

SERVICE DATE – NOVEMBER 5, 2020

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1304X

PACIFIC SUN RAILROAD, L.L.C.—DISCONTINUANCE OF SERVICE AND TRACKAGE
RIGHTS EXEMPTION—IN SAN DIEGO COUNTY, CAL.

Digest:¹ This decision allows Pacific Sun Railroad, L.L.C., to discontinue its operations over approximately 21.5 miles and its local trackage rights over approximately 45.49 miles of BNSF Railway Company rail line, in San Diego County, Cal.

Decided: November 3, 2020

On August 17, 2020, Pacific Sun Railroad, L.L.C. (PSRR), a Class III rail carrier, filed a petition under 49 U.S.C. § 10502 for an exemption from the prior approval requirements of 49 U.S.C. § 10903 to: (1) discontinue its operations over approximately 21.5 miles of rail line leased from BNSF Railway Company (BNSF) (the Leased Lines), consisting of the Escondido Subdivision, which extends from milepost 0.0 at Oceanside, Cal., to milepost 21.2 at Escondido, Cal., and the Miramar Spur, which extends approximately 0.3 miles eastward from milepost 252.9 at Miramar, Cal., on BNSF's San Diego Subdivision; and (2) discontinue local trackage rights over approximately 45.49 miles of rail line on BNSF's San Diego Subdivision (the Trackage Rights Line), extending from milepost 252.9 at Miramar to milepost 207.41 at the border of Orange County, Cal., and San Diego County, Cal. The Leased Lines and Trackage Rights Line collectively are referred to as the Lines.

Notice of the exemption proceeding was served and published in the Federal Register on September 4, 2020 (85 Fed. Reg. 55,349). No comments were filed in response to PSRR's petition. For the reasons discussed below, the Board will grant the petition for exemption.

BACKGROUND

In October 2008, the Board authorized PSRR to acquire and operate the Leased Lines and obtain trackage rights over the Trackage Rights Line. See Pac. Sun R.R.—Lease & Operation Exemption—BNSF Ry., FD 35173 (STB served Oct. 3, 2008). PSRR provided service on the

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

Lines pursuant to an agreement with BNSF that terminated on September 30, 2020. (Pet. 3.) PSRR states that the proposed discontinuance will allow PSRR to end its common carrier obligations over the Lines, but that no customer on the Lines will be without common carrier service as a consequence of the proposed discontinuance because the discontinuance will merely facilitate an agreed-upon exchange of rail service providers from PSRR back to BNSF, as of October 1, 2020. (*Id.* at 3, 7.) PSRR also states that, because the Lines over which it seeks discontinuance authority represent the entire scope of its operations and PSRR will have no residual interest in railroad assets or any other regulated operations as a result of the proposed discontinuance, PSRR “is entitled to relief from otherwise-applicable labor protection conditions.” (*Id.* at 6-7.)

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 10903, a rail carrier may not discontinue operations without the prior approval of the Board. Under 49 U.S.C. § 10502, however, the Board must exempt a transaction or service from regulation when it finds that: (1) continued regulation is not necessary to carry out the rail transportation policy (RTP) 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 under 49 U.S.C. § 10903 is not necessary to carry out the RTP in this case. An exemption would expedite regulatory decisions by minimizing the need for regulatory control of PSRR’s operation of the Lines, reduce regulatory barriers to exit for PSRR, and provide for the expeditious handling and resolution of the proceeding by facilitating an agreed-upon transition of operations from PSRR to BNSF. *See* 49 U.S.C. § 10101(2), (7), (15). Other aspects of the RTP would not be adversely affected.

Regulation of the proposed transaction under 49 U.S.C. § 10903 is also not necessary to protect shippers from the abuse of market power.² As described above, customers on the Lines would receive service directly from BNSF, which retains a common carrier obligation.

Where, as here, a carrier is discontinuing service over its entire system, the Board generally does not impose labor protection under 49 U.S.C. § 10502(g). *See Sw. R.R.—Discontinuance of Serv. Exemption—in Curry, Roosevelt, Chaves, & Eddy Cntys., N.M.*, AB 1251X, slip op. at 2 n.3 (STB served Apr. 27, 2017). Since PSRR indicates that the Lines on which it seeks discontinuance authority represent the entire scope of its operations and PSRR has no other residual interest in railroad assets or other regulated operations, (Pet. 6-7), the Board will not impose employee protective conditions.

² Because this decision finds that regulation is not necessary to protect shippers from the abuse of market power, the Board need not determine whether the transaction is limited in scope. *See* 49 U.S.C. § 10502(a)(2).

As no formal expressions of intent to file an offer of financial assistance (OFA) to subsidize continued rail service were filed by the September 14, 2020 deadline, the Board will not consider subsidy OFAs in this case. See 49 C.F.R. § 1152.27(c)(1)(i). Additionally, since this is a discontinuance and not an abandonment, the Board need not consider OFAs to acquire the Lines, interim trail use/rail banking requests under 16 U.S.C. § 1247(d), or requests for a public use condition under 49 U.S.C. § 10905.

Because there will be an environmental review during any subsequent abandonment of the Lines, this discontinuance proceeding does not require an environmental review.

It is ordered:

1. Under 49 U.S.C. § 10502, the Board exempts from the prior approval requirements of 49 U.S.C. § 10903 the discontinuance of service and trackage rights on the Lines by PSRR, as described above.
2. This exemption will be effective on December 5, 2020.
3. Petitions to reopen and petitions to stay the effectiveness of the exemption must be filed by November 20, 2020.

By the Board, Board Members Begeman, Fuchs, and Oberman.