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SERVICE DATE – OCTOBER 5, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35062

FINGER LAKES RAILWAY CORP.—CONTROL EXEMPTION—ONTARIO CENTRAL RAILROAD CORP.

Decided: October 1, 2007

By petition filed July 9, 2007, Finger Lakes Railway Corp. (FGLK) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 11323, et seq., to acquire control of Ontario Central Railroad Corp. (ONCT). We will grant the exemption.

BACKGROUND

FGLK is a Class III rail carrier that owns or operates approximately 154 miles of rail line in New York. FGLK seeks to acquire control of ONCT by the purchase of 81.05% of the issued and outstanding stock of ONCT, a Class III railroad that operates over approximately 14 miles of rail line in New York under lease from Ontario County, NY (the County). FGLK and ONCT connect at Shortsville, NY. In addition, ONCT also connects with both CSX Transportation, Inc. (CSXT) and Norfolk Southern Railway Company (NSR). FGLK proposes to operate ONCT as an independent part of the FGLK family and does not anticipate making any material changes in ONCT's operations.

On June 29, 2007, FGLK purchased from Livonia, Avon & Lakeville Railroad Corp., the 81.05% of the stock in question. Because FGLK cannot control ONCT without prior approval by the Board, the stock was immediately transferred to William P. Quinn as the Voting Trustee under a Voting Trust Agreement, dated June 29, 2007.

FGLK anticipates that the nature and scope of ONCT's operations or maintenance would remain the same or improve. No shipper currently served by or accessible to ONCT would experience a reduction or other adverse change in its transportation options. Shippers using ONCT's service will still have access to CSXT and NSR and may actually have additional routings available because FGLK operates over connecting lines. FGLK states that ONCT's lease with the County expires at the end of this year. Accordingly, it seeks expedited consideration in order to take control with ample time to negotiate an extension with the County.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 11323(a)(3), the acquisition of control of a rail carrier by any number of rail carriers requires prior Board approval. Under 49 U.S.C. 10502(a), 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. 11323, et seq., is consistent with the standards of 49 U.S.C. 10502. Detailed scrutiny of the proposed 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 the rail industry [49 U.S.C. 10101(7)], and encourage efficient management of railroads [49 U.S.C. 10101(9)]. Specifically, an exemption will permit FGLK to ensure the continuation of rail service currently provided by ONCT. Other aspects of the rail transportation policy will not be adversely affected.

Regulation of this transaction is not necessary to protect shippers from an abuse of market power, as there will be no adverse impact on rail operations or any lessening of rail competition as a result of the proposed transaction. There will be no change in ONCT's existing operations, and no shipper will lose rail service options as a result of the transaction. The more likely result would be an enhancement of shippers' rail service options. Given our market power finding, it is not necessary to determine whether the transaction is limited in scope.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

This transaction is exempt from environmental reporting requirements under 49 CFR 1105.6(c)(2)(i) because it will not result in any significant change in carrier operations. Similarly, the transaction is exempt from the historic reporting requirements under 49 CFR 1105.8(b)(3) because it will not substantially change the level of maintenance of railroad properties.

Finally, as previously noted, FGLK has requested expedited consideration of this petition to allow sufficient time for FGLK to negotiate a lease extension with the County. The request is reasonable. Accordingly, we will grant the request by shortening the effective date of the exemption from the normal 30-day period to 10 days.

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. 11323, et seq.

2. Notice will be published in the Federal Register on October 5, 2007.

3. This exemption will be effective on October 15, 2007. Petitions to stay must be filed by October 10, 2007. Petitions to reopen must be filed by October 22, 2007.

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

Vernon A. Williams
Secretary