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SERVICE DATE – JANUARY 14, 2013

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35689

BNSF RAILWAY COMPANY —LEASE EXEMPTION— NORFOLK SOUTHERN RAILWAY COMPANY

Digest:[1] This decision permits BNSF Railway Company (BNSF) to lease from Norfolk Southern Railway Company approximately 1.2 miles of rail line in Chicago, Ill. Under the lease, BNSF proposes to rehabilitate the line to improve the operating efficiencies of railroads in the Chicago region.

Decided: January 8, 2013

By petition filed on November 21, 2012, BNSF Railway Company (BNSF or petitioner) seeks an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. §§ 11323-25 to lease from Norfolk Southern Railway Company (NSR) approximately 1.2 miles of rail line (the Line) located between W. 23 Street on the northern end and a point approximately 600 feet north of the Chicago SAG Canal on the southern end in Chicago, Ill. Under the lease, BNSF proposes to rehabilitate the leased Line to provide a new connection between major freight yards and main line tracks, reducing congestion and delays and adding capacity to the Chicago area freight rail infrastructure.[2] We will grant the exemption, subject to standard labor protective conditions.

BACKGROUND

According to BNSF, the Line runs parallel to Western Avenue on the east side of Chicago and parallel to Rockwell Street on the west side, and is currently inoperable. BNSF states that under the lease, it plans to remove and replace the existing tracks and upgrade the Line to meet Federal Railroad Administration Class II standards. BNSF asserts that by doing so, the Line will facilitate the plans of the Chicago Region Environmental and Transportation Efficiency

[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] Pursuant to the lease, NSR will retain overhead trackage rights over the Line. BNSF states that under the lease it has the option to acquire the Line, but acknowledges that, should it exercise the option, BNSF would need to seek separate Board authority for acquisition.

Program (CREATE)[3] to increase the efficiency of the Chicago area's rail infrastructure and improve the quality of life for area residents.

BNSF states that there are currently no shippers located along the Line. BNSF argues that no anticompetitive effects will flow from the proposed transaction, which would be undertaken solely to improve the operating efficiencies of BNSF, NSR, and the other railroads with rail lines adjacent to the Line.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 11323(a)(2), prior Board approval is required for a rail carrier to lease the property of another rail carrier. Under 49 U.S.C. § 10502, however, the Board must exempt a transaction or service from regulation upon finding that: (1) 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 needed to protect shippers from the abuse of market power.

Detailed scrutiny of the proposed transaction through an application for review and approval under 49 U.S.C. §§ 11323-25 is not necessary here to carry out the rail transportation policy of 49 U.S.C. § 10101. This project is designed solely to reduce congestion and delays and add capacity to the Chicago area's rail freight infrastructure, an objective that is entirely consistent with the rail transportation policy. Specifically, exemption of the proposed transaction from the application process would minimize the need for Federal regulatory control [49 U.S.C. § 10101(2)], promote a safe and efficient rail transportation system [49 U.S.C. § 10101(3)], ensure the development and continuation of a sound rail transportation system [49 U.S.C. § 10101(4)], foster sound economic conditions in transportation [49 U.S.C. § 10101(5)], reduce regulatory barriers to entry into and exit from the rail industry [49 U.S.C. § 10101(7)], encourage efficient management of railroads [49 U.S.C. § 10101(9)], and promote energy conservation [49 U.S.C. § 10101(14)]. Other aspects of the rail transportation policy would not be adversely affected.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power.[4] Because there are no shippers currently served by the Line, and because NSR will retain overhead trackage rights over the Line, service options available to shippers would not be diminished as a result of the proposed transaction and competition will not be adversely affected. Rather, the lease should benefit shippers by establishing a new connection between major freight yards and main line tracks to move traffic more efficiently, consistent with the goals of CREATE. No one has filed comments objecting to the lease proposal.

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[3] CREATE is a public-private partnership between the Chicago Department of Transportation, the Illinois Department of Transportation, and the Association of American Railroads, including Metra and the freight railroads operating in Chicago.

[4] Given our market power finding, we need not 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 carrier of its statutory obligation to protect the interests of employees. Accordingly, as a condition to granting this exemption, we will impose the standard employee protective conditions in Mendocino Coast Railway—Lease & Operate—California Western Railroad, 354 I.C.C. 732 (1978), modified, 360 I.C.C. 653 (1980).

This transaction is exempt from the environmental reporting requirements under 49 C.F.R. § 1105.6(c)(2)(i) because it will not result in a significant change in carrier operations. Similarly, the transaction is exempt from the historic reporting requirements of 49 C.F.R. § 1105.8(b)(1) because there are no plans to alter railroad properties 50 years or older, and BNSF's acquisition of the Line is for continued rail operations; thus, further Board approval would be required to abandon or discontinue service over the Line.

BNSF requests expedited handling of its petition because rehabilitation of the Line and other CREATE programs are scheduled to start in early 2013. The request will be granted and the exemption will be made effective 10 days from the service date, rather than the typical 30 days.

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 from the prior approval requirements of 49 U.S.C. §§ 11323-25 BNSF's lease of the above-described Line, subject to the employee protective conditions in Mendocino Coast Railway—Lease & Operate—California Western Railroad, 354 I.C.C. 732 (1978), modified, 360 I.C.C. 653 (1980).

2. Notice of the exemption will be published in the Federal Register on January 14, 2013.

3. This decision will be effective on January 24, 2013. Petitions to stay must be filed by January 22, 2013. Petitions to reopen must be filed by February 4, 2013.

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