

21195
EB

SERVICE DATE - MARCH 3, 1997

SURFACE TRANSPORTATION BOARD¹

DECISION

STB Finance Docket No. 33003

LOUISIANA & DELTA RAILROAD, INC.
--LEASE AND OPERATION EXEMPTION--
SOUTHERN PACIFIC TRANSPORTATION COMPANY

Decided: February 18, 1997

BACKGROUND

On September 3, 1996, Louisiana and Delta Railroad, Inc. (LDRR), a Class III rail carrier, filed a notice of exemption under 49 CFR 1150.41: (1) to lease from Southern Pacific Transportation Company (SPT) and operate approximately 8.909 miles of rail line located in the State of Louisiana; and (2) to acquire approximately 15 miles of incidental overhead trackage rights over an SPT line also located in the State of Louisiana. The notice states that the proposed transaction was to be consummated on or after the September 10, 1996 effective date of the exemption.

LDRR proposed to lease: the Breaux Bridge Branch from milepost 0.35 near BR Jct., to the end of the track at milepost 8.060 near Breaux Bridge; the remaining segment of the St. Martinsville Branch, from the switch on the Breaux Bridge Branch near milepost 7.678 at a point on the St. Martinsville Branch near milepost 19.381 to the end of track at milepost 19.680; the Alexandria Branch from milepost 0.50 near Alex Jct. to the end of the track at milepost 1.00; and the "extension track" from milepost 144.90 to milepost 145.30.

LDRR also proposed to acquire and operate incidental overhead trackage rights on SPT's main line from milepost 131.0 at Ara Spur to milepost 146.0 at the east end of, but not including, Lafayette Yard. The trackage rights connect with overhead trackage rights LDRR had previously been granted on other portions of SPT's main line between Avondale and Iowa Jct, LA.²

The notice of the exemption, which was served and published October 3, 1996 (61 FR 51743), referred to a letter dated

¹ The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions to the Surface Transportation Board (Board). This decision relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10902.

² Louisiana & Delta Railroad, Inc.--Trackage Rights Exemption--Southern Pacific Transportation Company, Finance Docket No. 32227 (ICC served Jan. 6, 1993), and Louisiana & Delta Railroad, Inc.--Acquisition, Operation, Lease and Trackage Rights--Southern Pacific Transportation Company, Finance Docket No. 30958 (ICC served Jan. 22, 1987).

September 9, 1996, from Tyrone Boudreaux of the United Transportation Union-Louisiana State Legislative Board (Boudreaux) requesting that the proposal be denied. Boudreaux noted that, when the Board authorized Union Pacific Corporation (UP) to acquire control of SPT,³ the Board approved a settlement agreement providing, in part, for Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company (which, on December 31, 1996, merged to form The Burlington Northern and Santa Fe Railway Company) (BNSF) to purchase SPT's Avondale-Iowa Jct. main line. UP retained overhead trackage rights over the Avondale-Iowa Jct. line "and the right to serve all local industries with the right for [LDRR] to serve as [UP's] agent between Iowa Jct. and points served by [LDRR]." UP/SP Merger, at pp. 231 and 259.

Boudreaux questioned whether SPT could lawfully grant LDRR trackage rights over the line now owned by BNSF. Boudreaux also claimed that, by granting trackage rights to LDRR, SPT was seeking to evade employee protective conditions imposed by the Board in UP/SP Merger.⁴ Boudreaux noted that no labor protection would be imposed for this transaction, which was filed under the class exemption in 49 U.S.C. 1150, subpart E.⁵

The notice of exemption indicated that, if Boudreaux wanted the Board to consider the letter or consider a more detailed petition, he must serve a copy of his letter on counsel for LDRR, SPT and BNSF, and certify that service was made. Boudreaux was invited to supplement his filing and specify what provisions of the statute or the Board's regulations he maintains were violated by the proposed transaction, and what adverse effects he sees resulting from this transaction.

