

SERVICE DATE – JUNE 15, 2010

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1057X

MISSOURI & VALLEY PARK RAILROAD CORPORATION—DISCONTINUANCE OF
SERVICE EXEMPTION—IN ST. LOUIS COUNTY, MO.

Decided: June 11, 2010

By petition filed on March 3, 2010, Missouri & Valley Park Railroad Corporation (MVPR)¹ seeks an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10903 to discontinue service over 3.5 miles of rail lines owned by BNSF Railway Company (BNSF) located on the south side of BNSF's Cuba Subdivision between milepost 18.36 and milepost 20.50, near West Valley Park, in St. Louis County, Mo. (the Lines). Pursuant to 49 U.S.C. § 10502(b), the Board served and published a notice in the Federal Register on March 23, 2010 (75 Fed. Reg. 13,808-09), instituting an exemption proceeding. No comments were filed in response to the notice. We will grant the exemption.

BACKGROUND

MVPR leased the Lines from BNSF from 2002 until 2010. See Missouri & Valley Park R.R.—Lease Exemption—Burlington N. and Santa Fe Ry., FD 34231 (STB served Aug. 5, 2002).² MVPR ceased all operations over the Lines on January 29, 2010. Since January 30, 2010, a new operator, Burlington Shortline Railroad, Inc., d/b/a Burlington Junction Railway (BSRR), has provided service over the Lines pursuant to a lease with BNSF. See Burlington Shortline R.R. d/b/a Burlington Junction Ry.—Lease and Operation Exemption—BNSF Ry., FD 35333 (STB served Dec. 31, 2009). MVPR now seeks an exemption to permit it to discontinue service over the Lines and thus end its common carrier obligation.

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

¹ On March 12, 2010, MVPR supplemented its petition with station information.

² In Missouri & Valley Park R.R.—Burlington N. and Santa Fe Ry., the length of the Lines was described as 2.14 miles. According to MVPR, the Lines are actually 3.5 miles in length.

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 in this case. By minimizing the administrative expense of discontinuing service over the Lines, an exemption will expedite regulatory decisions and reduce regulatory barriers to exit [49 U.S.C. §§ 10101(2) and (7)]. An exemption will also foster sound economic conditions and encourage efficient management by more quickly permitting MVPR to terminate its common carrier obligation now that its lease with BNSF has expired, MVPR has ceased all operations over the Lines, and BNSF has entered into a lease with another carrier to provide service over the Lines. [49 U.S.C. §§ 10101(5) and (9)]. Finally, other aspects of the rail transportation policy will not be adversely affected by the use of the exemption process. In particular, competition and the continuation of a sound rail transportation system will not be affected since BSRR, another Class III rail carrier, has assumed MVPR's former operations over the Lines.

We also find that regulation is not necessary to protect shippers from the abuse of market power because one rail carrier is being replaced by another that will continue to provide service over the Lines. Therefore, shippers will not be deprived of rail service as a result of MVPR's discontinuance. Nevertheless, to ensure that all shippers and BNSF are informed of our action, we will require MVPR to serve a copy of this decision on all shippers on the Lines and on BNSF so that it is received by them 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.

MVPR proposes to discontinue service over the Lines, which constitutes its entire operations. When issuing discontinuance authority for railroad lines that constitute the carrier's entire system, we do not normally impose labor protection under 49 U.S.C. § 10502(g), unless evidence indicates the existence of: (1) a corporate affiliate that will continue substantially similar rail operations; or (2) a corporate parent that will realize substantial financial benefits over and above relief from the burden of deficit operations by its subsidiary railroad. See Wellsville, Addison & Galetton R.R.—Aban. of Entire Line in Potter and Tioga Counties, Pa., 354 I.C.C. 744 (1978); and Northampton and Bath R.R.—Aban. Near Northampton and Bath Junction in Northampton County, Pa., 354 I.C.C. 784 (1978). MVPR states that there is no corporate affiliate of MVPR that will continue substantially similar rail operations and that there is no corporate parent that would benefit from the proposed discontinuance. No one has disputed MVPR's statements. Under these circumstances, we will not impose employee protective conditions on MVPR's discontinuance of service.

Because this is a discontinuance of service and not an abandonment, the Board need not consider offers of financial assistance (OFAs) to acquire the Lines for continued rail service (49 U.S.C. § 10904) (the OFA provisions for a subsidy to provide continued rail service do apply

to discontinuances), trail use requests under 16 U.S.C. § 1247(d), or requests to negotiate for public use of the Lines (49 U.S.C. § 10905). This proceeding is also exempt from environmental reporting requirements under 49 CFR § 1105.6(c) and from historic reporting requirements under 49 CFR § 1105.8(b).³ 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, we exempt from the prior approval requirements of 49 U.S.C. § 10903 the discontinuance of service by MVPR of its operations over the above-described Lines.
2. MVPR is directed to serve a copy of this decision on all shippers over the Lines and on BNSF so that it is received by them within 5 days after the service date of this decision and to certify contemporaneously to the Board that it has done so.
3. An OFA under 49 CFR § 1152.27(b)(2) to subsidize continued rail service must be received by the railroad and the Board by June 25, 2010, subject to time extensions authorized under 49 CFR § 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. § 10904 and 49 CFR § 1152.27(c)(1). Each OFA must be accompanied by the filing fee, which currently is set at \$1,500. See 49 CFR § 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 30, 2010. Petitions to reopen must be filed by July 12, 2010.
6. Provided no OFA to subsidize continued rail service has been received, this exemption will be effective on July 15, 2010.

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

³ The environmental and historic reports are not required since BNSF is required to continue to provide common carrier service over the Lines.