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SERVICE DATE – AUGUST 1, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-511 (Sub-No. 3X)

CENTRAL RAILROAD COMPANY OF INDIANAPOLIS–DISCONTINUANCE OF
SERVICE EXEMPTION–IN GRANT COUNTY, IN

Decided: July 27, 2007

By petition filed on April 23, 2007, Central Railroad Company of Indianapolis (CERA) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to discontinue service over a 2.36-mile line of railroad between milepost TS-154.65, near Marion, and milepost TS-157.01, near West Marion Belt, in Grant County, IN. Pursuant to 49 U.S.C. 10502(b), the Board served and published a notice in the Federal Register on May 11, 2007 (72 FR 26865), instituting an exemption proceeding. The exemption will be granted, subject to standard employee protective conditions.

BACKGROUND

The 2.36-mile rail line proposed for discontinuance of service is owned by Norfolk Southern Railway Company (NSR). Pursuant to a written trackage rights agreement entered into between NSR and CERA, CERA was granted overhead and limited local trackage rights over a portion of NSR's track: (1) from CERA's connection with NSR and the trackage of the West Marion Belt at Michael, IN, at milepost TS-157.44, to the connection between the West Marion Belt and the trackage of Winamac Southern Railroad Company adjacent to NSR-operated Goodman Yard at Marion; and (2) from CERA's connection with NSR at milepost TS-157.44, through the switch serving Bell Fiber Corporation (Bell), at milepost TS-155.6, to, and including, the switch serving Essex Wire, Incorporated (Essex), at milepost TS-154.65, a total distance of approximately 5 miles. See Central Railroad Company of Indianapolis–Trackage Rights Exemption–Norfolk Southern Railway Company, STB Finance Docket No. 34212 (STB served July 3, 2002).

According to CERA, Bell and Essex are the only two shippers that it served over the portion of the line proposed for discontinuance of service. CERA states that Bell and Essex no longer use CERA's rail service, and that NSR has requested CERA to seek discontinuance of service over the line. CERA notes that NSR retains the common carrier obligation to provide service over the line.

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, the Board must exempt a transaction or service from regulation when it is found 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. By minimizing the administrative expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions and encourage efficient management by allowing CERA to discontinue service that appears to be unnecessary to the only two shippers ever to be served [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be adversely affected.

Regulation is not necessary to protect shippers from the abuse of market power. CERA has operated under trackage rights to serve the two shippers, Bell and Essex, which no longer use CERA's rail service. NSR, the owner of the line, retains the common carrier obligation to provide service over the line. Nevertheless, to ensure that Bell and Essex are informed of this action, the Board will require CERA to serve a copy of this decision on Bell and Essex within 5 days of the service date of this decision, and to certify to the Board that it has done so. Given the finding regarding market power, it is not necessary to determine whether the proposed discontinuance 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, the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979), will be imposed.

Because this is a discontinuance proceeding and not an abandonment, the Board need not consider offers of financial assistance (OFAs) to acquire the line for continued rail service (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 line. This proceeding is also exempt from environmental reporting requirements under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 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 CERA of its operations over the above-described line, subject to the employee protective conditions set forth in Oregon Short Line R. Co.–Abandonment–Goshen, 360 I.C.C. 91 (1979).

2. CERA is directed to serve a copy of this decision on Bell and Essex within 5 days of the service date of this decision, and to certify to the Board that it has done so.

3. An OFA under 49 CFR 1152.27(b)(2) to subsidize continued rail service must be received by the railroad and the Board by August 13, 2007, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by a \$1,300 filing fee. See 49 CFR 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 August 16, 2007. Petitions to reopen must be filed by August 27, 2007.

6. Provided no OFA to subsidize continued rail service has been received, this exemption will be effective on August 31, 2007.

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

Vernon A. Williams
Secretary