

SERVICE DATE - FEBRUARY 14, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33288

PICKENS RAILWAY COMPANY--PURCHASE EXEMPTION--  
CSX TRANSPORTATION, INC.

Decided: February 7, 1997

By petition filed on November 19, 1996, Pickens Railway Company (Pickens) and CSX Transportation, Inc. (CSXT) (collectively, petitioners), seek an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 11323 for Pickens' purchase<sup>1</sup> of 9.61 miles of CSXT's main line and spur trackage, from milepost AKH-555.088 to milepost AKH-561.409 and from milepost AKM-7.245 to milepost AKM-8.072, in Anderson, SC.<sup>2</sup> As part of this transaction, Pickens will also acquire, through assignment from CSXT, 11.96 miles of CSXT trackage rights over Norfolk Southern Railway Company's (NS) line between Belton, SC, and Anderson. The United Transportation Union requests imposition of labor protective conditions. We will grant the exemption subject to the standard labor protective conditions.

BACKGROUND

Pickens, a Class III rail carrier, is a South Carolina corporation that was formed to acquire all of the railroad properties and rights, including the entire 8.5-mile line of railroad from milepost 0.0 at Pickens to milepost 8.5 at Easley, in Pickens County, SC, of the former Pickens Railroad Company, which had been in operation since the late 1800's.<sup>3</sup> In addition,

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<sup>1</sup> Pickens seeks an exemption both to purchase and operate, and the petition is styled accordingly. While an exemption from the requirements of 49 U.S.C. 11323 for Pickens' purchase and operation is consistent with the standards of 49 U.S.C. 10502, we note that Pickens requires neither separate authority nor an exemption to operate the line being acquired. When a rail carrier petitioned for an exemption to purchase or lease a rail line from another rail carrier under former 11343 of the Interstate Commerce Act, the Interstate Commerce Commission (ICC) normally also exempted the operation of the line, if requested, but the exemption to operate was not necessary. The status of the purchaser or lessor, as a carrier, coupled with the purchase agreement or lease, constituted sufficient authority to conduct operations. Similarly, authority or an exemption for a carrier to purchase or lease a line under 49 U.S.C. 11323 of the ICC Termination Act of 1995 provides the necessary authority to conduct operations.

<sup>2</sup> The two segments of main line track are connected by the Orr Mill Spur. Under 49 U.S.C. 10906, we do not have authority over the acquisition of spur track.

<sup>3</sup> See Pickens Railway Acquisition Company (d/b/a Pickens Railway Company)--Acquisition and Operation Exemption--The Pickens Railroad Company, STB Finance Docket No. 32897 (STB served May 1, 1996). An application to change Pickens' corporate

Pickens acquired: (1) by lease, 6.57 miles of NS's line between milepost V-117.77 and milepost V-116.85, at or near Belton, and between milepost V-115.15, at or near Belton, and milepost V-109.50, at or near Honea Path, SC; and (2) by a grant of trackage rights over 12.70 miles of NS's line between milepost V-116.85 and milepost V-115.15, at or near Belton, and between milepost Z-0.00, at or near Belton, and milepost Z-11.00, at or near Anderson.<sup>4</sup> By operating the leased line, Pickens is able to connect with both CSXT and NS at Belton, and by using the trackage rights, it can interchange with NS in Anderson.

CSXT, a Class I rail carrier, operates rail properties in 19 States,<sup>5</sup> the District of Columbia, and in the Province of Ontario, Canada. CSXT is a wholly owned subsidiary of noncarrier CSX Corporation (CSX) and is operated as part of an extensive rail system.<sup>6</sup> The two line segments Pickens seeks to purchase, together with the Orr Mill Spur, are used by CSXT to serve seven shippers<sup>7</sup> in Anderson and to interchange traffic with NS. Because the line segments do not connect directly with any of its other rail lines, CSXT uses the 11.96 miles of trackage rights over NS's track between Anderson and Belton to get back to its own system and to interchange with Pickens at Belton.

Under the proposed purchase transaction, by acquiring CSXT's main line and spur trackage in Anderson, and the assignment of CSXT's trackage rights over NS between Belton and Anderson, Pickens will become the provider of rail service to the shippers in Anderson that are currently being served by CSXT. Petitioners anticipate that Pickens' lower operating cost structure will allow it to operate over the trackage in Anderson on a steady, profitable basis, and to meet service demands. Currently, CSXT provides service to Anderson 5 days a week with a dedicated two man crew based at Belton using two dedicated locomotives. In addition to serving the local traffic at Anderson, CSXT's crew also handles the interchange of

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name from Pickens Railway Acquisition Company to Pickens Railway Company was granted by the Office of the Secretary of the State of South Carolina on November 7, 1996.

<sup>4</sup> See Pickens Railway Acquisition Company (d/b/a Pickens Railway Company)--Acquisition Exemption--Norfolk Southern Railway Company, STB Finance Docket No. 32991 (STB served Aug. 1, 1996).

<sup>5</sup> Alabama, Delaware, Florida, Georgia, Illinois, Indiana, Louisiana, Maryland, Michigan, Mississippi, New York, North Carolina, Ohio, South Carolina, Tennessee, West Virginia, Kentucky, Pennsylvania, and Virginia.

<sup>6</sup> CSX's rail system includes, but is not limited to, The Western Railway of Alabama, The Carrollton Railroad Company, Gainesville Midland Railroad Company, and the Baltimore and Ohio Chicago Terminal Railway Company. CSX also owns and controls American Commercial Barge Line (an inland barge carrier), Sea-Land Service, Inc. (an ocean container carrier), and CSX Intermodal, Inc. (an intermodal transportation company).

