

SERVICE DATE – SEPTEMBER 18, 2023

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36694

COLORADO PACIFIC RIO GRANDE RAILROAD, LLC—PETITION FOR
EXEMPTION—ACQUISITION AND OPERATION OF LINE OF RAILROAD
IN COSTILLA COUNTY, COLORADO

Digest:¹ The Board grants Colorado Pacific Rio Grande Railroad, LLC, after-the-fact authority to acquire and operate 1.53 miles of rail line in Costilla County, Colo., known as the Blanca Spur.

Decided: September 11, 2023

The Colorado Pacific Rio Grande Railroad, LLC (CP Rio Grande), a Class III carrier, filed a petition for exemption on June 20, 2023, seeking after-the-fact authority to acquire in bankruptcy and operate 1.53 miles of track extending from milepost 0.0 in Blanca, Colo., to milepost 1.53 in McClintock, Colo. (the Blanca Spur).² This petition follows CP Rio Grande's recent acquisition of substantially all assets of the San Luis & Rio Grande Railroad, Inc. (SLRG), in Colorado Pacific Rio Grande Railroad—Acquisition & Operation Exemption Containing Interchange Commitment—San Luis & Rio Grande Railroad, FD 36656 (STB served Jan. 5, 2023).

BACKGROUND

According to CP Rio Grande, the Blanca Spur was originally part of a 31-mile line completed in 1910 by the San Luis Valley Southern Railroad that ran from Blanca, Colo., to Jaroso, Colo., and connected to the tracks of the Denver & Rio Grande Railroad. (Pet. 3.) This line was acquired by the Southern San Luis Valley Railroad (the old SSLV) in 1953, at the direction of the Interstate Commerce Commission, the Board's predecessor agency. (*Id.*) Over time, the old SSLV abandoned and sold off sections of the line, leaving only the Blanca Spur remaining, which the old SSLV ceased operating by the mid-1990s. (*Id.*) However, the old SSLV never sought abandonment authority for the Blanca Spur. (*Id.*) Instead, it sold the Blanca

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 Pol'y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

² Despite the name, the Blanca Spur is not excepted spur track but track over which the Board has licensing authority.

Spur and the underlying right-of-way in 2000 to Richard Vondrak of Conejos County, Colo., before dissolving as an entity shortly thereafter. (*Id.*)

According to CP Rio Grande, Mr. Vondrak never sought or received Board approval to acquire or operate the Blanca Spur. (*Id.*) In 2007, he sold his interests in the Blanca Spur and the underlying right-of-way to Iowa Pacific Holdings, LLC (IPH), a railroad holding company and the parent of Permian Basin Railways (PBR), which in turn owned SLRG. (*Id.*) IPH did not seek authority for that transaction. Instead, in 2012, a newly formed Southern San Luis Valley Railroad, LLC (the new SSLV), filed a verified notice of exemption to acquire and operate the Blanca Spur from IPH, asking the Board to exempt IPH's 2007 transaction, arguing that there was no need for the Board to require IPH to "unscramble" it. See S. San Luis Valley R.R.—Acquisition & Operation Exemption—Iowa Pac. Holdings, LLC, FD 35586, slip op. at 2 (STB served Feb. 10, 2012). In a related transaction, PBR sought an exemption to continue in control of the new SSLV upon SSLV's becoming a Class III carrier. See Iowa Pac. Holdings, LLC—Continuance in Control—S. San Luis Valley R.R., FD 35585 (STB served Feb. 10, 2012). The Board, considering the two proceedings together, rejected the new SSLV's request and denied PBR's request as moot due to the insufficiency of the record. S. San Luis Valley, slip op. at 3. The Board stated that should IPH wish to proceed with the contemplated transactions, it should trace the history of the Blanca Spur as well as it could, with supporting evidence, and request specific authority from the Board for this prior transaction, *id.*, but IPH did not do so, (Pet. 4).

CP Rio Grande further states that SLRG was placed into involuntary Chapter 11 bankruptcy in October 2019, with the order granting relief for the petition being entered on November 7, 2019. (Pet. 5.) In March 2021, IPH filed for Chapter 7 bankruptcy, but it was dismissed on January 6, 2022. (*Id.*) As part of a litigation settlement agreement entered during those proceedings, the ownership of the Blanca Spur was transferred from IPH to SLRG's bankruptcy trustee, which the bankruptcy court approved on July 14, 2022. (*Id.*) SLRG's bankruptcy trustee conveyed the Blanca Spur to CP Rio Grande under a purchase and sale agreement in January 2023. (*Id.*) CP Rio Grande filed a notice of exemption in Colorado Pacific Rio Grande Railroad, Docket No. FD 36656, for the acquisition of most of SLRG's assets on December 20, 2022, and later filed this petition for exemption on June 20, 2023. (Pet. 5.)

