

29978  
EB

SERVICE DATE - APRIL 14, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33688

STATE OF GEORGIA, DEPARTMENT OF TRANSPORTATION--ACQUISITION  
EXEMPTION--LINE OF CENTRAL OF GEORGIA RAILROAD COMPANY

Decided: April 9, 1999

On December 11, 1998, the State of Georgia, acting by and through its Department of Transportation (GDOT), filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Central of Georgia Railroad Company (COG) certain railroad assets, including approximately 42.4 miles of rail line consisting of: (1) a formerly abandoned, but since reactivated, line of railroad between milepost GF-152.2 near Vidalia, Toombs County, GA, and milepost GF-171.0 near Kirby, Emanuel County, GA; and (2) COG's rail line between milepost GF-171.0 near Kirby and milepost 194.6 near Midville, Burke County, GA. The notice was served on January 6, 1999, and published in the Federal Register on January 7, 1999 (64 FR 1068-69). Concurrently with its notice, GDOT filed a petition to dismiss the notice, asserting that it will acquire certain rail assets and trackage but not the right to conduct common carrier freight operations, that it will not become a common carrier as a result of the transaction, and that the transaction is not subject to Board jurisdiction. The petition to dismiss will be granted, for the reasons next discussed.

BACKGROUND

The railroad assets that GDOT, a noncarrier, is purchasing will be operated by a third party, Ogeechee Railway Company (Ogeechee), a Class III rail carrier. In this regard, on December 9, 1998, Ogeechee filed a verified notice of exemption under 49 CFR 1150.41 in STB Finance Docket No. 33689, Ogeechee Railway Company--Acquisition and Operation Exemption--Line of Central of Georgia Railroad Company, to acquire from COG the right to conduct common carrier freight operations over the 42.4-mile rail line.<sup>1</sup> The notice was served on January 6, 1999, and published in the Federal Register on January 7, 1999 (64 FR 1069).

GDOT states that it will enter into an agreement with COG to purchase certain railroad assets, including the subject rail line. GDOT also states that COG will retain a permanent easement for common carrier freight operations, and that the retained easement will be included in a deed which will be recorded in the appropriate county offices upon consummation of the acquisition. GDOT avers that, under the terms of the retained easement, it will not acquire the right to provide

---

<sup>1</sup> Ogeechee currently leases and operates over both portions of the line. See Ogeechee Railway Company--Lease Exemption--Line of Central of Georgia Railroad Company, STB Finance Docket No. 33683 (STB served Dec. 16, 1998).

any common carrier freight service but, instead, COG will retain the right to continue all common carrier freight operations over the line. GDOT adds that, pursuant to a separate and concurrently executed agreement, COG will transfer its retained easement and all rights and obligations pertaining thereto, including but not limited to the right to maintain and repair the physical assets on the line, to Ogeechee, which will continue to conduct freight operations over the line and will assume COG's common carrier obligation.

According to GDOT, because of the nature and terms of the transaction, the asset acquisition is not subject to Board jurisdiction and the consummation of the acquisition would not make GDOT a common carrier, citing Maine, DOT--Acq. Exemption, Me. Central R. Co., 8 I.C.C.2d 835 (1991) (State of Maine). GDOT avers that it will not conduct freight operations or hold itself out to the public as willing to do so, but will merely own the real and personal property. Ogeechee will be the only common carrier on the subject line performing freight operations after consummation of the transaction. GDOT states that the only difference between this transaction and State of Maine is that COG plans to transfer immediately its retained easement to Ogeechee, which will have both the intent and unconditional ability to continue to assume and exercise its common carrier rights and obligations.

#### DISCUSSION AND CONCLUSIONS

GDOT's petition to dismiss will be granted and the proceeding discontinued. The primary issue here is whether we must exercise jurisdiction over the proposed transfer of rail assets from COG, a rail carrier, to GDOT, a noncarrier. Acquisition of an active rail line by a noncarrier ordinarily requires Board approval under 49 U.S.C. 10901. The new owner then is ordinarily obligated to provide service over the line.

Here, however, the circumstances of this transaction do not require any form of Board action. On the basis of the representations made by the parties,<sup>2</sup> we find that GDOT will not conduct any operations over the line and will not hold itself out to do so. By merely acquiring certain rail assets from COG, GDOT will not become a carrier or acquire a common carrier obligation. Conversely, the evidence indicates that Ogeechee will have the ability to provide unrestricted freight service as a railroad common carrier over the subject line. Specifically, Ogeechee will receive a sufficient easement to enable it to perform its common carrier obligation, and the pertinent agreements will give Ogeechee more than sufficient power over the operation and maintenance of the line to avoid any undue interference by GDOT. For these reasons, we will grant

---

<sup>2</sup> Although the parties' agreements are not before us, we will hold them to their representations regarding Ogeechee's full right to operate over the line without any interference from GDOT.

the relief sought by GDOT.<sup>3</sup>

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. GDOT's petition to dismiss the verified notice of exemption is granted.
2. The proceeding is discontinued.
3. This decision is effective on its date of service.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams  
Secretary

---

<sup>3</sup> By letter submitted December 28, 1998, United Transportation Union (UTU) protests GDOT's proposal, arguing that the Board lacks authority to exempt any railroad from the labor protective conditions of 49 U.S.C. 11326. Because we find that Board authorization (whether by approval or exemption) is not required for GDOT's acquisition, UTU's argument regarding conditions to such an authorization is moot. Moreover, as discussed above, even if Board authorization were required, the statutory provision that would govern would not be sections 11323 through 11326, but rather section 10901, which expressly precludes labor protective conditions. See 49 U.S.C. 10901(c).