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SERVICE DATE – MAY 1, 2008

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-183 (Sub-No. 4X)

UNION RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN ALLEGHENY
COUNTY, PA

STB Docket No. AB-290 (Sub-No. 301X)

NORFOLK SOUTHERN RAILWAY COMPANY—DISCONTINUANCE OF TRACKAGE
RIGHTS EXEMPTION—IN ALLEGHENY COUNTY, PA

Decided: April 29, 2008

By petition filed on February 5, 2008, Union Railroad Company (URR) and Norfolk Southern Railway Company (NSR) (collectively, petitioners) jointly seek an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 for URR to discontinue service over and abandon, and for NSR to discontinue trackage rights over, a 1.34-mile line of railroad between South Duquesne and McKeesport, in Allegheny County, PA. The line extends from McKeesport Branch Station 0+00 (Duquesne Branch Station 97+26) at the point of switch for turnout D-60 to McKeesport Branch Station 70+78 at the point of switch for turnout UM-1, and includes the Riverton Railroad Bridge, which crosses the Monongahela River at Monongahela milepost 14.3. Notice of the filing was served and published in the Federal Register on February 25, 2008 (73 FR 10094). The Board will grant the exemption, subject to standard employee protective conditions.

BACKGROUND

According to petitioners, the line, including the Riverton Railroad Bridge, was constructed by the Pennsylvania Railroad Company in 1891 to connect its Monongahela line to the United States Steel Corporation's (USS) former National Works plant at McKeesport and to interchange with the McKeesport Connecting Railroad Company (MKC), which served the plant. As a result of a merger, the Pennsylvania Railroad Company became Penn Central Transportation Company, which granted trackage rights over the line to URR. In 1976, the line was designated in the Final System Plan of the United States Railway Association for sale to URR and, at that time, was acquired by URR. As part of that transaction, trackage rights were granted to Consolidated Rail Corporation (Conrail). The grant of trackage rights was formalized in an agreement between URR and Conrail on October 14, 1980.

URR, a Class III rail carrier, began operations in 1896 as part of the Lake Erie to Pittsburgh Mills rail line, which extended from East Pittsburgh, PA, to Hays, PA. URR later

expanded its operations to include 13 branches, serving the steel mills along the Monongahela River Valley. These mills were eventually consolidated under the ownership and operation of USX Corporation, the predecessor to USS.¹ URR presently has rail operations within the Commonwealth of Pennsylvania between North Bessemer, PA, and Clairton, PA, with a branch to Mifflin Junction and along the south bank of the Monongahela River between Duquesne and Homestead, PA. URR interchanges with NSR, CSX Transportation, Inc. (CSXT), Bessemer & Lake Erie Railroad, and Wheeling & Lake Erie Railway.

NSR, a Class I railroad, succeeded to Conrail's trackage rights over the line as the result of the merger proceeding in CSX Corp. et al.—Control—Conrail Inc. et al., 3 S.T.B. 196 (1998). Petitioners note that neither NSR nor Conrail have utilized these trackage rights for the past 15 years.

Petitioners state that operations at the National Works plant were terminated over 25 years ago. Currently, only one rail customer, Camp-Hill Corporation (Camp-Hill), of McKeesport, is served by the line. Camp-Hill operates an electric resistance welding mill that was formerly a part of National Works. It is an outside processor for USS and processes coils from the USS Irvin and Gary Works into pipe that is used by the water and gas transmission pipeline industry. At present, URR utilizes the line to move inbound shipments of coils from the USS Irvin and Gary Works plant north of Clairton to Camp-Hill via a connection with MKC. Petitioners submit that, in 2003 and 2004, there was an average of four inbound carloads a day, and, during 2005 and 2006, the average number of inbound carloads was reduced to two a day. Some of the outbound shipments of finished pipe move over the line to a connection with NSR. According to petitioners, these outbound movements are sporadic and infrequent. There has been no overhead traffic on the line for the past two years.

Petitioners state that other rail service will remain available to Camp-Hill for its inbound traffic via MKC and CSXT over alternative interchanges, and for its outbound traffic via MKC to connections with CSXT. In addition, alternative truck transportation also is available for both inbound and outbound traffic.

