

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1066 (Sub-No. 2X)

CENTRAL ILLINOIS RAILROAD COMPANY—DISCONTINUANCE OF SERVICE
EXEMPTION—IN COOK COUNTY, ILL.

Decided: November 16, 2010

Digest:¹ Central Illinois Railroad Company is permitted to stop providing rail service over approximately 18.5 miles of lines owned by BNSF Railway Company and located in Chicago, Ill. BNSF will resume providing rail service on the lines.

By petition filed on July 29, 2010, Central Illinois Railroad Company (CIRY) seeks an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10903 to discontinue service over approximately 5.9 miles of main line track and approximately 12.47 miles of sidetrack owned by BNSF Railway Company (BNSF). The lines are referred to as the Lumber District and the Illinois Northern Line and are located in the vicinity of BNSF's Western Avenue Yard in Chicago, Cook County, Ill.² Pursuant to 49 U.S.C. § 10502(b), the Board served and published a notice in the Federal Register on August 18, 2010 (75 Fed. Reg. 51,159), instituting an exemption proceeding. No comments were filed in response to the notice. We will grant the exemption subject to standard employee protective conditions.

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² The Lumber District is located between a point 300 feet south of the point of the frog (a track structure used at an intersection of 2 running rails to permit wheels on either rail to cross the other) on BNSF's crossover to the main line of the Norfolk Southern Railway Company, which point is south of the track that enters the west end of BNSF's Western Avenue Yard, and the end of BNSF's ownership at Lumber Street approximately 500 feet east of Canal Street, including trackage that extends north from Cermak Road parallel to Sangamon Street to the point of the frog at Track No. 7 even with milepost 2.0 on BNSF's main line east of Western Avenue Yard. The Illinois Northern Line is located between a point 10 feet north of the Chicago Sanitary and Ship Canal and a point 100 feet west of the westernmost railroad diamond near 26th and Western Avenue.

BACKGROUND

In 2000, CIRY was authorized to lease from BNSF and operate the subject lines. Cent. Ill. R.R.—Lease and Operation Exemption—Lines of Burlington N. and Santa Fe Ry. at Chicago, Cook County, Ill., FD 33960 (STB served Dec. 5, 2000).

CIRY now seeks to discontinue its operations over these lines of railroad. CIRY's July 2010 petition states that CIRY is in poor financial condition and is operating at a financial loss on the lines and cannot continue to do so. Petitioner points out that the lease agreement between BNSF and CIRY was scheduled to expire in November 2010, but the parties reached an agreement whereby the lease would terminate at the close of business on August 9, 2010. Petitioner states that, on August 10, 2010, BNSF, as owner of the lines, would resume providing rail service on the lines. According to petitioner, the lease agreement also authorized BNSF to market the lines and establish rates for all the traffic moving to and from the lines. In addition, the agreement allowed all customers on the lines to be open to reciprocal switching.³ BNSF will continue to perform these functions now that it has resumed operations over the lines and will keep all customers on the lines open to reciprocal switching. BNSF also will assume the maintenance responsibilities on the lines.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 10903, a rail carrier may not discontinue operations without the Board's 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 here. By minimizing the administrative expense of the application process, an exemption will expedite regulatory action and reduce regulatory barriers to exit, in accordance with 49 U.S.C. §§ 10101(2) and (7). An exemption also will foster sound economic conditions and encourage efficient management by allowing CIRY to discontinue its common carrier obligation to provide service now that its lease has expired, and by allowing BNSF to resume operations on the lines, consistent with 49 U.S.C. §§ 10101(5) and (9). Other aspects of the rail transportation policy will not be adversely affected by the use of the exemption process. In

³ In general, reciprocal switching is an arrangement whereby a railroad serving a shipper's facility transports traffic over its track to that facility for a competing railroad that cannot physically serve the facility and usually involves similar service by the competing railroad to shipper facilities in an area not physically served by that other railroad.

particular, competition and the continuation of a sound rail transportation system will not be adversely affected. BNSF has resumed operations over the lines and has continued the marketing functions that it performed for Ciry during the past 10 years. In addition, customers on the lines will continue to be open to reciprocal switching. The proposed transaction will substitute a financially sound carrier for one that is in poor financial condition, ensure continued service for customers, and allow BNSF to assume the maintenance responsibilities on the lines that Ciry now cannot afford to perform.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power. As discussed, the proposed transaction simply will substitute BNSF for Ciry, and customers on the line will continue to be open to reciprocal switching. No shipper has opposed the proposed discontinuance. Nevertheless, to ensure that all shippers and BNSF are informed of our action, we will require Ciry to serve a copy of this decision on all shippers on the lines and on BNSF so that it is received by them within 5 days of the service date of this decision and to certify contemporaneously to us that it has done so. Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, we will impose the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

Because this is a discontinuance of service and not an abandonment, the Board need not consider offers of financial assistance (OFAs) to acquire the lines for continued rail service under 49 U.S.C. § 10904 (but the OFA provisions for a subsidy to provide continued rail service do apply to discontinuances), trail use requests under 16 U.S.C. § 1247(d), or requests to negotiate for public use of the lines under 49 U.S.C. § 10905. This proceeding is also exempt from environmental reporting requirements under 49 C.F.R. § 1105.6(c) and from historic reporting requirements under 49 C.F.R. § 1105.8(b). Therefore, this decision 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, the Board exempts from the prior approval requirements of 49 U.S.C. § 10903 the discontinuance of service by Ciry of its operations over the above-described lines, subject to the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

2. CIRY is directed to serve a copy of this decision on all shippers on the lines and on BNSF so that they receive a copy within 5 days after the service date of this decision and to certify to the Board contemporaneously that it has done so.

3. An OFA under 49 C.F.R. § 1152.27(b)(2) to subsidize continued rail service must be received by the railroad and the Board by November 26, 2010, subject to time extensions authorized under 49 C.F.R. § 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27(c)(1). Each OFA must be accompanied by the filing fee, which currently is set at \$1,500. See 49 C.F.R. § 1002.2(f)(25).

4. 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.”**

5. Petitions to stay must be filed by December 1, 2010. Petitions to reopen must be filed by December 13, 2010.

6. Provided no OFA to subsidize continued rail service has been received, this exemption will be effective on December 16, 2010.

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