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SERVICE DATE - JANUARY 15, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-289 (Sub-No. 4X)

THE CENTRAL RAILROAD COMPANY OF INDIANAPOLIS--DISCONTINUANCE OF
SERVICE EXEMPTION--IN CLINTON, HOWARD AND TIPTON COUNTIES, IN

Decided: January 13, 1999

By petition filed September 29, 1998,¹ The Central Railroad Company of Indianapolis (CERA) seeks an exemption under 49 U.S.C. 10502 from the provisions of 49 U.S.C. 10903-05² to discontinue service over two segments of railroad lines owned by Norfolk and Western Railway Company (NW). The lines, known as the Kokomo Lines, extend 33.54 miles from milepost I-41.0 near Tipton to milepost I-51.8 at Kokomo, and from milepost TS-183.7 at Kokomo to milepost TS-206.44 at Frankfort, in Clinton, Howard and Tipton Counties, IN. As part of the exemption, CERA also seeks to discontinue 4.54-miles of incidental trackage rights (used at various points for interchange only) over NW's track between milepost TS-206.44 and milepost TS-207.80 near Frankfort, between milepost I-39.76 and milepost I-41.0 near Tipton, and between milepost SP-209.28 and milepost SP-211.22 near Tipton. We will grant the discontinuance exemption, subject to standard employee protective conditions.

BACKGROUND

CERA is a Class III railroad that was authorized to operate the Kokomo Lines and the incidental trackage rights under a lease arrangement with NW.³ In June of 1998, RailTex, Inc. (RailTex), acquired indirect control of CERA and its affiliate, The Central Railroad Company of

¹ Notice of the filing was served and published in the Federal Register on October 19, 1998 (63 FR 55917).

² CERA seeks exemption from the offer of financial assistance (OFA) subsidy provision of 49 U.S.C. 10904, which will be addressed in this decision. CERA also seeks exemption, to the extent necessary, from the public use provision of 49 U.S.C. 10905, and the trail use/rail banking provision of the National Trails System Act, 16 U.S.C. 1247(d). As stated in the October 19, 1998 notice, because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not applicable.

³ In addition to the lines at issue, CERA operates approximately 85 miles of rail lines in the north central part of Indiana.

Indiana (CIND),⁴ and, in connection with that transaction, CERA states that RailTex and NW agreed to changes in the lease and operating arrangements between CERA and NW. Among the changes were the exclusion of the Kokomo Lines and the incidental trackage rights from the lease and the resumption of service over these lines by NW. According to CERA, its lease with NW was terminated effective July 31, 1998, and NW resumed service on the Kokomo Lines on August 1, 1998.

In recent years, the three local shippers on the Kokomo Lines, Ag Max, Inc., Terra International, and TOPAG, have collectively shipped an average of less than 100 carloads per year (63 carloads in 1997). CERA submits that no shippers will lose rail service on the Kokomo Lines as a result of the discontinuance, because NW has resumed providing all common carrier service.⁵

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail carrier may not discontinue operations without our prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find 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 reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions, ensure coordination between rail carriers and other modes, and encourage efficient management by allowing CERA to discontinue operations on lines over which NW has resumed service [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Because NW is providing service and, thus, no shipper will be without service, we find that regulation is not necessary to protect shippers from the abuse of market power. Nevertheless, to ensure that the shippers are informed of our action, we will require CERA to serve a copy of this decision on all shippers on the lines within 5 days of the service date of this decision and certify to us

⁴ See RailTex, Inc.--Control Exemption--Central Properties, Inc., The Central Railroad Company of Indianapolis, and The Central Railroad Company of Indiana, STB Finance Docket No. 33585 (STB served June 26, 1998).

⁵ While CERA was providing service under the lease, the stations on the Kokomo Lines were apparently treated as NW stations for rating and routing purposes. Therefore, according to CERA, NW was accountable for the service being provided by CERA on the Kokomo Lines during that period.

that it has done so. Given our market power finding, we need not determine whether the proposed discontinuance is limited in scope.

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

Because this is a discontinuance proceeding and not an abandonment, we need not consider OFAs to acquire the line for continued rail service, trail use requests, or requests to negotiate for public use of the line. This proceeding is exempt from environmental reporting requirements under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8(b). As such, this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

CERA also seeks to be exempted from the OFA subsidy provision of 49 U.S.C. 10904. Exemptions from this provision are only rarely granted (i.e., there must be a compelling need to use the property for a valid public purpose and no overriding public need for continued rail service). See, e.g., Norfolk and Western Railway Company--Abandonment Exemption--In Cincinnati, Hamilton County, OH, STB Docket No. AB-290 (Sub-No. 184X), slip op. at 11 (STB served May 13, 1998). Here, CERA's private lease agreement with NW has been terminated and, although service over the lines has continued with NW resuming service, Congress in section 10904 has established a procedure to address the need for continued rail service when a carrier is authorized to abandon or discontinue service over a line. It would be inappropriate for us to subordinate that process to a private agreement simply because interested parties find it preferable to use such a mechanism. Under section 10904 "any" financially responsible person has the right to offer financial assistance to avoid abandonment or discontinuance. Moreover, the statute specifically contemplates that multiple offers to subsidize a rail line may be made. Thus, CERA's request for an exemption from the OFA subsidy provision will be denied. See Perry County Port Authority d/b/a Hoosier Southern Railroad--Discontinuance Exemption--In Spencer County, IN, STB Docket No. AB-554X (STB served Oct. 19, 1998).

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903 the discontinuance of service by CERA of its operations as described above, subject to the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979).
2. CERA is directed to serve a copy of this decision on all shippers on the lines within 5 days after the service date of this decision and certify to us that it has done so.

3. An OFA under 49 CFR 1152.27(b)(2) to subsidize continued rail service must be received by the railroad and the Board by January 25, 1999, 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 a \$1,000 filing fee. See 49 CFR 1002.2(f)(25).

4. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **“Office of Proceedings, AB-OFA.”**

5. Petitions to stay must be filed by February 1, 1999. Petitions to reopen must be filed by February 9, 1999.

6. Provided no OFA to subsidize continued rail service has been received, this exemption will be effective on February 14, 1999.

By the Board, Chairman Morgan, Vice Chairman Owen, and Commissioner Clyburn.

Vernon A. Williams
Secretary