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SERVICE DATE – JUNE 11, 2010

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 290 (Sub-No. 321X)

NORFOLK SOUTHERN RAILWAY COMPANY—DISCONTINUANCE OF SERVICE EXEMPTION—IN HAMILTON COUNTY, OHIO

Decided: June 9, 2010

By petition filed on February 24, 2010, Norfolk Southern Railway Company (NSR) seeks an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10903 for NSR to discontinue service over 5.70 miles of rail line between milepost CT 2.10 and milepost CT 7.80, in Hamilton County, Ohio. Notice of the exemption was served and published in the Federal Register on March 16, 2010 (75 Fed. Reg. 12,594-95). No comments were filed. We will grant the petition for exemption, subject to standard employee protective conditions.

BACKGROUND

According to NSR, the 5.70-mile rail line has no active customers and there is no overhead traffic on the line. NSR states that the line formerly served NSR's Norwood Thoroughbred Bulk Terminal transload facility (transload facility), which permanently closed on September 1, 2009. Prior to that date, NSR states there had been no other active customers on the line for several years. NSR avers that there are no other potential customers located along the line and that the former customers of the transload facility have either relocated to other facilities or made other transportation arrangements. NSR indicates that it is seeking to discontinue service over the line, because the line cannot be rehabilitated, maintained, and operated without NSR incurring a substantial financial loss.

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 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 accord with

49 U.S.C. §§ 10101(2) and (7). An exemption also will foster sound economic conditions and encourage efficient management by relieving petitioner of the costs of continuing to maintain and operate a line with no current traffic or potential for future traffic, consistent with 49 U.S.C. §§ 10101(5) and (9). 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. No shippers are currently using the line and no shipper has opposed the proposed discontinuance. Customers of the transload facility have apparently relocated or use other transportation options. Nevertheless, to ensure that the former customers of the transload facility are informed of our action, we will require NSR to serve a copy of this decision on those customers, so that it is received by the customers within 5 days of the service date of this decision, and to certify contemporaneously to us that it has done so. Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

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 this is a discontinuance proceeding and not an abandonment, the Board need not consider offers of financial assistance (OFAs) to acquire the line for continued rail service (the OFA provisions for a subsidy to provide continued rail service under 49 U.S.C. § 10904 do apply to discontinuances), trail use requests under 16 U.S.C. § 1247(d), or requests to negotiate for public use of the line. 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 NSR of its operations over the above-described line, 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. NSR is directed to serve a copy of this decision on former customers of the transload facility, so that they receive a copy within 5 days of the service date of this decision, and certify to the Board contemporaneously 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 June 21, 2010, subject to time extensions authorized under 49 C.F.R. § 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27(c)(1). Each OFA must be accompanied by a \$1,500 filing fee. See 49 C.F.R. § 1002.2(f)(25).

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 June 28, 2010. Petitions to reopen must be filed by July 6, 2010.

6. Provided no OFA to subsidize rail service has been received, this exemption will be effective on July 11, 2010.

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