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SERVICE DATE – JANUARY 25, 2007
SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-998X

TIMBER ROCK RAILROAD, INC.—DISCONTINUANCE OF SERVICE EXEMPTION—IN
BURLESON, BRAZOS, GRIMES, MONTGOMERY, LIBERTY, HARDIN AND
JEFFERSON COUNTIES, TX

Decided: January 24, 2007

By petition filed on October 13, 2006, Timber Rock Railroad, Inc. (TIBR) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to discontinue service over a 116-mile portion of rail line that it operates under lease from BNSF Railway Company (BNSF), the owner of the line. The line extends between (1) milepost 149.5 near Silsbee, TX, and milepost 52.5 near Dobbin, TX, (2) milepost 20.70 near Silsbee, TX, and milepost 4.5 near Beaumont, TX, and (3) milepost 149.5 and milepost 152.30 and track No. 498 in the Silsbee Yard near Silsbee, TX. TIBR also seeks to discontinue its 54.72 miles of overhead trackage rights operations over BNSF lines extending between (1) milepost 52.5 near Dobbin, TX, and milepost 144.0 on the BNSF Galveston Subdivision at Somerville, TX, and (2) milepost 4.5 near Beaumont, TX, and milepost 2.28 at Beaumont, TX. Notice of the filing was served and published in the Federal Register on November 2, 2006 (71 FR 64608). The exemption will be granted, subject to standard employee protective conditions.

BACKGROUND

The 116-mile rail line over which TIBR seeks to discontinue service is a portion of a 117.82-mile line of railroad that the Board authorized TIBR to lease from BNSF in Timber Rock Railroad, Inc.—Lease Exemption—The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 34503 (STB served July 14, 2004, and Oct. 8, 2004). As part of that transaction, TIBR also was authorized to acquire 54.72 miles of incidental overhead trackage rights over connecting BNSF rail lines, and BNSF retained the right to operate certain overhead trains over the leased lines. TIBR will continue to lease a 0.46-mile line between milepost 0.5 and milepost 0.96 near Kirbyville, TX, a 0.26-mile portion between milepost 152.30 and milepost 152.56 at Silsbee, TX, and a 1.10-mile portion between milepost 20.70 and 21.8 at Silsbee, TX, and the Silsbee Yard Tracks, except for Track No. 498, to accommodate better the continued interchange of traffic between BNSF and TIBR at Silsbee.

During the past 2 years, TIBR has served eight shippers on the leased lines and has handled bridge traffic for BNSF. The shippers are: Quality Materials located at Beaumont, TX; Charles Emmons, Union Tank, and Georgia Pacific, all three located at Cleveland, TX; Maverick Tube, Huntsman, Pavers, and Drilling Specialties, all four located at Conroe, TX.

TIBR states that, in mid-2004, because the amount of local traffic was relatively small given the length of the lines, and because the bridge traffic handled by TIBR for BNSF averaged less than 1,300 carloads per month, a lease transaction made sense from an operational and economic standpoint. TIBR points out that, since mid-2004, overhead traffic by BNSF has, in most months, significantly increased, and the volume of TIBR bridge traffic for BNSF has become erratic with volumes varying by over 200% on a month-to-month basis. TIBR states that, due to this significant increase in bridge traffic and the erratic volumes, the original intended operational savings have been undermined. TIBR also points out that the double interchange of the large volume of bridge traffic is producing inefficiencies for both BNSF and TIBR and that the increase in overhead traffic also has undermined the economics of the original transaction. Due to those increases, TIBR and BNSF have reconsidered their lease agreement and have decided to amend it so that BNSF will resume providing both local and overhead operations on the lines. Under the amended lease agreement, the eight shippers on the leased lines will receive rail service from BNSF as they did prior to the lease. The BNSF overhead traffic will continue to move as it now moves, but in a more operationally efficient manner, because the double interchange with TIBR will be eliminated.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail carrier may not discontinue operations without the Board's 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 and encourage efficient management by allowing TIBR to discontinue its service and allowing BNSF to resume operations, significantly improving the overall operating efficiencies of both TIBR and BNSF [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be adversely affected.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power. Although service is being discontinued over the line by TIBR, BNSF will resume providing local and overhead operations on the lines, and no shipper will lose service. Nevertheless, to ensure that the shippers are informed of our action, we will require TIBR to

serve a copy of this decision on Quality Materials, Maverick Tube, Huntsman, Pavers, Drilling Specialties, Charles Emmons, Union Tank and Georgia Pacific within 5 days of the service date of this decision and to certify to the Board 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), the Board may not use its 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, the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979), will be imposed.

Because this is a discontinuance proceeding and not an abandonment, the Board need not consider offers of financial assistance (OFAs) to acquire the line for continued rail service (the OFA provisions for a subsidy to provide continued rail service do apply to discontinuances), trail use requests under 16 U.S.C. 1247(d), or requests to negotiate for public use of the line. This proceeding is also exempt from environmental reporting requirements under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8(b). Therefore, this decision 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 Board exempts from the prior approval requirements of 49 U.S.C. 10903 the discontinuance of service by TIBR of its operations over the above-described lines, subject to the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

2. TIBR is directed to serve a copy of this decision on Quality Materials, Maverick Tube, Huntsman, Pavers, Drilling Specialties, Charles Emmons, Union Tank and Georgia Pacific within 5 days after the service date of this decision and to certify to the Board 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 February 2, 2007, 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 \$1,300 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 9, 2007. Petitions to reopen must be filed by February 20, 2007.

6. Provided no OFA to subsidize continued rail service has been received, this exemption will be effective on February 24, 2007.

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

Vernon A. Williams
Secretary