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SERVICE DATE - OCTOBER 29, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33609

NORFOLK SOUTHERN RAILWAY COMPANY--PURCHASE
EXEMPTION--UNION PACIFIC RAILROAD COMPANY

Decided: October 20, 1998

By petition filed on September 9, 1998, Norfolk Southern Railway Company (NSR)¹ seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 11323-25 for NSR to purchase from Union Pacific Railroad Company (UP) approximately 15.3 miles of rail line located between milepost 104.8 at Monterey Junction, IL (including the southwest leg of the wye track between mileposts 104.5 and 104.8), and milepost 119.8 at DeCamp, IL (the Line), as well as certain yard tracks known as the Wiggins Track, the New Pass Track and the CNW (A&E) Main Track, at Madison, IL.² NSR requests that the exemption become effective by December 16, 1998, for tax purposes. The United Transportation Union (UTU) requests imposition of labor protective conditions. We will grant the exemption, subject to standard labor protective conditions.

¹ Effective September 1, 1998, NSR, through merger, became the successor to the Norfolk and Western Railway Company (NW). See Norfolk Southern Railway Company--Merger Exemption--Norfolk and Western Railway Company, STB Finance Docket No. 33648 (STB served Aug. 31, 1998).

² NSR expresses its belief that the transfer of the yard tracks may be outside the Board's jurisdiction pursuant to 49 U.S.C. 10906. Because this sale involves two existing carriers and apparently does not involve joint use or ownership, petitioners correctly petitioned for exemption from 49 U.S.C. 11323. Regarding the jurisdictional exception at 49 U.S.C. 10906 [previously section 10907], the former Interstate Commerce Commission (ICC) has stated that Congress limited the exception to proceedings under 49 U.S.C. 10901-06. See, e.g., Tyburn Railroad Company - Notice of Exemption - Operation and Acquisition, Finance Docket No. 31475 (ICC served Apr. 30, 1990). Thus, the ICC has found that there is no statutory exemption at 10907 [now 10906] covering transactions under section 11343 [now 11323] for industrial, spur, switching, or team track not involving joint use or ownership. See, e.g., United Transportation Union v. Burlington Northern and Houston Belt & Terminal Railway Company, Docket No. 40074 (ICC served Mar. 30, 1987) slip op. at 4. In this proceeding, it appears that there will be no joint use or ownership of the yard track to invoke the section 10906 exemption. Therefore, prior Board approval would be required to purchase the yard track. We will include NSR's purchase of the yard tracks as part of NSR's exemption request.

BACKGROUND

NSR is a Class I rail carrier incorporated in Virginia and is a wholly owned subsidiary of Norfolk Southern Corporation, a non-railroad holding company. NSR owns and operates lines of railroad in 20 states.³ UP is a Class I rail carrier incorporated in Delaware. UP owns and operates lines of railroad in 24 western and midwestern states.⁴

NSR, through its predecessor NW, has been operating over the UP line since February 1998 under local access trackage rights exempted in Norfolk and Western Railway Company--Trackage Rights Exemption--Union Pacific Railroad Company, STB Finance Docket No. 33488 (STB served Oct. 21, 1997). The purpose of the trackage rights was to permit the movement of coal traffic directly between Monterey Mine No. 1 and Madison, IL, and on to Coffeen, IL, entirely via NW (now NSR) and to eliminate costly delays in handling and interchanges. Previously this coal traffic was interchanged between UP and NW/NSR at Edwardsville, IL.

The purchase agreement conveys to NSR three line segments consisting of trackage, right-of-way, and other rail related assets for continued rail operations, subject to certain exceptions related to the property.⁵ The agreement also includes the non-exclusive right for both UP and NSR to use the entire wye track area at Monterey Junction for turning trains.

