

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 32963

STEBEN COUNTY INDUSTRIAL DEVELOPMENT AGENCY--ACQUISITION  
EXEMPTION--LINE OF BATH AND HAMMONDSPORT RAILROAD COMPANY

Decided: July 1, 1997

By petition filed June 4, 1996, Steuben County Industrial Development Agency (SCIDA) seeks a retroactive exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10902 for the acquisition from Bath and Hammondsport Railroad Company (B&H) of a 7.83-mile portion of the B&H line between milepost 0.85 at Bath, NY, and milepost 8.68 at Hammondsport, NY.<sup>1</sup> The acquisition took place in February 1993, without the requisite approval or an exemption. SCIDA seeks to rectify the oversight through this exemption which we will grant without retroactive effect.

BACKGROUND

SCIDA, a Class III rail carrier and local government agency in Steuben County, NY, states that when it purchased the B&H line for continued rail service, it inadvertently failed to seek approval or an exemption from the Interstate Commerce Commission (ICC).<sup>2</sup> At the same time it acquired the B&H line, SCIDA notes that it acquired from Consolidated Rail Corporation the Bath Industrial Track, a 2.7-mile rail line in Steuben County, extending between milepost 285.1 in Bath and milepost 287.8 in Kanona, NY.<sup>3</sup> The Bath Industrial Track connects the B&H line to SCIDA's Kanona-Wayland line (K-W line), a 23.5-mile rail line, extending between milepost 287.8 in Kanona and milepost 311.25 at Wayland, NY.<sup>4</sup>

The current operator of SCIDA's three lines is Livonia, Avon & Lakeville Railroad Corporation, which acquired the exclusive right to operate in *Livonia, Avon & Lakeville Railroad Corp.--Acquisition and Operation Exemption--Steuben County Industrial Development Agency*, STB Finance Docket No. 32941 (STB served May 22, 1996). It was during that transaction that SCIDA discovered that it had failed to obtain the necessary regulatory approval to purchase the B&H line. This petition was filed shortly thereafter.

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<sup>1</sup> B&H later abandoned the remaining 0.31 miles of the B&H line, between milepost 8.86 and the end of the line at milepost 9.17, in the Village of Hammondsport. *Bath and Hammondsport Railroad Company--Abandonment Exemption--In Steuben County, NY*, Docket No. AB-436X (ICC served Mar. 8, 1995).

<sup>2</sup> The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the ICC and transferred certain functions to the Surface Transportation Board (Board). This decision relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10902, which is a new provision under the ICCTA.

<sup>3</sup> *Steuben County Industrial Development Agency and Champagne Railroad, Inc.--Acquisition and Operation Exemption--Line of Consolidated Rail Corporation*, Finance Docket No. 32132 (ICC served Dec. 23, 1992). SCIDA became a rail carrier with this purchase.

<sup>4</sup> B&H operated the K-W line under an agreement with SCIDA and possessed trackage rights over the Bath Industrial Track to permit it to connect the B&H line and K-W line. Following SCIDA's purchase of the Bath Industrial Track, Champagne Railroad, Inc., became the operator of all three lines. See *Steuben County Industrial Development Agency and Champagne Railroad, Inc.--Change in Operator Exemption--Bath and Hammondsport Railroad Company*, Finance Docket No. 32211 (ICC served Feb. 22, 1993).

## DISCUSSION AND CONCLUSIONS

Under the new ICCTA provision, 49 U.S.C. 10902, that governs the acquisition or operation of additional rail lines by Class II and III railroads, we are required, after application by a Class II or Class III rail carrier, to issue a certificate authorizing the transaction unless we find that "such activities are inconsistent with the public convenience and necessity." 49 U.S.C. 10902(c).

Under 49 U.S.C. 10902, the Class III rail carrier's acquisition of a rail line requires prior Board approval. Under 49 U.S.C. 10502, however, we must exempt a transaction from regulation if we find that: (1) application of a provision of law administered by the Board is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction is of limited scope or (b) application of such provision is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny of the proposed transaction, through an application for review and approval under 49 U.S.C. 10902, is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101. According to SCIDA, its acquisition of the B&H line is important to the economy of Steuben County and will assure the long-term preservation of rail service to the line's shippers. It will also allow SCIDA to coordinate its administration of the line with its two connecting rail lines. Thus, an exemption will promote efficient rail transportation, ensure the development and continuation of a sound rail transportation system to meet the needs of the public, foster sound economic conditions in transportation, ensure effective competition and coordination between rail carriers, and promote efficient management [49 U.S.C. 10101(3), (4), (5) and (9)]. Granting the exemption will also reduce the need for Federal regulatory control over the rail transportation system and regulatory barriers to entry [49 U.S.C. 10101(2) and (7)].

The transaction will not result in an abuse of market power. Shippers will continue to receive the same service as in the past and will otherwise benefit from the long-term stability that the transaction is intended to secure. Nevertheless, to ensure that the shippers are informed of our action, we will require SCIDA to serve them with a copy of this decision within 5 days after the service date and to certify to us that it has done so. Given our finding regarding the probable effect of the transaction on market power, we need not determine whether the transaction is limited in scope.

Because SCIDA is a Class III carrier, this transaction is governed by 49 U.S.C. 10902 and the imposition of labor protective conditions is precluded. *See* 49 U.S.C. 10902(c) and (d). In addition, this transaction does not involve a significant change in carrier operations and is exempt from the environmental reporting requirements under 49 CFR 1105.6(c)(2)(i). Also, the transaction is exempt from the historic preservation reporting requirements under 49 CFR 1105.8(b)(1) because it is for continued rail operations, our further approval is required to abandon service, and there are no plans to dispose of or alter properties that are 50 years old or older.

SCIDA asserts that its failure to seek approval or an exemption when it purchased the B&H line was inadvertent and requests that the exemption be given retroactive effect. While SCIDA's error appears to have been made in good faith and SCIDA has sought an exemption to correct the error, we see no need to give the exemption retroactive effect.

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

*It is ordered:*

1. Under 49 U.S.C. 10502, we exempt SCIDA's acquisition of the above-described line from the prior approval requirements of 49 U.S.C. 10902.
2. SCIDA must serve a copy of this decision on all shippers within 5 days of the service date and certify to the Board that it has done so.

3. Notice will be published in the *Federal Register* on July 15, 1997.
4. This exemption will be effective on August 14, 1997.
5. Petitions to stay must be filed by July 30, 1997 and petitions to reopen must be filed by August 11, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams  
Secretary