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SERVICE DATE — JANUARY 8, 2020

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1290X

WISCONSIN RAPIDS RAILROAD, L.L.C.—DISCONTINUANCE OF SERVICE
EXEMPTION—IN WOOD COUNTY, WIS.

Docket No. AB 303 (Sub-No. 52X)

WISCONSIN CENTRAL LTD.—ABANDONMENT EXEMPTION—
IN WOOD COUNTY, WIS.

Digest:¹ This decision allows Wisconsin Rapids Railroad, L.L.C., to discontinue service over, and Wisconsin Central Ltd. to abandon, approximately 1.1 miles of rail line in Wood County, Wis., subject to standard employee protective conditions.

Decided: January 7, 2020

On September 20, 2019, Wisconsin Rapids Railroad, L.L.C. (WRR), and Wisconsin Central Ltd. (WCL) (collectively, Petitioners) jointly filed a petition under 49 U.S.C. § 10502 for exemption from the prior approval requirements of 49 U.S.C. § 10903 for WRR to discontinue service over, and WCL to abandon, approximately 1.1 miles of rail line known as the Biron Lead extending from milepost 0.4 at Plover Road (State Highway 54) north to milepost 1.5 at South Biron Drive in Biron, Wood County, Wis. (the Line). Notice of the exemptions was served and published in the Federal Register on October 10, 2019 (84 Fed. Reg. 54,715).

No comments concerning the proposed abandonment and discontinuance were filed. The Board will grant the exemption from 49 U.S.C. § 10903, subject to standard employee protective conditions.

BACKGROUND

According to the petition, a WCL predecessor acquired the Line, and other rail lines in the area, in 1993. (Joint Pet. 4 (citing Fox Valley & W. Ltd.—Exemption, Acquis. & Operation—Certain Lines of Green Bay & W. R.R., 9 I.C.C.2d 209 (1992); Fox Valley & W. Ltd., 9 I.C.C.2d 272 (1993)).) WCL is a wholly owned, indirect subsidiary of Canadian National

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).

Railway Company. (Joint Pet. 3 (citing Can. Nat'l Ry.—Control—Wis. Cent. Transp. Corp., 5 S.T.B. 890 (2001)).) WRR, a Class III rail carrier and wholly owned subsidiary of Watco Holdings, Inc., has operated over the Line pursuant to a lease with WCL since September 1, 2019. (Joint Pet. 3-4); Wis. Rapids R.R.—Lease & Operation Exemption—Line of Wis. Cent. Ltd., FD 36339 (STB served Aug. 16, 2019). In its August 2, 2019 verified notice of exemption to lease and operate the Line in Docket No. FD 36339, WRR stated that it executed the lease with WCL at the behest of ND Paper Inc. (ND Paper), the sole shipper on the Line, in order to commence service to ND Paper's mill while the parties implemented longer-term arrangements to convert the Line to private industry track. WRR Notice 3, Wis. Rapids R.R., FD 36339; (Joint Pet. 2, 4, 8-9).

According to Petitioners, after the discontinuance and abandonment, the rail and track materials on the Line will remain in place and will be transferred to ND Paper. (Joint Pet. 1-2.) Petitioners state that the Line connects to private track owned by ND Paper at South Biron. (Id. at 2.) Petitioners also state that upon consummation of the discontinuance and abandonment and conveyance of the Line to ND Paper, WCL will continue to handle ND Paper's traffic to Plover Road pursuant to a rail transportation contract, and WRR (or an affiliate) will handle traffic over the Line as a private contract switching carrier for ND Paper. (Id.) According to Petitioners, the proposed transaction is being undertaken pursuant to a settlement agreement between ND Paper and WCL, and the transaction will permit ND Paper to control and conduct switching, placement, and storage of rail cars on the Line. (Id.)

ND Paper supports the joint petition. (Joint Pet., Ex. C.) In a letter of support filed with the joint petition, ND Paper states that it supports WCL's petition to abandon the Line because the transaction will allow ND Paper's mill to remain rail-served, and ND Paper's acquisition and operation of the private line will preserve, protect, and enhance cost-effective rail service to the mill. (Id., Ex. C at 2.) ND Paper also states that it supports WRR's request to discontinue its lease operations over the Line because WRR will serve as ND Paper's contract operator once ND Paper acquires the Line from WCL after abandonment. (Id.) Indeed, ND Paper states that denial of the joint petition would jeopardize its ability to improve service efficiencies and meet its transportation service requirements.² (Id.)

² The August 16, 2019 notice of WRR's exemption to lease the Line noted that acquisitions of active rail lines are supposed to be for continued rail use, citing Land Conservancy—Acquisition & Operation Exemption—Burlington Northern & Santa Fe Railway, 2 S.T.B. 673 (1997), and stated that if WRR elected to file for discontinuance authority, "it must submit evidence showing that discontinuance of service over the Line is warranted under the Board's statutory authority and rules, and must, under these circumstances, demonstrate (e.g., by providing the parties' agreement or a statement from ND [Paper]) that the interests of the shipper here will be protected." Wis. Rapids R.R., FD 36339, slip op. at 1 n.1. With their petition, Petitioners submitted a letter of support from ND Paper. (Joint Pet., Ex. C.) In these circumstances, where the lease and operation exemption was sought at the request of the sole

(continued . . .)

