

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33408

GATEWAY WESTERN RAILWAY COMPANY—LEASE
EXEMPTION—THE BURLINGTON NORTHERN
AND SANTA FE RAILWAY COMPANY

Decided: September 29, 1997

Gateway Western Railway Company (GWWR) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 11323-25 to lease The Burlington Northern and Santa Fe Railway Company's (BNSF) Coburg Line, extending a distance of 5.45 miles between milepost 0.0 at the Sheffield interlocking and milepost 5.45 near BV Junction, in Kansas City, Jackson County, MO. The United Transportation Union seeks the imposition of employee protective conditions. We will grant the exemption subject to standard labor protective conditions.

BACKGROUND

GWWR is a Class II carrier operating approximately 460 miles of rail line in Illinois, Missouri, and Kansas. It also is the corporate parent of the Gateway Eastern Railway Company (GWER), a Class III rail carrier operating approximately 18 miles of rail line between East St. Louis and East Alton, IL. In a recently consummated transaction, Kansas City Southern Industries, Inc., the parent of The Kansas City Southern Railway Company, acquired control of GWWR and GWER.¹

BNSF, a Class I rail carrier formed by the merger of The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) and Burlington Northern Railroad Company (BN),² operates more than 35,000 miles of rail line throughout the western and midwestern United States. The Coburg Line is a remnant of a former BN line between Kansas City and Springfield, MO.³ The line consists primarily of 90-pound jointed rail, with small segments of 100-, 110-, and 112-pound rail, and its overall condition is fair to good.

GWWR states that the terms of the lease agreement provide for it to lease the Coburg Line for an initial period of 2 years, followed by successive 3-year terms, until terminated by either party. Approximately 1,000 carloads of steel products, paper products, and lumber move annually to and from the four active shippers located on the line: Aspen Products, Inc. (Aspen); Havens Steel; KC Reload Center, Inc. (KC); and Wabash Fibre Box Company (Wabash). According to GWWR, BNSF currently provides switching service on the line 3 days per week at its facility in West Kansas City. BNSF assertedly performs little other industrial switching in this section of Kansas City, concentrating instead on its main-line, through-train operations. Also, according to GWWR, no

¹ See Kansas City Southern Industries, Inc., KCS Transportation Company, and The Kansas City Southern Railway Company—Control—Gateway Western Railway Company and Gateway Eastern Railway Company, STB Finance Docket No. 33311 (STB served May 1, 1997).

² See Burlington Northern Inc. and Burlington Northern Railroad Company—Control and Merger—Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company, Finance Docket No. 32549 (ICC served Aug. 23, 1995).

³ In Burlington Northern Railroad Company—Abandonment and Discontinuance—In Jackson and Cass Counties, MO, Docket No. AB-6 (Sub-No. 298) (ICC served Sept. 15, 1988), BN was authorized to abandon a 35.96-mile line south of BV Junction extending between BN milepost 16.04 near Dodson and BN milepost 52.00 near East Lynne, in Jackson and Cass Counties, MO; and to discontinue trackage rights operations over a 5.36-mile segment of Missouri Pacific Railroad Company (MP) line extending between MP milepost 284.63 (BN milepost 11.23) near BV Junction and MP milepost 289.99 near Dodson.

other rail carrier currently operates over or provides service on the line and there is no overhead traffic.⁴ GWWR submits that there is extensive truck transportation in the area that is available to and used by the shippers.

GWWR currently leases 25.68 miles of switch and yard tracks of the Kansas City Terminal Railway Company (KCT) in the Kansas City, MO—Kansas City, KS terminal area.⁵ The Coburg Line connects with KCT's east-west main line across Kansas City, at the Sheffield interlocking. GWWR submits that it will maintain and dispatch the Coburg Line and will integrate service on the line with its contiguous KCT terminal operations in the area, including its existing switching assignment serving the industries at Sheffield interlocking. GWWR anticipates that, due to resulting efficiency and operational improvements, it will be able to reduce transit times and increase service on the Coburg Line from 3 to 5 days a week as customer needs warrant. Moreover, all shippers on the line will remain open to BNSF and other line-haul carriers through reciprocal switching. GWWR states that it has informed the four active shippers of its intention to lease the line, and Aspen, KC, and Wabash have submitted letters in support of the exemption request.⁶

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 11323(a)(2), our prior approval is required for a rail carrier to lease the property of another rail carrier. 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 proposed lease under 49 U.S.C. 11323 is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101. Rather, an exemption will promote that policy by minimizing the administrative expense of the application process, thus reducing regulatory barriers to entry and exit [49 U.S.C. 10101(7)]. An exemption also will foster sound economic conditions and encourage efficient management by integrating operations, better utilizing resources, and improving transit time and routing options [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy are not affected adversely. For example, an exemption will preserve competition by ensuring that a sound rail transportation system will continue to meet the needs of the public [49 U.S.C. 10101(4)].

Regulation is not necessary to protect shippers from the abuse of market power. On the contrary, the change in operations assertedly will result in an upgrading of service because GWWR will be able to reduce transit times and increase service on the Coburg Line as customer needs warrant. Moreover, the shippers will retain all routing options which they presently possess, and they will continue to have access to extensive motor carrier service. All shippers on the line except Havens Steel have submitted letters expressing support for the transaction. However, to ensure that the shippers are informed of our action, we will require GWWR to serve a copy of this decision on them within 5 days of the service date of this decision and certify to us that it has done so. Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

⁴ GWWR asserts that the St. Louis Southwestern Railway Company may have obtained overhead trackage rights on a portion of the line, but that any such trackage rights have not been used in years, if ever. In any event, GWWR opines that the trackage rights will not be affected by the proposed lease transaction.

⁵ See The Atchison, Topeka and Santa Fe Railway Company and Gateway Western Railway Company—Lease Exemption—Kansas City Terminal Railway Company, Finance Docket No. 32238 (ICC served Feb. 24, and Aug. 26, 1994). In that proceeding, Santa Fe also was authorized to lease 41.62 miles of KCT's main line and connecting tracks.

⁶ In addition, a letter of support was submitted by Wabash's parent company, The Weston Paper and Manufacturing Co.

Under 49 U.S.C. 10502(g)(2), 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 Ry., Inc.—Lease and Operate, 354 I.C.C. 732 (1978) and 360 I.C.C. 653 (1980).

The proposed lease is exempt from both the environmental reporting requirements under 49 CFR 1105.6(c) and the historic reporting requirements under 49 CFR 1105.8(b).⁷

This action will not significantly affect either the quality of the human environment or 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 the lease by GWWR of the above-described line segment, subject to the employee protective conditions in Mendocino Coast Ry., Inc.—Lease and Operate, 354 I.C.C. 732 (1978) and 360 I.C.C. 653 (1980).
2. Notice will be published in the Federal Register on October 8, 1997.
3. GWWR must serve a copy of this decision on each shipper on the line within 5 days of the service date of this decision and certify to the Board that it has done so.
4. This decision will be effective on November 7, 1997.
5. Petitions to stay must be filed by October 23, 1997 and petitions to reopen must be filed by November 3, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,
Secretary

⁷ The transaction does not involve a significant change in carrier operations, GWWR has no plans to dispose of or alter historic properties, and further Board approval would be required for GWWR to abandon any service.