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SERVICE DATE – JUNE 15, 2012

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35631

SARATOGA AND NORTH CREEK RAILWAY, LLC–
OPERATION EXEMPTION–TAHAWUS LINE

Decided: June 14, 2012

This decision denies the petition of the Atlantic States Legal Foundation and the Adirondack Committee of the Atlantic Chapter of the Sierra Club (ASLF/Sierra) to reject the notice of exemption filed in this proceeding.

BACKGROUND

On May 17, 2012, Saratoga and North Creek Railway, LLC (Saratoga), a Class III rail carrier, filed a verified notice of exemption under 49 U.S.C. § 10902 and 49 C.F.R. § 1150.41 to operate, as a line of railroad, approximately 29.71 miles of private track owned by NL Industries, Inc. (NL). Saratoga refers to the private track as the “Tahawus Line.” The track runs between its existing connection with Saratoga at North Creek, N.Y., and its terminus at Newcomb, N.Y. The exemption is scheduled to become effective on June 16, 2012.

Saratoga previously filed a notice of exemption in Saratoga & North Creek Railway–Operation Exemption–Tahawus Line, FD 35559 (STB served Nov. 10, 2011), to operate the Tahawus Line. Protect the Adirondacks! Inc. (Protect), a non-profit organization, filed a petition to reject the notice, questioning, among other things, Saratoga’s claim that it will provide common carrier rail service. In a decision served on November 23, 2011, the Acting Director of the Office of Proceedings rejected the notice before it became effective. Saratoga appealed the Acting Director’s decision to the full Board. In a decision served on May 14, 2012 (May 2012 Decision), the Board denied Saratoga’s appeal. However, because subsequent filings had provided sufficient evidence to resolve the concerns regarding freight rail service that led to the initial rejection decision, the Board concluded that Saratoga could file a new notice of exemption for authority to pursue common carrier service on the Tahawus Line. In this docket, Saratoga filed its new notice of exemption to operate the Tahawus Line. In its notice, Saratoga explained that it planned to operate no more than 1 train per day, 5 days a week, which would be well under the Board’s thresholds for environmental review (generally 3 or 8 trains per day depending on the air quality of the region). See 49 C.F.R. § 1105.6(c)(2)(i). Further, Saratoga contended that the transaction is exempt from historic review under 49 C.F.R. § 1105.8(b)(1) because the transaction involves only a change in operators and Board approval (including an environmental and historic review) would be required prior to any abandonment.

On June 4, 2012, ASLF/Sierra filed a petition to reject Saratoga's new notice of exemption. ASLF/Sierra argues that 13 miles of the Tahawus Line are in the Adirondack State Forest Preserve (Forest Preserve), which they claim is protected as public forest land under Section 1, Article 14 of the Constitution of New York. ASLF/Sierra also argues that, under New York law, the Tahawus Line has been abandoned due to non-use. While ASLF/Sierra acknowledges that issues related to the alleged Forest Preserve and other state law matters are best resolved in state court, ASLF/Sierra claims that the Board should require Saratoga to use a procedure that would allow more scrutiny than a notice of exemption.

In addition to its arguments based on New York law, ASLF/Sierra argues that an environmental and historic review should be required. ASLF/Sierra notes that 13 miles of the Tahawus Line is a National Historic Landmark and claims that renewed operations on the Tahawus Line would result in unspecified environmental impacts. Lastly, ASLF/Sierra argues that it is unlikely that operation of the Tahawus Line will result in the creation of many jobs.

On June 11, 2012, Saratoga replied in opposition to ASLF/Sierra's petition to reject. Saratoga argues that ASLF/Sierra's petition does not cite to any materially false or misleading information in the notice, point to any misuse of the Board's procedures, or demonstrate that increased Board scrutiny of the transaction is necessary. Saratoga explains that all of ASLF/Sierra's arguments regarding New York state law are appropriate for state courts to address. Saratoga states that it has made a business judgment that sufficient traffic exists to justify the new rail service and is willing to make the necessary investments based on that decision. Finally, Saratoga contends that ASLF/Sierra has failed to show that an environmental or historic review by the Board is needed here.

DISCUSSION AND CONCLUSIONS

ASLF/Sierra's request that the Board reject Saratoga's notice of exemption will be denied. ASLF/Sierra has not shown that Saratoga's notice contains false or misleading information that would warrant rejection under 49 C.F.R. § 1150.42(c). Furthermore, ASLF/Sierra has presented no issues within the Board's jurisdiction that warrant the use of the Board's petition for exemption or application process. Nor has ASLF/Sierra demonstrated that the Board needs more time to address the issues raised here before the exemption takes effect.

The primary issues raised here relate to claims regarding the Forest Preserve and other state property law issues that, as the Board stated in the May 2012 Decision, are not within the Board's jurisdiction and are appropriate for a state court to address. See Allegheny Valley R.R.–Petition for Declaratory Order–William Fiore, FD 35388 (STB served Apr. 25, 2011); Lackawanna Cnty. R.R. Auth.–Acquis. Exemption–F&L Realty, FD 33905 (STB served Oct. 22, 2001). The operating authority Saratoga will receive under the class exemption is permissive, and is not determinative of any underlying state law property claims for this railroad right-of-way. Thus, rejection of Saratoga's notice is not necessary to address these issues.

Saratoga correctly notes that ASLF/Sierra has failed to show that insufficient traffic exists to justify the planned rail service. As Saratoga states, it has made a business decision to make the necessary investment to provide this common carrier rail service, and ASLF/Sierra has not supported its suggestion that this decision requires more scrutiny by the Board than can be provided under the streamlined notice of exemption process. ASLF/Sierra also fails to support its claims that Saratoga should be required to submit environmental and historic reports and that this transaction requires environmental and historic review by the Board. Saratoga states in its notice of exemption that it anticipates operating a single roundtrip over the Tahawus Line up to 5 days per week. Thus, Saratoga's planned operations will not trigger the thresholds for an environmental review under the National Environmental Policy Act (NEPA) in 49 C.F.R. § 1105.6(c)(2)(i). Nor has ASLF/Sierra presented any specific evidence of potentially significant environmental impacts regarding this transaction that would warrant reclassifying this proposal as one that requires a NEPA review under 49 C.F.R. § 1105.6(d). ASLF/Sierra also ignores that the New York State Department of Environmental Conservation and the New York State Department of Transportation (as well as other state or local agencies and government entities) have indicated that they support Saratoga's proposal and that Saratoga has addressed prior concerns that those agencies had regarding the economic and environmental impacts that would be associated with these rail operations. See May 2012 Decision at 3 & n. 4.

Nor has ALSF/Sierra shown that an historic review by the Board is required here. See 49 C.F.R. § 1105.8(b)(1). This transaction is essentially a replacement of one operator for another. There is no indication that Saratoga has any plans to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older. Also, should Saratoga initiate common carrier operations, the Tahawus Line would become part of the national rail network, and Saratoga would subsequently need Board authority prior to abandoning it, which would trigger environmental and historic reporting followed by an appropriate environmental and historic review at that point.

For these reasons, ASLF/Sierra's petition to reject Saratoga's notice of exemption will be denied.

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

It is ordered:

1. ASLF/Sierra's petition to reject the notice of exemption is denied.
2. The decision is effective on the date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.