Petitioners state that, aside from existing rail traffic to ND Paper, “there is and has been no other” rail traffic on the Line. (Joint Pet. 2.) Petitioners also state there is no reasonable possibility for the development of other rail traffic as the stub-ended, 1.1-mile Line serves only ND Paper. (Id.)

DISCUSSION AND CONCLUSIONS

Exemption from 49 U.S.C. § 10903. Under 49 U.S.C. § 10903, a rail line may not be abandoned, nor service over the line discontinued, without the Board’s prior approval. 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 of the proposed discontinuance and abandonment under § 10903 is not necessary to carry out the RTP in this case. The record indicates that ND Paper, the sole rail-served facility on the Line, supports the transaction and intends to expand its private track ownership and operations to include the Line. In its letter of support for the transaction, ND Paper states that it is acquiring the Line in order to store and privately switch its railcars, improve transportation efficiencies, lower operating costs, and enhance the competitiveness of its paper mill located at the end of the Line. (Joint Pet., Ex. C at 1.) WCL line-haul service for ND Paper traffic would remain unchanged, and the common carrier switching operation now conducted by WRR would continue as private switching provided under contract with ND Paper.

By minimizing the administrative expense of the application process, an exemption would expedite regulatory decisions, reduce regulatory barriers to exit, and provide for the expeditious handling of this proceeding. 49 U.S.C. § 10101(2), (7), (15). Other aspects of the RTP would not be adversely affected by use of the exemption process. Additionally, regulation of the proposed transaction is not needed to protect shippers from the abuse of market power.³ As discussed above, ND Paper is the only customer on the Line. Following consummation of the proposed transaction, ND Paper has plans to expand its private track ownership and operations to include the Line. Nevertheless, because ND Paper is not a party to this proceeding, to ensure that it is informed of this decision, the Board will direct Petitioners to serve a copy of this decision on ND Paper and to certify to the Board that it has done so within five days of the service date of this decision.

shipper on the Line to facilitate service to the shipper in the short term while the parties’ longer-term plans—fully supported by the shipper—were implemented, the Board will not revoke the lease and operation exemption.

³ Because the Board finds that regulation of the proposed abandonment is not needed to protect shippers from the abuse of market power, the Board need not determine whether the proposed abandonment is limited in scope.

Employee Protection. WRR states that it does not anticipate any adverse impact on employment levels as a result of the proposed abandonment and discontinuance. (Joint Pet. 8.) Under § 10502(g), however, the Board may not use its exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees.

Petitioners acknowledge that the appropriate level of employee protection to be imposed on this proposed transaction is established in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979). (Joint Pet. 8.) WCL also notes that it “does not contest that the short-term lease of the Biron Lead to WRR” exempted in Docket No. FD 36339 “was undertaken ‘in anticipation of’ WCL’s proposed abandonment of the Biron Lead for purposes of Article I, Section 10 of the Oregon Short Line conditions.” (Joint Pet. 8 (quoting Oregon Short Line, 360 I.C.C. at 101).)⁴ Accordingly, as a condition to granting this exemption, the Board will impose the employee protective conditions set forth in Oregon Short Line, including with respect to any WCL employees who were adversely affected by the lease of the Line to WRR in Docket No. FD 36339.

Environmental and Historic Review. Petitioners submitted a combined environmental and historic report with their joint petition and have notified the appropriate federal, state, and local agencies of the opportunity to submit information concerning the environmental impacts of the proposed discontinuance and abandonment. See 49 C.F.R. §§ 1105.7, 1105.8, 1105.11. The Board’s Office of Environmental Analysis (OEA) has examined the report, verified the data it contains, and analyzed the potential effects of the proposed action on the quality of the human environment.

In an Environmental Assessment (EA) served on November 19, 2019, OEA concluded that, as proposed, the abandonment of and discontinuance of service over the Line would not significantly affect the quality of the human environment. Comments on the EA were due by December 16, 2019, and no comments were received. In the Final EA, issued December 23, 2019, OEA did not recommend any environmental or historic preservation conditions. Based upon OEA’s assessment, the Board concludes that the proposed abandonment and discontinuance would not significantly affect either the quality of the human environment or the conservation of energy resources.

Because no formal expressions of intent to file an offer of financial assistance (OFA) to acquire the Line or to subsidize continued rail service were filed by the October 21, 2019 deadline, the Board will not consider OFAs in this case.

⁴ Article I, Section 10 states, “[s]hould the railroad rearrange or adjust its forces in anticipation of a transaction with the purpose or effect of depriving an employee of benefits to which he otherwise would have become entitled under this appendix, this appendix will apply to such employee.” Oregon Short Line, 360 I.C.C. at 101.

It is ordered:

1. Under 49 U.S.C. § 10502, the Board exempts from the prior approval requirements of 49 U.S.C. § 10903 WRR's discontinuance of service over, and WCL's abandonment of, the above-described Line, subject to the employee protective conditions set forth in Oregon Short Line. The employee protective conditions also apply to any WCL employees who were adversely affected by the lease of the Line to WRR in Docket No. FD 36339.

2. WCL is directed to serve a copy of this decision on ND Paper and to certify to the Board that it has done so within five days of the service date of this decision.

3. This exemption will be effective February 7, 2020.

4. Petitions to reopen and petitions to stay must be filed by January 28, 2020.

5. Pursuant to 49 C.F.R. § 1152.29(e)(2), WCL 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 WCL's filing of a notice of consummation by January 8, 2021, 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 one-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, Board Members Begeman, Fuchs, and Oberman.