

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. FD 35465

AUTAUGA NORTHERN RAILROAD, L.L.C.—LEASE AND OPERATION  
EXEMPTION—NORFOLK SOUTHERN RAILWAY COMPANY

Decided: March 18, 2011

This decision denies the petition of International Paper Company (IP) to stay the exemption noticed in this docket.

BACKGROUND

On February 17, 2011, the Autauga Northern Railroad, L.L.C. (ANRR), a noncarrier indirectly controlled by Watco Holdings, Inc. (Watco), filed a notice invoking the class exemption for lease and operation at 49 C.F.R. § 1150.31. By this notice, ANRR seeks to lease from Norfolk Southern Railway Company (NSR) and to operate approximately 43.62 miles of rail lines located between: (1) milepost MA 130.00, at Maplesville, Ala., and milepost MA 171.05, at Autauga Creek, Ala.; and (2) milepost MD 0.00 and milepost MD 2.57, at Autauga Creek (collectively, the lines). In addition, ANRR would obtain by assignment incidental trackage rights over a 10.08-mile rail line owned by CSX Transportation, Inc. (CSXT), extending between milepost 171.02, at Autauga Creek, and milepost 181.1, at Montgomery, Ala.<sup>1</sup> The notice was served on March 4, 2011, and published on the same date in the Federal Register at 76 Fed. Reg. 12,224. Also on February 17, 2011, Watco filed a related notice

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<sup>1</sup> On March 11, 2011, CSXT filed a letter stating that its current trackage rights agreement with NSR prohibits assignment of those trackage rights without the written consent of CSXT, and that ANRR may not use those trackage rights until and unless CSXT gives that consent. According to CSXT, it is currently negotiating the terms of its consent for NSR to assign the trackage rights to ANRR. While a notice of exemption gives an acquiring entity permission to acquire a rail line, by sale, lease, or trackage rights, it does not mandate the acquisition. Rather, such an exemption may not be exercised unless an agreement is ultimately reached between the parties to the transaction. See, e.g., Gen. Ry.—Exemption for Acquis. of R.R. Line—in Osceola & Dickinson Counties, Fla., FD 34867 (STB served June 15, 2007); see also Chi., Lake Shore & South Bend Ry.—Acquis. & Operation Exemption—Norfolk S. Ry., FD 34960 (STB served Feb. 14, 2008); Rock River R.R.—Acquis. & Operation Exemption—Rail Lines of Renew Energy, LLC, FD 35016 et al. (STB served June 25, 2010). The fact that ANRR and NSR are still negotiating with CSXT for the assignment of the incidental trackage rights neither voids the notice nor precludes the lease and operation exemption from taking effect.

invoking the class exemption at 49 C.F.R. § 1180.2(d)(2) to allow it to continue in control of ANRR upon ANRR's becoming a Class III rail carrier.<sup>2</sup> The notice in Docket No. FD 35464 was also published on March 4, 2011, in the Federal Register at 76 Fed. Reg. 12,223-24.

Both the control exemption in Docket No. FD 35464 and the lease and operation exemption in Docket No. FD 35465 cannot take effect until March 19, 2011. Neither ANRR nor Watco can exercise control over the lines unless and until the lease and operation exemption becomes effective and the parties consummate that transaction.

By a petition filed on March 11, 2011, IP requests that the Board stay the effectiveness of the lease and operation exemption.<sup>3</sup> IP, a manufacturer of paper and paper products, states that it owns a mill located on the lines at Prattville, Ala., and that NSR transported over 5,000 boxcar shipments for IP in 2010. According to IP, NSR filled 100% of its boxcar needs and performed 6 to 7 switches per week in 2009, but since then service levels have declined. IP states that in December 2010, the Federal Railroad Administration, after inspecting the lines, found them to be in such poor condition that maximum speeds were reduced to 10 miles per hour, further degrading service on the lines. As a result, by February 2011, NSR was only fulfilling 48% of IP's car supply orders and performing 3 switches per week. IP states that it is concerned that the notice of exemption did not provide any information concerning ANRR's financial resources, operating plan, car supply, or ability to serve IP and other shippers and rehabilitate the lines. To that end, IP claims that it is not opposing the transaction or seeking an indefinite stay, but, rather, is requesting a brief stay to enable ANRR and NSR to provide the information that IP seeks. By a pleading filed on March 16, 2011, ANRR replied to the stay request.<sup>4</sup> NSR also filed a pleading on March 16, stating its support for ANRR's position.

## DISCUSSION AND CONCLUSIONS

In deciding petitions for stay, the Board follows the traditional stay criteria by requiring a party seeking a stay to establish that: (1) there is a likelihood that it will prevail on the merits of any challenge to the action sought to be stayed; (2) it will suffer irreparable harm in the absence of a stay; (3) other interested parties will not be substantially harmed by a stay; and (4) the public

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<sup>2</sup> Watco Holdings, Inc.—Continuance in Control Exemption—Autauga N. R.R., FD 35464 (STB served Mar. 4, 2011).

<sup>3</sup> In its petition, IP suggested that, under the circumstances, should a stay of the lease and operation exemption in Docket No. FD 35465 be granted, it would be appropriate to also stay the continuance in control exemption in Docket No. FD 35464. Because the petition for stay in Docket No. FD 35465 will be denied, IP's suggestion that the continuance in control exemption in Docket No. FD 35464 also be stayed is moot.

<sup>4</sup> In its reply, ANRR claims that it is willing to provide IP with all the requested information; however, it asserts that IP has refused to meet with officials of ANRR's parent company, Watco. Moreover, ANRR contends that IP should be well aware of Watco through Watco's subsidiaries operating in the paper industry and specifically because several Watco affiliates serve other IP plants.

interest supports the granting of the stay. Washington Metro. Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977); Virginia Petroleum Jobbers Ass'n v. Fed. Power Comm'n, 259 F.2d 921, 925 (D.C. Cir. 1958). The party seeking a stay carries the burden of persuasion on all of the elements required for such extraordinary relief. Canal Auth. of Fla. v. Callaway, 489 F.2d 567, 573 (5th Cir. 1974).

IP's request for stay will be denied because IP has not met, or even discussed, the criteria for granting a stay. IP's sole justification for stay is to allege that the transaction could harm IP and other shippers because the information furnished in the notice does not indicate whether ANRR has the resources necessary to provide adequate service on the lines. The contention that rail service to IP and other shippers might deteriorate or, at the very least, might not improve in the future, however, is speculative. See San Joaquin Valley R.R.—Aban. Exemption—in Tulare and Kern Counties, Cal., AB 398 (Sub-No. 5X) (STB served Apr. 3, 1998). Moreover, from a business perspective, a rail carrier depends on providing adequate service or its business would fail. It would thus be against ANRR's economic interest to provide poor service to IP, a major shipper on the lines and therefore a source of significant revenue to ANRR. See Pyco Indus.—Feeder Line Application—Lines of S. Plains Switching, Ltd. Co., FD 34890 et al., (STB served Sept. 20, 2007). On this record, IP has not shown that either itself or any other shipper would suffer irreparable harm in the absence of a stay or that it is likely to prevail on the merits if it were to petition to revoke the exemption.

We note that, while IP has not satisfied the criteria for granting a stay, if IP does not receive adequate service in the future, it has options. The first would be to contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance to explore whether informal resolution is possible. Should formal action be necessary, IP may avail itself of various statutory remedies addressing inadequate service.

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

It is ordered:

1. IP's request for stay is denied.
2. This decision is effective on its date of service.

By the Board, Daniel R. Elliott, Chairman.