In their petition, petitioners indicate that the proposed discontinuance of service and abandonment by URR has been discussed with representatives of Camp-Hill and USS. Petitioners have included as part of their petition copies of letters from Camp-Hill and USS, in

¹ Both MKC and URR are wholly owned indirect subsidiaries of USS, a noncarrier. USS owns all of the issued and outstanding stock of Transtar, Inc. (Transtar), a noncarrier holding company. Transtar owns all of the issued and outstanding stock of seven common carrier railroads, including URR and MKC. Common control of these railroads by USS was authorized by the Board in USX Corporation—Control Exemption—Transtar, Inc., STB Finance Docket No. 33942 (STB served Nov. 30, 2000).

which Camp-Hill and USS state that they waive any rights that they may have to oppose this petition.

PRELIMINARY MATTER

Petitioners have requested expedited consideration of the petition, and ask that the Board issue a decision by May 1, 2008. They indicate that the line proposed to be abandoned, including the Riverton Railroad Bridge, is intended to be used as part of a trail system, known as the Great Allegheny Passage, that would connect Washington, DC, and the City of Pittsburgh. Petitioners state that URR, and its parent company USS, have engaged in negotiations with Allegheny County, PA, and plan for URR to transfer title to the line to the county. Petitioners indicate that the official opening of the system is scheduled for on or about October 1, 2008, and that, prior to the trail opening, construction would be required to prepare the line for use as a trail. Petitioners state that it is estimated that the construction process would take approximately 5 months to complete, and therefore they would like the work to begin by May 1. Petitioners have confirmed that they are aware that removal of rail or railroad-related materials may not occur until completion of the exemption process, including compliance with any environmental or historic conditions that may be imposed. Under the circumstances presented here, petitioners' request for expedited handling is appropriate, and will be granted.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned or service discontinued without our prior approval. Under 49 U.S.C. 10502, however, the Board must exempt a transaction or service from regulation when it is found 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 necessary to protect shippers from the abuse of market power.

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of the application process, an exemption will minimize the need for Federal regulatory control over the rail transportation system, and will reduce regulatory barriers to exit [49 U.S.C. 10101(2) and (7)]. An exemption will also foster sound economic conditions and encourage efficient management by allowing URR to convey the line to Allegheny County for recreational trail purposes [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power. The only shipper, Camp-Hill, does not oppose the proposed abandonment and discontinuance of service, and will have alternative rail and truck transportation available. Nevertheless, to ensure that Camp-Hill is informed of this action, the Board will require URR to serve a copy of this decision on Camp-Hill within 5 days of the service date, and to certify to the Board that it has done so. Given our market power finding, the Board need not determine whether the proposed transaction is limited in scope.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting the exemption, the Board will impose the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

Petitioners have submitted a combined environmental and historic report with their petition and have notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the energy and environmental impacts of the proposed abandonment. See 49 CFR 1105.11. The Board's Section of Environmental Analysis (SEA) has examined the environmental and historic report, verified the data it contains, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) in this proceeding on March 5, 2008, recommending that no environmental conditions be imposed on any decision granting abandonment authority. Comments to the EA were due by April 4, 2008, but none were received. Accordingly, no environmental or historic preservation conditions will be imposed. The proposed abandonment will not significantly affect either the quality of the human environment or the conservation of energy resources.

Although SEA has indicated in the EA that the right-of-way may be suitable for public use under 49 U.S.C. 10905, no one has sought a public use condition, and none will be imposed.²

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 abandonment by URR and the discontinuance of trackage rights by NSR of the above-described line, subject to the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).
2. URR is directed to serve a copy of this decision on Camp-Hill by May 6, 2008, and to certify to the Board that it has done so.
3. An offer of financial assistance (OFA) under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by May 9, 2008, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by the filing fee, which currently is set at \$1,300. See 49 CFR 1002.2(f)(25).
4. OFAs and related correspondence to the Board must refer to this proceeding. The

² Public use requests were due no later than 20 days after publication of the notice in the Federal Register, or by March 17, 2008.

following notation must be typed in bold face on the lower left-hand corner of the envelope:
“Office of Proceedings, AB-OFA.”

5. Provided no OFA has been received, this exemption will be effective on May 31, 2008. Petitions to stay must be filed by May 16, 2008, and petitions to reopen must be filed by May 27, 2008.

6. Pursuant to 49 CFR 1152.29(e)(2), URR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by URR’s filing of a notice of consummation by May 1, 2009, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory barrier to consummation exists at the end of the 1-year period, the notice of consummation must be filed no later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Anne K. Quinlan
Acting Secretary