

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34057

STATE OF GEORGIA, DEPARTMENT OF TRANSPORTATION—ACQUISITION
EXEMPTION—SOUTH CAROLINA CENTRAL RAILROAD, INC.

Decided: April 23, 2002

On December 21, 2001, the State of Georgia, Department of Transportation (GDOT), filed a verified notice of exemption under 49 CFR 1150.31 to acquire from South Carolina Central Railroad, Inc. (SCCR), certain physical assets, including 101.27 miles of rail lines (the Lines) located in Georgia: (1) between milepost SLB 0.38 near Columbus and milepost SLB 23 near Cusseta; (2) between Valuation Station 41+60 and Valuation Station 107+35 near Columbus; (3) between Valuation Station 0+00 and Valuation Station 41+61 near Columbus; (4) between milepost SLC 91.68 near Bainbridge and milepost SLC 160.0 near Cuthbert; and (5) between milepost 63.55 near Dawson and milepost 72.88 near Sasser.¹ Simultaneously, GDOT filed a motion to dismiss the notice. In its motion, GDOT states that it will acquire the physical assets, but not the right to conduct common carrier freight operations, and it asserts 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 motion will be granted.

BACKGROUND

GDOT, a noncarrier, states that it entered into an agreement with SCCR, a Class III carrier, to purchase the physical assets (right-of-way and real property underlying the Lines, together with the track and all improvements thereon), but not the right or obligation to conduct common carrier freight operations over the Lines.² The Lines are being operated by a third party, Georgia Southwestern Railroad, Inc. (GWSR), a Class III carrier, under a lease from SCCR.³

¹ The notice was served and published in the Federal Register on January 18, 2002 (67 FR 2730-31).

² Copies of the drafts of the agreements (Quitclaim Deeds) between GDOT and SCCR were attached as Exhibit B to GDOT's motion. These deeds except and reserve to SCCR an exclusive, perpetual, assignable easement for rail freight service.

³ GWSR earlier sold the Lines to SCCR, which leased the Lines back to GWSR, its affiliate at the time, to conduct common carrier freight service over the Lines. See Georgia Southwestern Railroad, Inc.—Sale and Lease Exemption Within a Corporate Family

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GSWR will continue to provide common carrier operations, but according to GDOT, SCCR will “retain a permanent exclusive easement to retain the residual common carrier freight obligation over the Lines in the event GSWR or future assignees are unable to provide common carrier freight operations over the Lines.”⁴ Motion to dismiss at 2.

Citing Maine, DOT–Acq. Exemption, Me. Central R. Co., 8 I.C.C.2d 835 (1991) (State of Maine), GDOT argues that, 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. GDOT states that it will not conduct freight operations over the Lines or hold itself out to the public as willing to do so. GDOT asserts that the only difference between this transaction and State of Maine is that it would be insulated from the common carrier obligation by two carriers (GSWR and SCCR) instead of one.

DISCUSSION AND CONCLUSIONS

GDOT’s motion to dismiss will be granted and the proceeding discontinued. The sole issue is whether Board approval is required for the proposed transfer of rail line assets from SCCR, a rail carrier, to GDOT, a noncarrier. Ordinarily, acquisition of an active rail line by a noncarrier requires Board approval under 49 U.S.C. 10901, and the new owner is obligated to provide service over the line.

Here, however, the circumstances of this transaction do not require Board action. On the basis of the representations made by the parties, we find that GDOT will not conduct any operations over the Lines and will not hold itself out to do so. By merely acquiring certain rail assets from SCCR, GDOT will not become a carrier or acquire a common carrier obligation. See State of Maine. SCCR will retain its common carrier obligation, which in this case it will apparently carry out by continuing to contract with GSWR to provide rail freight service over the Lines. There is no indication that GDOT will be in a position to interfere with the ability of GSWR/SCCR to fulfill their common carrier obligation for the Line or to assume that obligation itself.⁵ For these reasons, we will grant the relief sought by GDOT.

³(...continued)

Transaction–South Carolina Central Railroad, Inc., STB Finance Docket No. 34144 (STB served Jan. 18, 2002).

⁴ GDOT notes that GSWR and SCCR will retain all common carrier obligations and will be required to seek discontinuance or abandonment authority, respectively, from the Board if either party decides to terminate all or a portion of the service on the Lines.

⁵ We note in this regard that GDOT has also submitted a draft lease under which GDOT would lease the Line to GSWR to provide rail freight service and GSWR would be required to
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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 motion to dismiss the verified notice of exemption is granted.
2. The proceeding is discontinued.
3. This decision is effective 30 days after its service date.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams
Secretary

⁵(...continued)

get written permission from GDOT before it could assign the lease to another operator. The draft lease is inconsistent with the draft deeds, under which SCCR would retain an exclusive, perpetual, assignable easement for rail freight service. Given that irrevocable easement, no lease would be necessary and GDOT would have no right to require its approval for any assignment of the easement (although an assignment would require our approval under 49 U.S.C. 10901 or 10902 and GDOT could bring to our attention any objections it might have). Our grant of GDOT's motion to dismiss is based upon the broad and unequivocal nature of that easement, and we assume that GDOT will not proceed with this inconsistent lease.