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SERVICE DATE – MAY 14, 2008

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35125

DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION– ACQUISITION EXEMPTION-LINE OF BNSF RAILWAY COMPANY

Decided: May 8, 2008

By petition filed on March 25, 2008, Dakota, Minnesota & Eastern Railroad Corporation (DM&E), a Class II rail carrier, seeks an exemption pursuant to 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10902 to acquire from the BNSF Railway Company (BNSF) an approximately 3.5-mile rail line, known as the Yale Extension, extending from milepost 145.0 to milepost 148.5, in Yale, SD. We will grant the exemption subject to labor protective conditions.

BACKGROUND

DM&E states that the purpose of the transaction is to allow it to begin serving the grain elevator of the South Dakota Wheat Growers (SDWG) located on the Yale Extension in Yale, SD. DM&E explains that, upon completion of the transaction, it will serve SDWG's elevator via a direct and efficient line from the south rather than BNSF serving the elevator on its line from the north. DM&E requests that the Board make the exemption authorizing the acquisition effective on or before June 13, 2008, so that DM&E may provide service for the spring wheat harvest.

According to petitioner, the Yale Extension connects at milepost 148.5 with a DM&E-owned line segment running southwest to milepost 160.33 at Huron, SD, where it connects with DM&E's main east-west line running across South Dakota. At milepost 145.0, the Yale Extension connects with a BNSF-owned line segment running northeast to milepost 90.72 at Watertown, SD. The three segments had been part of a single Watertown-Huron branch line that had been owned by Great Northern Railway Company, a BNSF predecessor.

In 1992, DM&E acquired the Huron-Yale segment from BNSF's predecessor, the Burlington Northern Railroad Company (BN), pursuant to an offer of financial assistance in Burlington Northern Railroad Company–Abandonment Exemption–In Beadle County, SD, Docket No. AB-6 (Sub-No. 336X) (ICC served Feb. 20, 1992). DM&E subsequently obtained from BN overhead trackage rights on the Yale-Watertown segment. Dakota, Minnesota & Eastern Railroad Corporation–Trackage Rights Exemption -- Burlington Northern Railroad

Company, Finance Docket No. 32024 (ICC served Apr. 14, 1992).¹ At the same time, DM&E also granted back to BN overhead trackage rights on the Huron-Yale segment, allowing BN to reach its yard in Huron and its pre-existing trackage rights on DM&E's east-west main line between Huron and Wolsey, SD. Burlington Northern Railroad Company–Trackage Rights Exemption–Dakota, Minnesota & Eastern Railroad Corporation, Finance Docket No. 32023 (ICC served Apr. 14, 1992).²

The petition indicates that BNSF has recently used the Yale Extension solely for the purpose of providing service to SDWG's grain elevator located on the line with a train operating from Watertown. However, the Yale-Watertown segment is currently inoperable due to a washout that occurred in the fall of 2007. While BNSF and DM&E have not operated on the Huron-Yale segment for several years, DM&E points out that State-sponsored repairs and improvements are currently being conducted to allow rail service to be resumed on that segment. As part of the overall transaction, DM&E will grant back overhead trackage rights to BNSF to operate over the Yale Extension.³

Petitioner states that the proposed transaction is the result of several years of discussions by the State of South Dakota, the East Central Regional Railroad Authority, DM&E, BNSF, and SDWG to ensure continued and viable rail service to SDWG's elevator at Yale. The petition includes a letter from SDWG supporting the proposed DM&E acquisition of the Yale Extension as necessary to preserve competitive and efficient rail service to its facility and urging that the Board take action by mid-June so that DM&E rail service will be available for the spring wheat

¹ These rights provided DM&E with an alternative to its own branch line into Watertown, which originated in Brookings, SD. DM&E subsequently abandoned its Brookings-Watertown line in Dakota, Minnesota & Eastern Railroad Corporation–Abandonment Exemption–In Brookings, Hamlin, Deuel and Codington Counties, SD, Docket No. AB-337 (Sub-No. 1X) (ICC served Jan. 19, 1993).

² BN's prior trackage rights on DM&E's main line between Huron and Wolsey were granted in Burlington Northern Railroad Company–Trackage Rights Exemption–Chicago and North Western Transportation Company, Finance Docket No. 30075 (ICC served Jan. 11, 1983), and Burlington Northern Railroad Company–Trackage Rights Exemption–Dakota, Minnesota and Eastern Railroad Corporation, Finance Docket No. 30075 (Sub-No. 1) (ICC served May 6, 1988). DM&E's main line crosses a north-south BNSF line at Wolsey.

