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SERVICE DATE – LATE RELEASE SEPTEMBER 30, 2008

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-286 (Sub-No. 5X)

THE NEW YORK, SUSQUEHANNA AND WESTERN RAILWAY CORPORATION—
DISCONTINUANCE OF SERVICE EXEMPTION—
IN BROOME AND CHENANGO COUNTIES, NY

Decided: September 30, 2008

This decision denies a request for a stay of the effective date of the exemption in this proceeding.

BACKGROUND

This proceeding involves the discontinuance of service over a portion of the New York, Susquehanna and Western Railway Corporation's (NYS&W) line of railroad, known as the Utica Main Line, between milepost 202.62 at or near Chenango Forks, Broome County, and milepost 243.64 at or near Sherburne, Chenango County, NY, a distance of approximately 41.02 miles. On August 12, 2008, NYS&W filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments and Discontinuance of Service to discontinue service over the line. NYS&W states that it will use the discontinued line for rail car storage and other private uses. NYS&W also states that the title to the property is currently held by the Broome and Chenango County Industrial Development Authorities. Notice of the exemption was served and published in the Federal Register on August 29, 2008 (73 FR 51048). The effective date of the exemption is October 1, 2008.

On September 8, 2008, the New York State Department of Transportation (NYDOT) petitioned the Board to stay the effective date of the exemption pending resolution of contractual issues between NYDOT and NYS&W. According to NYDOT, under the terms of various contracts between it and NYS&W, NYS&W received funds from NYDOT to preserve and upgrade NYS&W's rail system in exchange for NYS&W's agreeing to operate and maintain the improvements for a set term. NYDOT states that a flood caused significant damage to the NYS&W's Utica Branch in 2006, but that NYS&W has consistently ignored its contractual obligation to restore its the flood-damaged tracks and roadbed. NYDOT also notes that NYS&W has not repaid NYDOT for the depreciated value of NYDOT's prior investments in the line.

On September 26, 2008, NYS&W filed a reply to NYDOT's petition for stay, disputing NYDOT's allegations, stating that NYDOT has not alleged any defects in NYS&W's notice of exemption, and arguing that NYDOT has not met its burden of showing that a stay is warranted.

This reply was submitted approximately 2 weeks after its due date (see 49 CFR 1115.5(a)) and NYS&W has neither sought leave to file its reply late nor explained why it waited until then to file. Thus, the tendered reply will not be considered.¹

DISCUSSION AND CONCLUSIONS

The factors to be considered in addressing a petition for stay are: (1) whether there is a strong likelihood that petitioner will prevail on the merits of any challenge to the action sought to be stayed; (2) whether petitioner will suffer irreparable harm in the absence of a stay; (3) whether issuance of a stay would substantially harm other parties; and (4) whether issuance of a stay would be in the public interest. Hilton v. Braunskill, 481 U.S. 770, 776 (1987); Washington Metro. Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977); Virginia Petroleum Jobbers Ass'n v. Fed. Power Comm'n, 259 F.2d 921, 925 (D.C. Cir. 1958). A party seeking a stay carries the burden of persuasion on all of the elements required for such extraordinary relief. Canal Auth. of Fla. v. Callaway, 489 F.2d 567, 573 (5th Cir. 1974).

NYDOT has neither cited nor satisfied the criteria for a stay. First, NYDOT cannot show any likelihood of success on the merits of a claim before the Board, because NYDOT has not alleged a violation of any statute or regulation that we enforce. Although NYDOT complains that NYS&W has not restored service on the line, it does not allege any breach of NYS&W's common carrier obligation to provide service over the line on reasonable request. Instead, NYDOT asserts merely that NYS&W has failed to comply with its contractual obligations to the State. But a court of competent jurisdiction is the proper forum to resolve contractual disputes, not the Board. See Saginaw Bay Southern Railway Company—Acquisition and Operation Exemption—Rail Line of CSX Transportation, Inc., STB Finance Docket No. 34729, slip op. at 3 (STB served May 5, 2006).

Second, NYDOT has not alleged or shown that it will be irreparably harmed in the absence of a stay. NYDOT claims that NYS&W has not reimbursed it for the project costs required by their contract and that it is entitled to monetary damages resulting from NYS&W's breach of contract, but monetary damages generally are insufficient to demonstrate irreparable harm. See Suffolk & Southern Rail Road, LLC—Lease and Operation Exemption—Sills Road Realty, LLC, STB Finance Docket No. 35036, slip op. at 6 (STB served Nov. 16, 2007). In any

¹ On September 18, 2008, a petition to reopen, reject, and/or revoke the notice of exemption was filed by the County of Chenango Industrial Development Agency (Chenango), a political subdivision of the State of New York. Chenango claims that NYS&W's notice for exemption is contrary to the applicable regulations, contains false and misleading information, and is void ab initio. Chenango also reiterated NYDOT's arguments presented in the petition for stay regarding the breach of contractual obligations. NYS&W has indicated that it intends to respond separately to Chenango's petition. Chenango's petition will be addressed in a separate decision.

event, a discontinuance of service under the circumstances here would have no effect on the damages, if any, that could result from a breach of contract case in court.

Finally, NYDOT has not shown, or even attempted to show, that a stay is warranted under the other two stay criteria.

For these reasons, NYDOT's request for a stay of the effective date of the exemption will be denied.

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

It is ordered:

1. NYDOT's petition for stay is denied.
2. This decision is effective on its date of service.

By the Board, Charles D. Nottingham, Chairman.

Anne K. Quinlan
Acting Secretary