of the surviving corporation is The Burlington Northern and Santa Fe Railway Company. In this decision, we will continue to refer to this entity as BN.

[2] Without analysis, BN initially questions whether, under the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, the proposed transaction involving a Class I carrier continues to be governed by section 10901. We conclude that the plain language of section 10901(a)(3), which remains unchanged from the former statute as relevant here, governs this request to reinstitute operations.

[3] BN refers to the shipper as MidAmerican Power Systems, Inc., MidAmerican's predecessor.

[4] In its comment, MidAmerican stated that it was directly affected by the petition; that BN did not inform MidAmerican of its intent to reroute the shipper's traffic; and that MidAmerican wanted the Board to delay action for 30 days so that the shipper could analyze BN's proposal. MidAmerican also claimed that some new construction/rehabilitation would be necessary, as property owners have removed portions of the rail. BN responded, stating that it agreed to the delay. Further correspondence from MidAmerican stated that it and BN met, and that MidAmerican was waiting for a response from BN. By letter filed November 27, 1996, BN noted that MidAmerican had not requested further extensions of time and asked that the proceeding move forward. By letter filed December 18, 1996, MidAmerican replied that, while unresolved issues remained, it did not object to the Board's moving forward with processing the exemption as requested by BN.

and other railroad purposes not related to transportation in interstate commerce.

BN currently routes unit train coal traffic from Powder River Basin (PRB) origins to MidAmerican's Council Bluffs Energy Center (CBEC), a route that runs through the towns of Alliance, Lincoln, Ashland, Chalco, and Omaha, in Nebraska, and Council Bluffs in Iowa, to the CBEC. To effect operating efficiencies for the remainder of BN's transportation contract with MidAmerican, BN proposes to change its current through route of MidAmerican trains to run via Ashland and Oreapolis, in Nebraska, and Pacific Junction, in Iowa, to the CBEC. BN states that MidAmerican receives about 3 million tons per year of PRB coal via BN.

After termination of the MidAmerican contract at the end of 1997, BN intends to institute local service to a new facility owned by Bunge Corporation (Bunge). BN plans to commence shipments from the new facility on the line in the fall of 1998. BN states that this change in operations requires reactivation of the previously-abandoned 14-mile line.

According to BN, the current route passes through congested areas and involves steep grades between Ashland and Omaha that require two extra locomotives east of Lincoln. The proposed route would avoid congestion at Lincoln as well as at Council Bluffs, where several railroads' busy interchange tracks are crossed at grade. BN can also avoid using the bridge over the Missouri River at Omaha owned by the Union Pacific Railroad Company (UP). The bridge is a heavily used facility, which handles substantial UP east-bound coal traffic, as well as certain merchandise traffic.

BN also states that it will use the route for detours of through trains when other lines are closed due to emergencies or natural disasters, such as flooding of the Missouri River. Additionally, BN anticipates marketing its services to potential local traffic on the line.

Finally, BN states that the right-of-way will provide a critical local point of service in late 1998. BN avers that Bunge is expanding its soy processing and edible oil refining operations in the area, and is currently planning to locate a large facility at approximately MP 486 on the line. BN expects to handle soybeans and soybean oil inbound to the facility and meal and soybean oil outbound. Once operations are in place in late 1998, BN anticipates providing one local train (50 cars) per day to Bunge.

DISCUSSION AND CONCLUSIONS

We find that the proposed reinstitution of operations over an abandoned rail line requires Board approval under section 10901(a)(3). Under section 10502, however, we must exempt a transaction or service from regulation if we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101 (RTP); and (2) either (a) the transaction or service is limited in scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Our detailed scrutiny of this transaction under section 10901 is unnecessary to carry out the RTP. Exemption will promote the RTP. Reinstitution of operations on this line will enable BN to provide more efficient and economic service to shippers and reduce rail congestion. Exempting the proposed transaction 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). This exemption will also place non-productive assets into revenue producing use and enhance BN's ability to earn adequate revenues from its transportation services. 49 U.S.C. 10101(3). Other aspects of the rail transportation policy will not be adversely affected. Conversely, failure to grant the exemption will inhibit development of a sound transportation system, freeze the current service arrangements, promote inefficiencies, and prohibit service to a new plant.

Regulation also is not needed to protect shippers from the abuse of market power. Reactivation of this previously used rail line will allow BN to serve an existing shipper over a different route and will provide service to a new facility. Thus, an exemption here should result in more service options for shippers, not fewer. Moreover, the existing shipper apparently no longer has any objections to the exemption request. Given our finding regarding the probable effect of our decision on market power, we need not determine whether the transaction is limited in scope.

UTU has protested, seeking the imposition of employee protective conditions pursuant to 49 U.S.C. 11326. That section requires employee protective conditions for transactions under 49 U.S.C. 11324 and 11325. Because this is a transaction under section 10901, however, the Board has no authority to impose labor protection conditions. See 49 U.S.C. 10901(c). Accordingly, no labor conditions will be imposed here.

The Board's Section of Environmental Analysis (SEA) has stated that reinstitution of operations will not exceed any of the thresholds established in 49 CFR 1105.7(e)(4) or (5). SEA has also stated that, because the rail line is largely intact, there will be minimal construction activities. We adopt SEA's conclusion that this proceeding is exempt from environmental reporting requirements under 49 CFR 1150.6(c)(2)(i) and from historic reporting requirements under 49 CFR 1105.8(b)(1).

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 exempt the operation of the above-described line from the prior approval requirements of 49 U.S.C. 10901.

2. Notice will be published in the Federal Register on March 12, 1997.

3. Petitions to stay must be filed by March 24, 1997. Petitions to reopen must be filed by April 1, 1997.

4. This exemption is effective on April 11, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary