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SERVICE DATE - LATE RELEASE JUNE 12, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-542X

HARBOR BELT LINE RAILROAD--DISCONTINUANCE EXEMPTION--
PORT OF LOS ANGELES

Decided: June 9, 1998

By petition filed February 19, 1998,¹ Harbor Belt Line Railroad (HBL) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to discontinue its switching operations on tracks owned by the City of Los Angeles (the City) within the Port of Los Angeles (the Port), Los Angeles County, CA.² The United Transportation Union seeks imposition of labor protective conditions. We will grant the exemption.

BACKGROUND

This transaction is related to Pacific Harbor Line, Inc.--Operation Exemption--Port of Los Angeles, STB Finance Docket No. 33411 (STB served Dec. 2, 1997), in which Pacific Harbor Line, Inc. (PHL), filed a notice of exemption to acquire operating rights from the City to provide the switching services being discontinued here. Upon commencement of services by PHL, HBL will be replaced as the operator of the lines within the Port and will discontinue all operations.

HBL states that in the summer of 1994 the relevant parties determined that operations within the Port would be better handled by a neutral third party provider. The increased prominence of intermodal unit trains and the emphasis on containerized traffic over the last 10 years changed the requirements for rail services within the Port. According to HBL, its organization and focus were no longer suitable for the kind of updated rail services required by the Port, the Port's tenants, and UP and BNSF, collectively, the railroads.

¹ Notice of the filing was served and published in the Federal Register on March 11, 1998 (63 FR 11950).

² HBL was created in 1928 by the City and the railroads then serving the Port to provide switching service within the Port. HBL is now controlled by the City, through its Board of Harbor Commissioners, and the railroads currently serving the Port, Union Pacific Railroad Company (UP) and The Burlington Northern and Santa Fe Railway Company (BNSF).

Accordingly, in the fall of 1995, after an extensive competitive selection process, Anacostia & Pacific Company (A&P), located in Chicago, IL, was selected to become the operator within the Port. PHL is a wholly owned subsidiary of A&P and was specifically created to provide the services on behalf of A&P.

Pursuant to an Operating Permit entered into between the City and PHL, dated December 1, 1997, PHL will perform the carload switching services currently provided by HBL within the Port and assume all existing HBL obligations. PHL will operate the tracks and other facilities currently used by HBL. It will supply its own locomotives as well as the financial and personnel resources necessary to meet the changing demands of the Port.³ In addition, PHL will extend the hours of operation to 24 hours a day, 7 days a week and will also provide dispatching for all rail operations over the Port rail facilities. PHL will be responsible for the operation and maintenance of the track components of a moveable railbridge (Badger Avenue Bridge), as well as for performing certain other in-terminal maintenance operations. It will hire, train and supervise all persons necessary to perform its duties and obligations.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail carrier may not discontinue operations without prior approval. 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.

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of a discontinuance application, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also promote a safe and efficient rail transportation system, foster sound economic conditions, ensure coordination between all carriers and other modes, and encourage efficient management by allowing HBL to discontinue operations, thereby enabling a neutral third party operator, PHL, that is better suited to handling the changed requirements of the Port, to take over operations [49 U.S.C. 10101(3), (5) and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Because all of HBL's service obligations will be assumed by PHL, and PHL will expand services to provide 24 hour, 7 day a week operations, we find that regulation is not necessary to protect shippers from an abuse of market power. Given our market power finding, we need not determine whether the proposed discontinuance is limited in scope.

³ HBL had received its personnel resources, such as train crews, maintenance personnel and management personnel, from the railroads.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. However, we do not normally impose employee protective conditions when a carrier discontinues service over its entire operation unless the evidence shows the existence of: (1) a corporate affiliate that will continue substantially similar rail operations; or (2) a corporate parent that will realize substantial financial benefits over and above relief from the burden of deficit operations by its subsidiary railroad. See Wellsville, Addison & Galetton R. Corp.--Abandonment, 354 I.C.C. 744 (1978); and Northampton and Bath R. Co.--Abandonment, 354 I.C.C. 784 (1978) (Northampton). HBL proposes to discontinue service over its entire operation and go out of business. It does not appear to have any corporate affiliate or parent that could benefit from the proposed discontinuance of operations. And no one has attempted to show that the situation under Northampton exists for imposing labor protection in entire line discontinuances. Under the circumstances, we will not impose labor protective conditions in this case.

Because this is a discontinuance proceeding and not an abandonment, we need not consider offers of financial assistance (OFA) to acquire the line for continued rail service,⁴ trail use requests, or requests to negotiate for public use of the line. This proceeding is exempt from environmental reporting requirements under 49 CFR 1105.6(c)(2) and from historic reporting requirements under 49 CFR 1105.8(b)(3). As such, 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 from the prior approval requirements of 49 U.S.C. 10903 the discontinuance of service by HBL of its entire operations as described above.
2. An OFA under 49 CFR 1152.27(b)(2) to subsidize continued rail service must be received by the railroad and the Board by June 22, 1998, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by a \$1,000 filing fee. See 49 CFR 1002.2(f)(25).
3. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: “**Office of Proceedings, AB-OFA.**”
4. Petitions to stay must be filed by June 22, 1998. Petitions to reopen must be filed by July 2, 1998.

⁴ OFAs to subsidize continued rail service, however, do apply to discontinuances.

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5. Provided no OFA to subsidize continued rail service has been received, this exemption will be effective on July 12, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary