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SERVICE DATE – OCTOBER 3, 2012

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1101X

PROGRESSIVE RAIL, INCORPORATED – DISCONTINUANCE OF SERVICE
EXEMPTION – IN BARRON COUNTY, WIS.

Digest:¹ Progressive Rail, Incorporated is permitted to stop providing rail service over approximately 23.97 miles of rail line owned by Wisconsin Central Ltd., that is located in Barron County, Wis.

Decided: October 1, 2012

By petition filed on July 5, 2012, Progressive Rail, Incorporated (PGR) and Wisconsin Central Ltd. (WCL) (collectively, Petitioners) seek an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10903 to discontinue rail service provided by PGR over approximately 23.97 miles of rail line owned by WCL in Barron County, Wis. (the Lines), consisting of: (1) 16.92 miles of rail line between milepost 80.88 at or near Almena and milepost 97.80 at or near Cameron, and (2) 7.05 miles of rail line between milepost 49.0 at or near Cameron and milepost 56.05 at or near Rice Lake. Pursuant to 49 U.S.C. § 10502(b), the Board served and published a notice in the Federal Register on July 25, 2012 (77 Fed. Reg. 43,657), instituting an exemption proceeding. No comments were filed in response to the notice. We will grant the exemption subject to standard employee protective conditions.

BACKGROUND

In 2004, PGR was authorized to lease and operate the Lines.² The original lease between PGR and WCL for the operation of the Lines expired at the end of 2008. Since that time, PGR has continued to operate the Lines without objection from WCL.³ WCL now intends to resume rail operations on the Lines itself. To that end, PGR and WCL entered into an Amendment and Restatement of Lease, dated May 14, 2012, which extends the lease, but permits WCL to

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 Progressive Rail, Inc. – Lease & Operation Exemption – Rail Lines of Wis. Cent., Ltd., FD 34600 (STB served Nov. 12, 2004).

³ Progressive Rail, Inc. Pet. 3.

terminate the agreement on December 1, 2012, provided the parties obtain regulatory authority authorizing PGR to discontinue service on the Lines.⁴

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 of the Petitioners' proposed discontinuance 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 expedite regulatory action and reduce regulatory barriers to exit, in accordance with 49 U.S.C. §§ 10101(2) and (7). Consistent with 49 U.S.C. §§ 10101(5) and (9), an exemption will also foster sound economic conditions and encourage efficient management by more quickly allowing PGR to discontinue its common carrier obligation to provide service and by allowing WCL to resume operations on the Lines, as agreed by the Petitioners. Other aspects of the rail transportation policy will not be adversely affected.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power.⁵ WCL will resume operations on the Lines in place of PGR, and no shipper has opposed the proposed discontinuance of PGR's service. Nevertheless, to ensure that the shippers on the Lines are informed of our action here, we will require PGR to serve a copy of this decision on them so that it is received by them within five days of the service date of this decision and to certify contemporaneously to the Board that it has done so.

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 the Petitioners seek a discontinuance of service in this proceeding 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 (although the OFA provisions for a subsidy to provide continued rail service do apply to discontinuances), trail use requests under

⁴ Id.

⁵ Given our market power finding, we need not determine whether the proposed transaction is limited in scope

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 PGR 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. PGR is directed to serve a copy of this decision on the Lines' shippers so that it is received by them within five days after the service date of this decision and to certify contemporaneously to the Board 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 October 15, 2012, subject to time extensions authorized under 49 C.F.R. § 1152.27(c)(1)(i)(C). Any 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 \$1,600. See Regulations Governing Fees for Serv. Performed in Connection with Licensing & Related Servs.–2012 Update, EP 542 (Sub-No. 20) (STB served July 27, 2012).

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 October 18, 2012. Petitions to reopen must be filed by October 29, 2012.

6. Provided no OFA to subsidize continued rail service has been received, this exemption will be effective on November 2, 2012.

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