SERVICE DATE – DECEMBER 23, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34563

BUFFALO & PITTSBURGH RAILROAD, INC.—LEASE AND OPERATION EXEMPTION—SOUTH BUFFALO RAILWAY COMPANY

Decided: December 22, 2004

By petition filed on November 16, 2004, Buffalo & Pittsburgh Railroad, Inc. (BPRR), a Class II rail carrier, 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 an approximately 2-mile segment of rail line between approximately milepost 0.0 and approximately milepost 2.0 in Buffalo, Erie County, NY, owned by its Class III rail carrier affiliate, South Buffalo Railway Company (SB). We will grant the exemption subject to labor protective conditions.

BACKGROUND

BPRR and SB are wholly owned by Genesee & Wyoming, Inc. (GWI), a noncarrier holding company. In 2001, GWI acquired the stock of SB, a terminal switching operation located in Buffalo and Lackawanna, NY. See Genesee & Wyoming Inc.–Control Exemption–South Buffalo Railway Company, STB Finance Docket No. 34107 (STB served Nov. 21, 2001). As a part of its operation, SB owns the rail line involved in this transaction, which runs north from a point on or near the Buffalo city line up to (but not including) the Control Point Draw Bridge in Buffalo. The lease transaction also involves SB's yard tracks in Buffalo, known as "Station C," that are used for interchange and storage of cars.

According to BPRR, the lease transaction will both eliminate SB's tax obligation to the city of Buffalo, and result in operating efficiencies because, although Station C is located miles away from SB's main operation and serves little purpose in its daily operations, BPRR maintains a large operation in Buffalo. For example, BPRR's Buffalo Creek yard is located near Station C, and BPRR submits that it will be able to more fully utilize the space and have supervision and support nearby. BPRR states that there are no shippers that originate or terminate traffic on the line. BPRR also states that SB will continue to interchange cars with BPRR and other railroads at Station C in the future because the parties intend to execute an agreement whereby BPRR will grant SB trackage rights over the line. Thus, BPRR submits that the shippers in Buffalo and Lackawanna will continue to be served by the same carriers that currently serve them now. Assertedly, no employees of either railroad will lose jobs as a result of the lease transaction.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10902, the lease and operation of a rail line by a Class II carrier would require an application to, and authorization by, the Board. Under 49 U.S.C. 10502, however, the Board must exempt a transaction or service from regulation upon finding that: (1) 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 needed 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 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 needed to protect shippers from the abuse of market power. BPRR indicates that there will be no adverse impact on rail operations or lessening of rail competition because there are no shippers that originate or terminate traffic on the line and that shippers in Buffalo and Lackawanna will continue to be served by the same carriers that currently serve them. Assertedly, the transaction will more likely result in the same, or enhanced, rail service because BPRR will be able to provide more efficient operations at Station C. Given the 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), aff'd in relevant part sub nom. Association of American Railroads v. STB, 162 F.3d 101 (D.C. Cir. 1998). As required by 49 CFR 1121.4(h), BPR has certified to the Board that it has posted a notice of the transaction at the workplace of potentially affected employees and served the same on the national organizations representing them. The certification was made 60 days prior to November 28, 2004, and therefore the requirements of section 1121.4(h) have been satisfied.

This transaction is exempt from environmental reporting requirements under 49 CFR 1105.6(c)(2)(i) because it will not result in a significant change in carrier operations. Similarly, the transaction is exempt from the historic reporting requirements under 49 CFR 1105.8(b)(1) because it will not substantially alter railroad properties.

In requesting expedited consideration, BPRR asks that the exemption be effective prior to December 31, 2004, so that the transaction can be consummated on January 1, 2005. BPRR states that expedited closing of the transaction will enable the parties to realize the financial and operating benefits of the lease as soon as possible. The request is reasonable. Accordingly, this decision is being issued on an expedited basis and the exemption will be effective on December 30, 2004, rather than the normal 30 days after service of the decision and publication in the Federal Register.

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 the employee protective conditions implementing 49 U.S.C. 10902(d) as provided in this decision.

2. Notice will be published in the Federal Register on December 30, 2004.

3. The exemption will become effective on December 30, 2004.

4. Petitions to stay must be filed by January 3, 2005. Petitions to reopen must be filed by January 12, 2005.

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

Vernon A. Williams
Secretary