DISCUSSION AND CONCLUSIONS

The Board finds that CP Rio Grande has supplied information sufficient to grant this petition.³ The petition and supporting documents trace the ownership history of the Blanca Spur and do not reveal any extant dispute over CP Rio Grande's ownership of the Blanca Spur. The documents show that SSLV sold the Blanca Spur to Mr. Vondrak on July 14, 2000, (*id.*, Ex. B), before he then sold it to IPH on May 24, 2007, (*id.*, Ex. B). During the bankruptcy proceedings, the Blanca Spur was transferred from IPH to SLRG without Board authority, (*id.*, Ex. C), before the bankruptcy trustee for SLRG sold the Blanca Spur to CP Rio Grande under a purchase and sale agreement in January 2023, also without prior Board authority as required by 11 U.S.C. § 1172. (*Id.* at 5.)

³ In situations requiring after-the-fact acquisition authority, the Board strongly encourages parties to file for such authority as soon as possible.

CP Rio Grande indicates Mr. Vondrak cannot be located, and according to the Illinois Secretary of State's listing of businesses registered in Illinois, IPH was involuntarily dissolved on June 10, 2022.⁴ There is no indication that any former IPH personnel are involved with CP Rio Grande. Similarly, PBR is listed as having been dissolved on October 8, 2021,⁵ and SLRG's bankruptcy was discussed in greater detail in Colorado Pacific Rio Grande Railroad, FD 36656, slip op. at 1-2 (STB served Jan. 5, 2023). Under these circumstances, the Board will not require any further action regarding the earlier acquisitions and transfers of the Blanca Spur.

The acquisition of a rail line by a Class III carrier requires prior approval from the Board under 49 U.S.C. § 10902(a). Under 49 U.S.C. § 10502(a), however, the Board must exempt a transaction or service from regulation upon finding that (1) the regulation is not necessary to carry out the rail transportation policy (RTP) under 49 U.S.C. § 10101 and (2) either the transaction or service is of limited scope or regulation is not needed to protect shippers from the abuse of market power.

The Board finds that an after-the-fact exemption should be granted for CP Rio Grande's acquisition of the Blanca Spur. Detailed scrutiny of the proposed transaction through an application for review under 49 U.S.C. § 10902 is not necessary here to carry out the RTP, and an exemption would promote the RTP by minimizing the need for regulatory control over the transaction (49 U.S.C. § 10101(2)), ensuring the development and continuation of a sound rail transportation system able to compete with other modes of transportation and meet the needs of the public and national defense (49 U.S.C. § 10101(4)), minimizing the need for regulatory barriers for entry into and exit from the industry (49 U.S.C. § 10101(7)), encouraging honest and efficient management of railroads (49 U.S.C. § 10101(9)), and providing for the expeditious handling and resolution of proceedings required or permitted to be brought under this part (49 U.S.C. § 10101(15)). Other aspects of the RTP will not be adversely affected.

Regulation of the transaction is not needed to protect shippers from an abuse of market power. CP Rio Grande purchased the Blanca Spur out of bankruptcy for the purpose of investing in the track and developing business for existing and new shippers. Granting the exemption would ensure that service along the Blanca Spur can continue because CP Rio Grande will have a common carrier obligation to provide service upon reasonable request along the track.

Under 49 C.F.R. § 1105.6(c)(1), this action, which will not result in significant changes in carrier operations, is categorically excluded from environmental review. Similarly, under 49 C.F.R. § 1105.8(b)(1), no historic report is required because the subject transaction is for continued rail service, CP Rio Grande has indicated no plans to alter railroad properties 50 years

⁴ Business Entity Search, Ill. Sec'y of State, apps.ilsos.gov/businessentitysearch/ (click "Name" under "Choose a Search Method" and enter "Iowa Pacific Holdings" in the "Search for" box, click submit, then click the "IOWA PACIFIC HOLDINGS, LLC" entity which has "INVOLUNTARY DISSOLUTION" next to it) (last visited Sept. 5, 2023).

⁵ Id. (click "Name" under "Choose a Search Method" and enter "Permian Basin Railways" in the "Search for" box, click submit, then click the "PERMIAN BASIN RAILWAYS, INC." entity with "DISSOLVED" next to it) (last visited Sept. 5, 2023).

old or older, and any future abandonment of the Blanca Spur would be subject to Board jurisdiction.

It is ordered:

1. Under 49 U.S.C. § 10502, the Board exempts CP Rio Grande's acquisition and operation of the Blanca Spur from the prior approval requirements of 49 U.S.C. § 10902.
2. Notice of this exemption will be published in the Federal Register.
3. This decision will be effective on October 18, 2023. Petitions for stay must be filed by September 28, 2023. Petitions to reopen must be filed by October 9, 2023.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.