On November 5, 1996, Boudreaux filed a supplemental letter reiterating his previous objections. Boudreaux added that LDRR would be the only rail carrier serving former shippers on SPT's lines without rail competition. Boudreaux further asserted that LDRR's parent, the Genesee & Wyoming Industries (GWI), is owned by Philip Anschutz (Anschutz), who also owns SPT, raising concerns of a conflict of interest.⁶

In a letter filed November 12, 1996, LDRR has disputed the allegations about Anschutz's interest in GWI. LDRR states that

³ Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company--Control and Merger--Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp. and the Denver and Rio Grande Western Railroad Company, Finance Docket No. 32760, Decision No. 44 (STB served Aug. 12, 1996) (UP/SP Merger).

⁴ UP/SP Merger at 237 subjected trackage rights to employee protective conditions in Norfolk and Western Ry. Co. - Trackage Rights - BN, 354 I.C.C. 605 (1987), as modified by Mendocino Coast Ry., Inc. - Lease and Operate, 360 I.C.C. 653 (1980) (N&W/Mendocino).

⁵ See Class Exemp. for Acq. or Oper.--Under 49 U.S.C. 10902, 1 S.T.B. 95, 104 (1996).

⁶ Boudreaux also certified that copies of his letter were served on LDRR, BNSF and SPT.

GWI is a holding company for several Class III railroads and became publicly traded in June 1996. Prior to that date, LDRR asserts, Anschutz never had been a stockholder of GWI stock and to the best of GWI's knowledge, still neither holds GWI stock nor holds any form of controlling interest in GWI.

LDRR also disagrees that the transaction conflicts with UP/SP Merger. LDRR states that its lease and trackage rights had been negotiated before the UP/SP merger had been announced, and became effective before the merger became effective. In addition, LDRR maintains that the transaction is consistent with UP/SP Merger. Even though BNSF agreed to purchase SPT's main line, including the portion over which LDRR will operate trackage rights, LDRR notes that BNSF is not purchasing the branch lines that SPT is leasing to LDRR. LDRR further asserts that BNSF purchased SPT's line for a new through route between Houston and New Orleans, but UP retained local service rights over the line, which, as indicated in UP/SP Merger, LDRR will operate as UP's agent.

DISCUSSION AND CONCLUSIONS

We will treat Boudreaux's letter as a petition to revoke under 49 U.S.C. 10502(d). Under that provision, a person seeking to revoke an exemption has the burden of showing that regulation of this transaction is necessary to carry out the rail transportation policy of 49 U.S.C. 10101. UTU has not presented any reasons to justify revoking this exemption.

LDRR's proposed lease and trackage rights is clearly consistent with the rail transportation policy of 49 U.S.C. 10101. LDRR has been operating trackage rights over a substantial portion of SPT's Avondale-Iowa Jct. main line since 1987, and has acquired or leased several SPT connecting branch lines. In UP/SP Merger, *supra*, we recognized LDRR's status as UP's agent to provide service on the line. Through this transaction, LDRR will serve industries in the vicinity of Lafayette, LA, extending its operations on the main line as UP's agent. LDRR will also establish a new interchange with UP at Lafayette Yard to connect with the leased branch lines. No shippers have objected to the proposal or raised competitive concerns. The transaction clearly promotes continuation of a sound rail system to meet the needs of the public and will enhance efficiency, coordination and competition among rail carriers. 49 U.S.C. 10101(4), (5) and (9).

We disagree that SPT employees are being deprived of labor protection imposed in UP/SP Merger. Even though no labor protection is being imposed relative to LDRR's lease of rail line from SPT and acquisition of incidental trackage rights over lines purchased by BNSF because LDRR is a Class III carrier, UP continues to be obligated to accord labor protection imposed in UP/SP Merger for trackage rights retained on the line under the BNSF agreement. That obligation to protect SPT employees is not changed where, as here, UP granted authority to LDRR to lease or operate SPT lines.

We also disagree with the argument that SPT may not grant trackage rights on a line that is now owned by BNSF. As LDRR points out, the trackage rights to be granted here are clearly consistent with the BNSF agreement, which provides for UP to retain trackage rights over the line. The agreement also

recognizes LDRR as UP's agent. We have previously recognized this in UP/SP Merger. Moreover, BNSF has not raised any objections to this transaction.

Finally, we agree with LDRR that Boudreaux's assertion about Anschutz's purported interest in GWI has no merit. Accordingly, the petition to revoke is denied.

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

It is ordered:

1. The petition to revoke is denied.
2. This decision is effective on the date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams

Secretary