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SERVICE DATE – JULY 17, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35012

WISCONSIN & SOUTHERN RAILROAD CO.—LEASE AND OPERATION
EXEMPTION—SOO LINE RAILROAD COMPANY
d/b/a CANADIAN PACIFIC RAILWAY

Decided: July 13, 2007

By petition filed on May 25, 2007, Wisconsin & Southern Railroad Co. (WSOR) seeks an exemption pursuant to 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10902 to lease and operate 4.8 miles of railroad in Milwaukee, WI, owned by Soo Line Railroad Company d/b/a Canadian Pacific Railway (CPR). The subject trackage, known as the Glendale Line, extends southerly from the north line of Hampton Avenue at CPR milepost 93.2 on the Watertown Subdivision to CPR milepost 88.4, which end point is approximately 500 feet south of the southerly street line of State Street, and includes a portion of CPR's Glendale Yard known as the "B" yard. The Board will grant the exemption, subject to labor protective conditions.

BACKGROUND

WSOR is a Class II rail carrier that operates over 573 miles of rail line in Wisconsin and northern Illinois. For the past 10 years, WSOR has leased and operated CPR's "A" yard. WSOR now desires to lease CPR's adjacent "B" yard to increase WSOR's yard capacity in the Milwaukee area and as a facility for locating new rail-served customers. According to WSOR, CPR has not operated much of the subject trackage since the last major customer at the end of the trackage ceased operations about 3 years ago. Recently, CPR has used the trackage only to interchange cars with WSOR. WSOR states that it operates as a neutral feeder railroad whose system connects with six Class I railroads, and that, after consummation of this transaction, WSOR's rail service would increase the competitive options available to shippers that choose to locate on the subject trackage.

WSOR further states that the parties propose to consummate this transaction on or shortly after July 24, 2007. Accordingly, WSOR seeks expedited consideration of its petition.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10902, a Class II carrier providing transportation subject to the jurisdiction of the Board may not acquire an additional rail line 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 finds 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.

An exemption from the prior approval requirements of 49 U.S.C. 10902 is consistent with the standards of 49 U.S.C. 10502. Detailed scrutiny of this transaction is not necessary to carry out the rail transportation policy. An exemption from the application process will minimize the need for Federal regulatory control [49 U.S.C. 10101(2)], foster sound economic conditions in transportation [49 U.S.C. 10101(5)], reduce regulatory barriers to entry into and exit from the rail transportation industry [49 U.S.C. 10101(7)], and encourage efficient management of railroads [49 U.S.C. 10101(9)]. Other aspects of the rail transportation policy will not be adversely affected.

Regulation of this transaction is not necessary to protect shippers from the abuse of market power. As WSOR states in its petition, in view of the absence of shippers on this line, granting the petition would increase the competitive options for any rail shippers that would locate on the line because WSOR serves as a neutral feeder of rail traffic to the six Class I railroads to which it connects. Given this market power finding, it is not necessary to determine whether the transaction is limited in scope.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of adversely affected employees. Section 10902(d) provides for labor protection in line acquisitions by Class II rail carriers. As a condition to this exemption, any employees affected by the acquisition will be protected as required by section 10902(d), subject to the standards and procedures established in Wisconsin Central Ltd.—Acquisition Exem.—Union Pac. RR, 2 S.T.B. 218 (1997), rev'd in part sub nom. Association of American R.R. v. STB, 162 F.3d 101 (D.C. Cir. 1998). In a letter, WSOR attests that, as of May 24, 2007, it has complied with the advance notice requirements of 49 CFR 1121.4(h) by serving a notice of this transaction on the national offices of the labor unions with employees on the affected lines and by posting it at the workplaces of employees on the affected lines.

Under the regulations of the Council on Environmental Quality,¹ actions whose environmental effects are typically insignificant are normally excluded from National Environmental Policy Act (NEPA) review. Rather, such activities are covered by a “categorical exclusion,” and once a project is found to fit within a categorical exclusion, no further NEPA procedures are warranted. In its environmental rules, the Board has promulgated various categorical exclusions. As pertinent here, transactions involving a lease and operation that would not result in operational changes that exceed certain thresholds normally require no environmental review. 49 CFR 1105.6(c)(2)(i). The Board’s regulations also provide that historic review normally is not required for a lease and operation where there will be no significant change in operations. 49 CFR 1105.8(b)(1).

¹ See 40 CFR 1500.4(p), 1501.4(a)(2), and 1508.4.

Moreover, even without the categorical exclusion from environmental review provided by Board regulations for transactions involving a lease and operation, SEA has reviewed the proposed transaction and concluded that the transaction would not have enough potential for significant impacts to warrant further environmental review under NEPA and the Board's environmental rules. The proposed action does not require historic review under the National Historic Preservation Act, 16 U.S.C. 470f, because further approval would be required to abandon any service and there are no plans to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older.

Finally, as previously noted, WSOR has requested expedited consideration of this petition and that the exemption be made effective on or about July 24, 2007. According to WSOR, the subject trackage needs substantial rehabilitation that must be performed prior to the onset of bad weather in late autumn and any delay could jeopardize that work. WSOR also states that several railroads, including CPR and Canadian National Railway, will benefit because the transaction will simplify their operations in the area. Under the circumstances, the request for expedited action is reasonable. Accordingly, this decision is being issued on an expedited basis and the exemption will be made effective on July 27, 2007.

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, the above-described transaction is exempted from the prior approval requirements of 49 U.S.C. 10902, subject to WSOR's compliance with the employee protective conditions implementing 49 U.S.C. 10902(d) as provided in this decision.
2. WSOR's request for expedited consideration of this petition will be granted, and notice will be published in the Federal Register on July 19, 2007.
3. The exemption will become effective on July 27, 2007.

4. Petitions to stay must be filed by July 23, 2007. Petitions to reopen must be filed by August 6, 2007.

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

Vernon A. Williams
Secretary