28905 SERVICE DATE - FEBRUARY 13, 1998
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SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33501

DOUGLAS M. HEAD, KENT P. SHOEMAKER AND CHARLES H. CLAY—CONTINUANCE IN CONTROL EXEMPTION—RUTLAND LINE, INC.

Decided: February 9, 1998

By decision served January 7, 1998, the Surface Transportation Board (Board) exempted from the prior approval requirements of 49 U.S.C. 11323-25 the continuance in control by Douglas M. Head, Kent P. Shoemaker and Charles H. Clay (Petitioners) of the Rutland Line, Inc. (RLI).[1] Notice of the exemption was published in the Federal Register the same day at 63 FR 922. The exemption was scheduled to become effective on February 6, 1998.

On January 26, 1998, Petitioners filed a letter of clarification with respect to their petition for exemption filed on October 24, 1997 (Petition for Exemption). Petitioners observed that the statement in the Petition for Exemption, at 13, that no shippers are currently located on the line

[1] RLI was scheduled to become a Class III rail carrier upon consummation of its acquisition transaction that was the subject of the notice of exemption in Rutland Line, Inc.—Acquisition and Operation Exemption—The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 33500 (STB served Nov. 21, 1997, and published the same day at 62 FR 62401). RLI acquired approximately 23 miles of rail line from The Burlington Northern and Santa Fe Railway Company (BNSF), extending from milepost 42.67, at Geneseo Junction, ND, to milepost 65.60, at the North Dakota/South Dakota border (Subject Line). RLI also acquired BNSF's interest in certain spur trackage and real estate at Hankinson and Lidgerwood, ND. In addition, RLI obtained incidental operating rights to operate overhead rail freight services on BNSF's lines from milepost 212.32, at Breckenridge, MN, to milepost 195.6, at Aberdeen Line Junction, MN, and from milepost 0.00, at Aberdeen Line Junction, to milepost 0.60, at BN Junction, MN (Overhead Operating Rights). Further, BNSF also assigned to RLI its operating rights under a July 5, 1955 agreement from BNSF milepost 0.60, at BN Junction, to CPRS milepost 205.6, at Hankinson, and its operating rights under a September 18, 1959 agreement from CPRS milepost 205.6, at Hankinson, to BNSF milepost 42.67, at Geneseo Junction (Assigned Operating Rights).

RLI is controlled through stock ownership by Petitioners. RLI's stock was placed in an irrevocable voting trust. In addition, Petitioners currently control through stock ownership three other Class III common carriers by rail: Twin Cities & Western Railroad Company (TCW); Red River Valley & Western Railroad Company (RRVW); and Minnesota River Bridge Company (MRBC). TCW, RRVW, and MRBC are hereinafter collectively referred to as Affiliates.

being acquired by RLI is only true with respect to the Overhead Operating Rights and that there are actually 2 shippers located on the Subject Line (the 23-mile line in North Dakota acquired by RLI) and 3 shippers located on the line over which RLI acquired Assigned Operating Rights. Petitioners assert that the facts, as clarified, should not affect the Board's market power analysis in connection with the conclusion that an exemption is appropriate, but Petitioners request a Board determination to that effect. Petitioners also request expedited action so that, if our action is favorable, petitioners will be able to dissolve the voting trust as soon as possible.

Petitioners' request will be granted. The presence of shippers located on the acquired Subject Line and on the line over which Assigned Operating Rights were acquired does not affect the Board's previous conclusion and finding that the transaction would not result in the abuse of market power. While estimates indicate that these 5 shippers will ship between 600 and 700 carloads a year via RLI and that an additional shipper that is constructing facilities on the Assigned Operating Rights line will also ship via RLI, Petitioners continue to maintain that each of the Affiliates is a corporate entity separate from RLI, and that any business dealings between RLI and the Affiliates will be the result of arms-length negotiations between the parties. There is no reason to believe that any shipper would be disadvantaged by the proposed continuance in control.

We find that the transaction, as clarified, qualifies for exemption from the prior approval requirements of 49 U.S.C. 11323-25.

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

It is ordered:

1. This proceeding is reopened for our consideration of the facts as corrected by Petitioners.

2. The Board's conclusion in the decision served on January 7, 1998, is affirmed. The proposed continuance in control is exempt from the prior approval requirements of 49 U.S.C. 11323-25.

3. This decision is effective on the date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary