

SERVICE DATE – APRIL 14, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34665

GEORGIA DEPARTMENT OF TRANSPORTATION—PETITION FOR DECLARATORY ORDER

Decided: April 13, 2005

On March 11, 2005, the Georgia Department of Transportation (GDOT) filed a petition seeking a declaratory order that: (1) GDOT will not become a rail carrier subject to the Board's jurisdiction as a result of its acquisition from Georgia & Florida RailNet, Inc. (GFRR), of a 26.6-mile rail line located approximately between milepost GF 30.6 in Valdosta, GA, and milepost GF 57.2 in Nashville, GA (Nashville line), and its acquisition from the City of Willacoochee (City), of a connecting 16.6-mile line located approximately between milepost GF 57.2 in Nashville, GA, and milepost GF 73.8 in Willacoochee, GA (Willacoochee line); (2) GDOT's acquisition of these two connecting lines does not require the Board's authorization; and (3) upon consummation of GDOT's acquisition of the rail line from the City and GFRR's simultaneous acquisition of an exclusive freight easement over that line, GFRR will be the sole common carrier on that line. Exercising our discretionary authority under 49 U.S.C. 721 and 5 U.S.C. 554(e), we will issue a declaratory order to remove uncertainty surrounding GDOT's requests.

BACKGROUND

GDOT is an agency of the state of Georgia. It owns rail lines in the states of Alabama, Georgia and Tennessee. These lines are leased and operated by several short line railroads. GFRR, a Class III rail carrier, owns and operates the Nashville line.¹ The City owns the Willacoochee line, and GFRR operates it. See Georgia & Florida RailNet, Inc.—Acquisition and Operation Exemption—Georgia Department of Transportation, STB Finance Docket No. 34655 (STB served Mar. 10, 2005) (March 2005 notice of exemption). GDOT states that it will acquire the underlying assets of the Nashville and Willacoochee lines, while GFRR will obtain or retain the common carrier rights and obligations over both lines.

In its petition for declaratory order, GDOT attached copies of four agreements by which it, GFRR, and the City have structured the transfer of the two rail lines. Under a railroad

¹ GFRR was authorized to acquire and operate the Nashville line in Georgia & Florida RailNet, Inc.—Acquisition and Operation Exemption—Lines of Gulf & Ohio Railways, Inc., STB Finance Docket No. 33716 (STB served May 13, 1999).

quitclaim deed, GFRR will convey its right, title, and interest in the Nashville line to GDOT, except that GFRR will reserve an exclusive, perpetual, and assignable railroad freight easement for itself. Under a separate railroad deed, the City will convey to GDOT the City's right, title, and interest in the Willacoochee line, except that the City will reserve, and simultaneously convey to GFRR under a separate agreement, an exclusive, perpetual, and assignable railroad freight easement over the Willacoochee line.² Under the irrevocable freight easements, GFRR will retain common carrier rights and obligations over both the Nashville and Willacoochee lines.

In addition to the unconditional freight easements retained and granted to GFRR, GDOT will also lease its interest in both lines to GFRR. The lease agreement provides that GFRR will assume all duties and obligations to use, repair and maintain both lines to Federal Railroad Administration class 2 track standards. While GDOT will retain limited rights to enter into and terminate agreements, easements and licenses with third parties, it must obtain written consent from GFRR to do so and may not unreasonably interfere with GFRR's operations. The lease is for an initial term of 20 years, subject to renewal at 5, 10, and 15 years, at which point either party may give the other party 6 months' notice that it intends not to renew the lease. If no notice is given, then renewal is automatic.

DISCUSSION AND CONCLUSIONS

GDOT seeks a declaratory order that it will not become a rail carrier subject to the Board's jurisdiction through its actions of acquiring the Nashville and the Willacoochee lines. Under 5 U.S.C. 554(e) and 49 U.S.C. 721, we may issue a declaratory order to terminate a controversy or remove uncertainty in a case that relates to the subject matter jurisdiction of the Board. The Board has broad discretion to determine whether to issue a declaratory order. See Intercity Transp. Co. v. United States, 737 F.2d 103 (D.C. Cir. 1984); Delegation of Authority—Declaratory Order Proceedings, 5 I.C.C.2d 675 (1989). In this case, we will grant the declaratory order to address certain questions presented.

As a general rule, a person, including a state agency, that acquires an active rail line, assumes a common carrier obligation over that line. This is to ensure that service will continue on a rail line despite a change in ownership. The Board and its predecessor, the Interstate Commerce Commission, have recognized that there is an exception to this general rule when a public agency acquires the physical assets of a rail line and a separate operating carrier acquires or retains a permanent and unconditional interest to conduct rail service over that line. See Maine, DOT—Acq. Exemption, ME Central R. Co., 8 I.C.C.2d 835, 836-37 (1991) (State of Maine).

Based on the transactions described by GDOT, all common carrier obligations and rights for both lines will transfer to GFRR through permanent, exclusive and assignable freight easements without ever passing to GDOT. GDOT will not hold itself out as willing or able to provide rail service and may not interfere with GFRR's rail service over the lines. Thus, GDOT

² GFRR indicated that it planned on consummating this portion of the transaction on or before April 8, 2005. See March 2005 notice of exemption, slip op. at 1 n.1.

will not become a rail carrier subject to the Board's jurisdiction. This is consistent with State of Maine and recent Board precedent. See Wisconsin Department of Transportation—Petition for Declaratory Order, STB Finance Docket No. 34623 (STB served Dec. 23, 2004); City of Venice—Abandonment Exemption—In Venice, IL and St. Louis, MO, STB Docket No. AB-863X (STB served June 22, 2004); State of Georgia, Department of Transportation—Acquisition Exemption—Georgia Southwestern Railroad, Inc., STB Finance Docket No. 33876 (STB served July 7, 2000).

GDOT also seeks a declaratory order that its acquisition of the Nashville and Willacoochee lines does not require the Board's authorization. As discussed in the cases cited above, GDOT does not need our authorization where, as here, the physical assets would be transferred to it, as a noncarrier state entity, and the freight easement and common carrier obligation would be transferred to another entity. See State of Vermont—Acquisition Exemption—Certain Assets of Boston and Maine Corporation, STB Finance Docket No. 33830 (STB served June 8, 2000), and State of Maine, 8 I.C.C.2d at 836-37. Thus, GDOT's acquisition of the Nashville and Willacoochee lines does not require Board authorization.

GDOT further seeks a declaratory order that, upon consummation of its acquisition of the Willacoochee line and GFRR's acquisition of the Willacoochee freight easement, GFRR will be the sole common carrier on the Willacoochee line. According to the agreements that GDOT has submitted, the answer appears to be yes. Under the terms of the agreement and the authority granted in the March 2005 notice of exemption, no other carrier has authority to operate over the line. It should be noted that the freight easement over the line is assignable, which means that the rail carrier on the line is subject to change by GFRR. However, the appropriate Board authority would be required before such a change could be effected.

Finally, GDOT asks whether, in our view, the Willacoochee line is industrial track excepted from entry and exit licensing under 49 U.S.C. 10906. Because GDOT has not provided sufficient information on which we can make such a determination, and because GFRR has already obtained operating authority, we will not rule on this issue at this time. A ruling in this regard can be made if necessary at some point in the future based on a more complete record.

GDOT has requested expedited consideration of its petition because it would like to close the transactions described above by April 15, 2005. It states that it cannot close the transactions until the issues in this declaratory order request are resolved. To accommodate this request, this decision will be made effective on its service date.

It is ordered:

1. GDOT's petition for declaratory order is granted, as discussed in this decision.

2. This decision will be effective on its service date.

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

Vernon A. Williams
Secretary