

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34210

SUNFLOWER RAIL COMPANY, LLC — CONSTRUCTION AND OPERATION
EXEMPTION — FINNEY COUNTY, KS

Decided: March 21, 2003

By petition filed on January 22, 2003, Sunflower Rail Company, LLC (SRC), a subsidiary of Sunflower Electric Power Corporation (Sunflower), seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 for authority to construct and operate approximately 4.7 miles of railroad line in the vicinity of Garden City in Finney County, KS.¹ The new line would consist of two line segments connected in the middle by a line of railroad owned by The Garden City Western Railway, Inc. (GCW). The first segment of new line would begin at Build Out milepost 0.0 at a connection with the Holcomb Station Spur located approximately 0.8 miles southeast of BNSF's main line connection with the Holcomb Station Spur. This new line would proceed from the Holcomb Station Spur track switch in a northeasterly direction, cross over BNSF's tracks at approximately BNSF milepost 406.9 (Build Out milepost 0.6) through use of an overpass structure,² and proceed eastward until it connects with GCW's Lowe Spur (the South-End Lowe Spur Connection) at approximately GCW milepost 2.7 (Build Out milepost 2.2). The second segment would begin at a switch on GCW's Lowe Spur just north of U.S. Highway 50 (the North-End Lowe Spur Connection) at approximately GCW milepost 3.9 (Build Out milepost 3.4)³ and proceed in an easterly direction until it reaches a connection with GCW's Shallow Water-Garden City line at approximately

¹ Sunflower operates a coal-fired electricity generating plant near Holcomb, KS (Holcomb Plant), southwest of Garden City at a location generally known as "Holcomb Station." A 3.4-mile spur track (Holcomb Station Spur), owned by Sunflower and leading to the Holcomb Plant, connects to a main line of The Burlington Northern and Santa Fe Railway Company (BNSF) at approximately BNSF milepost 407.4.

² SRC states that, while it is hopeful it can reach an agreement with BNSF permitting it to cross BNSF's line, SRC has concurrently filed a related petition in STB Finance Docket No. 34210 (Sub-No. 1), Sunflower Rail Company, LLC—Petition for Crossing Authority Under 49 U.S.C. 10901(d), seeking authority to cross the BNSF track.

³ Build Out mileposts reflect approximately 1.2 miles of GCW-owned track between the South-End and North-End Lowe Spur Connections.

GCW milepost 153.0 (Build Out milepost 5.9), about 1.8 miles north of Garden City. SRC requests that we conditionally grant the exemption, subject to our completion of the required environmental review. We will grant a conditional exemption and issue a final decision after completion of the environmental review process.

BACKGROUND

Sunflower is a nonprofit, non-stock, independent electric power generation and transmission cooperative. It is owned and operated by a federation of six rural Kansas electric distribution cooperatives and serves people and industries in 34 western Kansas counties. Sunflower's Holcomb Plant currently uses approximately 1.5 million tons of coal per year. It is anticipated that over the next several years these volumes may rise to approximately 1.7 million tons of coal annually. Sunflower purchases coal for the Holcomb Plant from a Powder River Basin (PRB) mine near Gillette, WY. BNSF and the Union Pacific Railroad Company (UP) serve the mine, but BNSF is the only railroad capable of originating this coal traffic and delivering it directly to Holcomb Station. BNSF delivers this coal traffic to Holcomb Station via its La Junta Subdivision and the Holcomb Station Spur.

Sunflower has concluded that it would be beneficial to both itself and its customers if the Holcomb Plant gained access to UP as a competitive alternative to BNSF for PRB coal traffic.⁴ Sunflower contends that the benefits of direct rail competition are expected to come in the form of reduced rail rates and improved service and reliability. Also, it argues that adding an independent rail transportation option would also provide greater operational flexibility in the event of a future emergency, disaster, or service breakdown affecting either carrier.

The proposed new line might also be used for coal delivery to a new 600mW capacity coal-fired plant currently being planned for construction immediately adjacent to the Holcomb Plant (Sand Sage Plant). Sunflower is expected to operate the Sand Sage Plant when it is completed. The Sand Sage Plant is expected to require approximately 2.7 million tons of coal

⁴ UP can originate coal traffic from numerous PRB mines, but in the absence of the proposed rail line construction, it would have to interchange that traffic with BNSF for final delivery to Holcomb Station. Sunflower believes that a route independent of BNSF for UP-origin PRB coal shipments is necessary to create a competitive UP rail service option for the Holcomb Plant. Accordingly, Sunflower hopes to create such a route by having SRC construct and operate a rail line connecting Sunflower's Holcomb Station Spur to GCW's nearby Lowe Spur and connecting the Lowe Spur to GCW's north-south line running between Garden City and Shallow Water, KS.

annually from PRB sources once it is fully operational.⁵ Like the Holcomb Plant, the Sand Sage Plant would be served via the Holcomb Station Spur. Thus, it too could benefit from the added competition and operational flexibility that would be created with the construction of the proposed new SRC rail line.