According to petitioner, the line purchase will permit a more efficient, single-line movement of coal from Monterey Mine No. 1 to the Coffeen generating station of the Central Illinois Public Service Company. Not only would the costs and delays of interchange be avoided, but the rerouting of traffic via Litchfield and Sorento from DeCamp (and the utilization of existing trackage rights over a Burlington Northern and Santa Fe Railway Company line) will save approximately 28 miles and two run-around operations per round trip. NSR asserts that it would have more incentive to maintain and improve the track of a line over which it provides the entire service. UP will still provide rail service to Monterey Mine No. 1 from the north. Petitioner maintains that the Line transfer will allow UP to rationalize its system, while resulting in increased economies and

³ The 20 states include: Alabama, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia.

⁴ The 24 states include: Arizona, Arkansas, California, Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, Oklahoma, Oregon, Tennessee, Texas, Utah, Washington, Wisconsin, and Wyoming.

⁵ The agreement excludes yard trackage at Benald, IL, and the spur line to Shaft No. 4 between Sawyerville and Parkeville, IL, in the vicinity of milepost 114 and land that is located more than fifty (50) feet from the center of each side of the Line.

efficiencies for both UP and NSR which can only improve overall service to area shippers. Otherwise, NSR asserts that no shippers will suffer any loss of service or change of operators as a result of this transaction because NSR is already providing rail service pursuant to trackage rights.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 11323(a)(2), prior Board approval is required for a rail carrier to purchase the rail operating property of another rail carrier. However, under 49 U.S.C. 10502, 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 needed to protect shippers from the abuse of market power.

Detailed scrutiny of the proposed purchase under 49 U.S.C. 11323-25 is not necessary to carry out the rail transportation policy. By minimizing the administrative time and expense of considering the proposed transaction, an exemption will expedite regulatory decisions and reduce barriers to entry and exit [49 U.S.C. 10101(2) and (7)]. In addition, the transaction will help promote a safe and efficient rail transportation system, foster sound economic conditions, and encourage efficient management [49 U.S.C. 10101(3), (5), and (9)]. The exemption will assure that the Monterey Junction/DeCamp, IL line is maintained by the most interested party, NSR, its current user. A connection between NSR and UP will still be available at Madison Yard. While the Line is a very small portion of UP's rail system, elimination of UP's obligation to operate and maintain the Line will permit UP to concentrate its resources where it provides rail service. UP will continue to serve Monterey Mine No. 1 from the north. NSR, on the other hand, can operate and maintain the Line in connection with its adjacent line, and has an interest in maintaining the Line as a route for coal shipments from Monterey Mine No. 1 to the Cental Illinois Power Company. Transfer of the Line will allow NSR to conduct more efficient train operations on a track maintained at a level appropriate for those operations, thereby ensuring that a sound transportation system will continue to meet the needs of the public [49 U.S.C. 10101(4)]. Other aspects of the rail transportation policy are not affected adversely.

Regulation of the transaction is not necessary to protect shippers from the abuse of market power because the transaction represents only a change in owners. There will be no change in operations, inasmuch as NSR already operates the Line under a trackage rights agreement. Existing NSR operations will be continued and improved and there will be no loss of rail competition. Given our market power finding, we need not also determine whether the proposed transaction is limited in scope.

UTU requests imposition of labor protective conditions. Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve rail carriers of their statutory obligation under 49

U.S.C. 11326 to protect the interests of their employees. Accordingly, as a condition to granting this exemption, we will impose the employee protective conditions in New York Dock Ry.--Control--Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

Petitioner states that this transaction is excepted from environmental reporting requirements under 49 CFR 1105.6(c)(2)(i) and that an historic report is not required under 49 CFR 1105.8(b)(1). Our Section of Environmental Analysis has reviewed the transaction and has concluded that it is exempt from environmental and historic reporting requirements.⁶

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, we exempt the above-described purchase from the prior approval requirements of 49 U.S.C. 11323-25, subject to the employee protective conditions in New York Dock Ry.--Control--Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

2. Notice will be published in the Federal Register on October 29, 1998.

3. This exemption will be effective on November 28, 1998.

4. Petitions to reopen must be filed by November 18, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

⁶ This transaction does not involve a significant change in carrier operations, petitioner has no plans to dispose of or alter historic properties, and further Board approval would be required for NSR to abandon any service.