³ On April 17, 2008, BNSF filed a notice of exemption under 49 CFR 1180.2(d)(7) for Board authority for the grant back of the overhead trackage rights. See BNSF Railway Company–Trackage Rights Exemption–Dakota, Minnesota & Eastern Railroad Corporation, STB Finance Docket No. 32023 (Sub-No. 1) (filed Apr. 17, 2008).

harvest. When the transaction is completed, DM&E will serve SDWG by a direct and efficient line from Huron.⁴

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10902, the purchase of a rail line by a Class II carrier would require an application to, and authorization by, the Board. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation if we find that: (1) 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 limited in scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

An exemption from the prior approval requirements of 49 U.S.C. 10902 is consistent with the standards of 49 U.S.C. 10502. Detailed scrutiny of this transaction is not necessary to carry out the rail transportation policy. An exemption from the application process will minimize the need for Federal regulatory control [49 U.S.C. 10101(2)], foster sound economic conditions in transportation [49 U.S.C. 10101(5)], reduce regulatory barriers to entry into and exit from the rail industry [49 U.S.C. 10101(7)], and encourage efficient management of railroads [49 U.S.C. 10101(9)]. Other aspects of the rail transportation policy will not be adversely affected.

Regulation of this transaction is not needed to protect shippers from the abuse of market power. The transaction will enable DM&E to provide service to SDWG directly from its line in Huron and will also benefit any shippers and businesses that may locate on the line in the future. DM&E indicates that it has served a copy of the petition on SDWG, and SDWG has written a letter supporting the transaction. To ensure that SDWG is informed of the Board's decision, we will require that petitioner serve a copy of this decision on that shipper within 5 days of the service date of this decision and certify to the Board that it has done so. Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of employees. Section 10902(d) provides for labor protection in line acquisitions by Class II rail carriers. As a condition to this exemption, any employees affected by the acquisition will be protected as required by section 10902(d), subject to the standards and procedures established in Wisconsin Central Ltd.—Acquisition Exem.—Union Pac. RR, 2 S.T.B. 218 (1997), aff'd in relevant part sub nom. Association of American Railroads v. STB, 162 F.3d 101 (D.C. Cir. 1998). As required by 49 CFR 1121.4(h), DM&E has certified to the Board that it has posted a notice of the transaction

⁴ DM&E's existing overhead trackage rights on the Yale Extension will merge into DM&E's ownership of the line once the transaction is consummated. See Norfolk and Western Railway Company—Acquisition Exemption—Consolidated Rail Corporation, Finance Docket No. 32957, slip op. at 1 n.3 (STB served Aug. 15, 1996).

at the workplace of potentially affected employees and served the same on the national organizations representing them. DM&E has made its certification on March 25, 2008, which is more than 60 days prior to the June 13, 2008 effective date sought and, therefore, the requirements of section 1121.4(h) will have been met for the exemption to become effective as early as May 24, 2008.⁵

This transaction is exempt from environmental reporting requirements under 49 CFR 1105.6(c)(2)(i) because it will not result in a significant change in carrier operations. Similarly, the transaction is exempt from the historic reporting requirements under 49 CFR 1105.8(b)(1) because it will not substantially alter railroad properties.

In requesting expedited consideration, DM&E asks that the exemption be effective on or before June 13, 2008, to enable it to handle SDWG's traffic from the forthcoming spring wheat harvest. The request is reasonable. Accordingly, this decision is being issued on an expedited basis, and the exemption will become effective June 13, 2008.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. 10502, the above-described transaction is exempted from the prior approval requirements of 49 U.S.C. 10902, subject to employee protective conditions implementing 49 U.S.C. 10902(d) as provided in this decision.
2. Notice will be published in the Federal Register on May 14, 2008.
3. Petitioner is directed to serve a copy of this decision on SDWG by May 19, 2008, and to certify to the Board that it has done so.
4. The exemption will become effective June 13, 2008.

⁵ In a letter dated March 25, 2008, DM&E certified that it posted notice at BNSF workplaces on March 17, 2008, and served national offices of labor unions representing BNSF employees on March 25, 2008. DM&E's March 25, 2008 certification satisfies the Board's notice requirements, considering that the 60-day notice period will have run by May 24, 2008.

5. Petitions to stay must be filed by May 29, 2008. Petitions to reopen must be filed June 9, 2008.

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

Anne K. Quinlan
Acting Secretary