<sup>7</sup> These shippers are: Owens Corning; Paper Stock Dealers; Gold Kist; WCI International; Carolina Scrap Processor; Venture Packaging; and Badische Corporation.

approximately 2000 carloads per year with NS.<sup>8</sup> CSXT currently maintains this trackage at Anderson as a very small part of its Blue Ridge Division, Belton Subdivision. Pickens will conduct its Anderson-Belton-Honea Path rail operations with four engineers immediately, and with two more engineers to be added within 4 to 6 months after operations have begun. Two locomotives are now in place to provide service to the Anderson customers, and two additional locomotives will be acquired within 3 months after Pickens' operations commence. These four locomotives will operate in pairs. Pickens also intends to begin immediately upgrading the line with more substantial tracks, ties, and ballast to provide more reliable service to present and prospective shippers in the Anderson area.

Other plans to improve service include locating a regional office in Anderson within 60 to 90 days following consummation of the transaction to allow Pickens to continue its current rail operations between Anderson and Belton and Honea Path, as well as to begin service on CSXT's rail line in Anderson. Pickens also intends to reinstall a connection track in Anderson between the NS trackage over which it has trackage rights and the CSXT trackage that it will acquire. This will afford Pickens certain advantages in its rail operations in Anderson. For example, the new connection track will allow Pickens to serve several customers located on the Orr Mill Spur in Anderson without having to cross the heavily travelled U.S. Highway 76/178. Also, during times when repairs to either the track in Anderson or an overpass bridge are necessary, the use of the new connection track will avoid disruption of rail service to those customers located in Anderson on the line beyond where the repairs are being made. By combining the Anderson operation with Pickens' already existing Anderson-Belton-Honea Path operations, petitioners assert that Pickens can operate over and maintain the Anderson trackage more economically than CSXT.

#### DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 11323(a)(2), prior Board approval is required for a rail carrier to purchase the property of another rail carrier. However, under 49 U.S.C. 10502, 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 transportation 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. 11323 of the proposed purchase is not necessary to carry out the rail transportation policy. By minimizing the administrative time and expense of the application process, an exemption will reduce barriers to entry and exit [49 U.S.C. 10101(7)]. In addition, the transaction will help promote a safe and efficient rail transportation system, ensure coordination between rail carriers and encourage efficient

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<sup>8</sup> Petitioners provide the following carload data for the line: approximately 308 carloads originated and approximately 1,583 carloads terminated in 1994; approximately 181 carloads originated and approximately 1,606 carloads terminated in 1995; and approximately 39 carloads originated and approximately 699 carloads terminated during the first 6 months of 1996.

management [49 U.S.C. 10101(3), (5), and (9)]. The exemption will also enable Pickens, as a locally based low cost railroad, to provide service to individual customers tailored to their particular needs, thereby ensuring that a sound rail transportation system will continue to meet the needs of the public [49 U.S.C. 10101(4)]. Other aspects of the rail transportation policy are not affected adversely.

Regulation of the transaction is not necessary to protect shippers from the abuse of market power. Pickens will merely be substituted for CSXT as the rail carrier providing service on the line. In addition, petitioners state that the principal commodities handled may be transported competitively by motor carriers and that the service area in western South Carolina is crisscrossed by numerous motor carriers. Given our market power finding, we need not determine whether the proposed transaction is limited in scope. Nevertheless, to ensure that shippers on the line are informed of our action, we will require petitioners to serve a copy of this decision on them within 5 days of the service date of this decision and certify to us that they have done so.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve carriers of their statutory obligations under 49 U.S.C. 11326 to protect the interests of their employees. Accordingly, as a condition to granting this exemption, we will impose the employee protective conditions in New York Dock Ry.--Control--Brooklyn Eastern Dist., 360 I.C.C. 60 (1979), as clarified in Wilmington Term. RR, Inc.--Pur. & Lease--CSX Transp., Inc., 6 I.C.C.2d 799 (1990), modified 7 I.C.C.2d 60 (1990), aff'd sub nom. Railway Labor Executives Ass'n v. ICC, 930 F.2d 511 (6th Cir. 1991).

Petitioners state that this transaction is excepted from environmental reporting requirements under 49 CFR 1105.6(c)(2)(i) and that an historic report is not required under 49 CFR 1105.8(b)(1). Our Section of Environmental Analysis has reviewed the transaction and has concluded that this transaction is in fact exempt from the environmental and historic reporting requirements.<sup>9</sup>

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 purchase from the prior approval requirements of 49 U.S.C. 11323, subject to the employee protective conditions in New York Dock Ry.--Control--Brooklyn Eastern Dist., 360 I.C.C. 60 (1979), as clarified in Wilmington Term. RR, Inc.--Pur. & Lease--CSX Transp., Inc., 6 I.C.C.2d 799 (1990), modified 7 I.C.C.2d 60 (1990), aff'd sub nom. Railway Labor Executives Ass'n v. ICC, 930 F.2d 511 (6th Cir. 1991).

2. Notice will be published in the Federal Register on

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<sup>9</sup> This transaction does not involve a significant change in carrier operations, petitioners have no plans to dispose of or alter historic properties, and further Board approval would be required for Pickens to abandon any service.

February 14, 1997.

3. Petitioners must serve a copy of this decision on all shippers on the line within 5 days of the service date of this decision and certify to us that they have done so.

4. This exemption will be effective on March 16, 1997.

5. Petitions to reopen must be filed by March 11, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams  
Secretary