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SERVICE DATE – DECEMBER 13, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35094

THE KANSAS CITY SOUTHERN RAILWAY COMPANY—ACQUISITION AND  
OPERATION EXEMPTION—COLUMBUS AND GREENVILLE RAILWAY COMPANY

Decided: December 6, 2007

On October 22, 2007, The Kansas City Southern Railway Company (KCSR) filed a petition for exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 11323, *et seq.*, to acquire and operate a 2.23-mile rail line owned by Columbus and Greenville Railway Company (CAGY), subject to CAGY's reservation of nonexclusive limited local trackage rights.<sup>1</sup> The rail line extends between, at one end, a connection between KCSR's Artesia Subdivision and CAGY's main track near KCSR milepost 230.4 and, at the other end, two connections between CAGY's main track and KCSR's Louisville Subdivision near KCSR milepost 88.5, near West Point, MS.<sup>2</sup> We will grant the exemption, subject to standard labor protective conditions.

BACKGROUND

KCSR is a Class I carrier that operates rail lines in 10 states, and CAGY is a Class III carrier that operates rail lines in the State of Mississippi. According to petitioner, the parties have contemplated for a period of time the eventual transfer of the line to KCSR. As a consequence, CAGY has been reluctant to expend funds to maintain the line other than at the minimum necessary to maintain safe operations. In assuming ownership of the line, KCSR would undertake any rehabilitation and assume the primary obligation for maintaining the line. While there are no active shippers on the line, CAGY will retain limited local trackage rights to serve any already-existing but currently dormant shippers, should they again become active. In

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<sup>1</sup> Pursuant to an agreement between petitioners, CAGY would be permitted to traverse the involved line via its reserved nonexclusive local trackage rights, but it would not be permitted to serve shippers on the line that had not been previously served when CAGY owned the line. Consequently, the rights retained by CAGY are referred to as "limited local" trackage rights.

<sup>2</sup> The terminal mileposts are points on separate KCSR subdivisions to which the line connects at either end (CAGY has indicated that the line does not have mileposts of its own). The mileposts therefore cannot be used for purposes of calculating the actual mileage of the line.

addition, as the owner of the line, KCSR would also have the right to serve such shippers. Therefore, petitioner points out, competition would be enhanced as a result of the transaction because any already-existing shippers would have access to two carriers rather than one.

## DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 11323(a)(2), prior Board approval is required for a rail carrier to purchase and operate the property of another rail carrier. Under 49 U.S.C. 10502(a), however, we must exempt a transaction or service from regulation when we find that: (1) regulation is not necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

Detailed scrutiny of the proposed transaction under 49 U.S.C. 11323-25 is not necessary to carry out the RTP. By minimizing the administrative expense of considering the proposed transaction, an exemption will expedite regulatory decisions and reduce barriers to entry and exit [49 U.S.C. 10101(2) and (7)]. In addition, the transaction will help promote a safe and efficient rail transportation system, foster sound economic conditions, and encourage efficient management [49 U.S.C. 10101(3), (5), and (9)]. Other aspects of the RTP will not be adversely affected.

Regulation of the transaction is not necessary to protect shippers from the abuse of market power. The transaction involves the transfer of a rail line with the seller retaining limited local trackage rights. There will be no reduction in rail competition and, indeed, the transaction will result in enhancing competition for previously existing shippers as they will have access to two carriers rather than one. Given our market power finding, we need not also determine whether the proposed transaction is limited in scope.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting the exemption, we will impose the employee protective conditions in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

This transaction is exempt from environmental reporting requirements under 49 CFR 1105.6(c)(2)(i) because KCSR's acquisition and operation will not result in significant changes in carrier operations, i.e., changes exceeding the thresholds of 49 CFR 1105.7(e)(4) or (5). Similarly, the transaction is exempt from the historic reporting requirements under 49 CFR 1105.8(b)(1) because petitioner has no plans to dispose of or alter historic properties.

KCSR requests expedited consideration by the Board and issuance of a decision no later than December 10, 2007, so that it may be able to consummate the proposed transaction by December 20, 2007, in order to begin needed track work. According to petitioner, expeditious

action would not only facilitate KCSR's tax and budgeting needs associated with the transaction, but it would also inure to the benefit of shippers and the general public which have an interest in an adequately maintained and serviceable rail line. The request is reasonable. Accordingly, the exemption will be effective on December 20, 2007, rather than the normal 30 days after service of the decision and publication in the Federal Register.

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 above-described transaction from the prior approval requirements of 49 U.S.C. 11323 et seq., subject to the employee protective conditions in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).
2. Notice will be published in the Federal Register on December 13, 2007.
3. This exemption will be effective on December 20, 2007. Petitions to stay must be filed by December 19, 2007. Petitions to reopen must be filed by January 14, 2008.

By the Board, Chairman Nottingham, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams  
Secretary