As part of the construction project, and with the agreement and cooperation of GCW and Kansas & Oklahoma Railroad, Inc. (K&O), SRC plans to arrange for the rehabilitation of: (a) approximately 1.2 miles of GCW's Lowe Spur between the South-End and North-End Lowe Spur Connections; (b) approximately 28 miles of GCW-owned trackage between the point of connection with the line SRC proposes to construct and Shallow Water; and (c) approximately 5 miles of track owned by K&O between Shallow Water and Scott City, KS. The planned rehabilitation is necessary for the lines to handle coal cars with 286,000-pound capacity.

SRC seeks to construct and operate the new line as a jurisdictional line of railroad available to provide common carrier service to other shippers. SRC acknowledges that it would become a rail carrier upon completion of the project but expects that the actual service over the line will be provided by GCW (and by UP for Holcomb Station coal traffic) and plans to hire a third party to maintain the rail line.⁶ SRC expects GCW (and any other third party that would provide common carrier service over the proposed line) to seek authority from the Board as necessary to engage in such operations. Likewise, if SRC should find it necessary or efficient to operate over the lines of other carriers, it would seek appropriate authority from the railroads involved and from the Board as necessary in order for it to do so.

DISCUSSION AND CONCLUSIONS

The construction and operation of railroad lines requires prior Board approval under 49 U.S.C. 10901. 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.

⁵ To transport this volume of coal, Sand Sage is expected to receive between 172 and 186 unit coal trains per year (120-130 cars per train with a per-car capacity of 120 tons), or between 1.02 and 0.94 unit trains per day (counting both loads and empties).

⁶ SRC expects to grant non-exclusive trackage rights to GCW over the lines to be constructed, and GCW is expected to assume day-to-day operational responsibilities over the new line once it is completed. SRC may also grant trackage rights over the new lines to UP to allow it to carry coal destined for Holcomb Station.

Based on the information provided, we conclude that detailed scrutiny of the proposed construction and operation under 49 U.S.C. 10901 is not necessary to carry out the rail transportation policy. The requested exemption will promote that policy. The proposed construction and operation will afford Sunflower access to additional rail service via UP and SRC; consequently the construction and operation will increase competition [49 U.S.C. 10101(1) and (4)]. Moreover, exempting the proposed construction and operation will minimize the need for Federal regulation, ensure the development of a sound transportation system, foster sound economic conditions, and reduce regulatory barriers to entry [49 U.S.C. 10101(2), (4), (5), and (7)]. Unless we determine otherwise following environmental analysis, nothing on the record indicates that other aspects of the rail transportation policy will be adversely affected.

Regulation of the transaction is not necessary to protect shippers from the abuse of market power. Rather, the proposed construction of a new line will enhance competition by providing Sunflower, and any other shippers that choose to locate there, with an additional rail transportation option. Given our finding regarding the probable effect of the transaction on market power, we need not determine whether the transaction is limited in scope.

SRC has consulted with our Section of Environmental Analysis (SEA) regarding the environmental review process. Pursuant to our rules at 49 CFR 1105.10(d), SRC has retained an independent third-party consultant to prepare the environmental documentation for this project. After the environmental documentation is prepared and an environmental assessment or impact statement is issued and comments received, we will issue a further decision addressing the environmental issues and making the exemption effective at that time, if appropriate, subject to any necessary mitigation conditions, thereby allowing construction to begin. See Missouri Mining, Inc. v. ICC, 33 F.3d 980 (8th Cir. 1994); Illinois Commerce Com'n v. ICC, 848 F.2d 1246, 1259 (D.C. Cir. 1988), cert. denied, 488 U.S. 1004 (1989).

As conditioned, this action will not significantly affect the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. 10502, we conditionally exempt SRC's construction and operation of the above-described line from the prior approval requirements of 49 U.S.C. 10901, subject to our further consideration of the anticipated environmental impacts of the proposal.
2. On completion of the environmental review, we will issue a further decision addressing those matters and making the exemption effective at that time, if appropriate, subject to any necessary conditions, thereby allowing construction to begin.
3. Notice will be published in the Federal Register on March 28, 2003.

4. Petitions to reopen must be filed by April 17, 2003.
5. This decision is effective 30 days from the date of service of this decision.

By the Board, Chairman Nober and Commissioner Morgan.

Vernon A. Williams
Secretary