

SERVICE DATE – NOVEMBER 9, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34913

GENESEE & WYOMING INC.–CONTINUANCE IN CONTROL EXEMPTION–
CHATTAHOOCHEE BAY RAILROAD, INC.

Decided: November 1, 2006

By petition filed on August 18, 2006, Genesee & Wyoming Inc. (GWI or petitioner) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 11323-25 to continue in control of Chattahoochee Bay Railroad, Inc. (CBRR), upon CBRR's becoming a rail carrier in a related transaction involving the acquisition and operation of certain rail assets of H&S Railroad Company, Inc. (H&S), and Chattahoochee & Gulf Railroad Co., Inc. (CHAT).¹ We will grant the exemption, subject to labor protective conditions.

BACKGROUND

GWI is a noncarrier holding company that directly or indirectly controls Buffalo & Pittsburgh Railroad, Inc., a Class II rail carrier operating in New York and Pennsylvania, and 23 Class III rail carriers.² GWI also controls additional rail carriers together with two of its wholly

¹ Simultaneously with GWI's petition, CBRR filed a verified notice of exemption under 49 CFR 1150.31 to acquire (by purchase) and to operate the following rail assets: (1) CHAT's 24.2 miles of rail line from Dothan, AL, to Hilton, GA (CHAT Line); and (2) H&S's exclusive freight rail easement over 4 miles of rail line from Dothan to Taylor, AL. In addition, CBRR will acquire CHAT's incidental trackage rights over 2.8 miles of Central of Georgia Railroad Company's (CGRC) rail line near Hilton for the purpose of interchanging with the Chattahoochee Industrial Railroad (CIRR). See Chattahoochee Bay Railroad, Inc.–Acquisition and Operation Exemption–Certain Assets of H&S Railroad Company, Inc., and Chattahoochee & Gulf Railroad Co., Inc., STB Finance Docket No. 34912 (STB served Sept. 15, 2006).

² These carriers are: Arkansas, Louisiana & Mississippi Railroad Company, which operates in Arkansas and Louisiana; CIRR, which operates in Georgia; Commonwealth Railway, Inc., which operates in Virginia; Corpus Christi Terminal Railroad, Inc., which operates in Texas; Dansville and Mount Morris Railroad Company, which operates in New York; First Coast Railroad, Inc., which operates in Florida and Georgia; Fordyce & Princeton Railroad Company, which operates in Arkansas; Genesee & Wyoming Railroad Company, Inc., which operates in New York; Golden Isles Terminal Railroad, Inc., which operates in Georgia; Illinois & Midland Railroad, Inc., which operates in Illinois; Louisiana & Delta Railroad, Inc., which

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owned subsidiaries that are noncarrier holding companies: RP Acquisition Company One (RP1) and RP Acquisition Company Two (RP2). Petitioner and RP1 control Rail Partners, L.P.,³ and eight Class III rail carriers formed as limited partnerships.⁴ Petitioner and RP2 control Rail Partners, L.P.,⁵ KWT Railway, Inc., a Class III rail carrier, and five Class III rail carriers organized as limited liability companies.⁶

In its petition for exemption, GWI indicated that it anticipates that CBRR's acquisition and operation of the rail assets of H&S and CHAT will be consummated prior to the issuance of a decision in this proceeding. In that event, GWI will have the shares of CBRR placed into an independent, irrevocable voting trust, pursuant to 49 CFR part 1013, to prevent any unauthorized control of CBRR pending the Board's disposition of this proceeding. To avoid prolonged interim control of the operations of CBRR by an independent trustee, GWI requests expedited handling of its petition for exemption.

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operates in Louisiana; Portland & Western Railroad, Inc., which operates in Oregon; Rochester & Southern Railroad, Inc., which operates in New York; Salt Lake City Southern Railroad Company, which operates in Utah; Savannah Port Terminal Railroad Inc., which operates in Georgia; South Buffalo Railway Company, which operates in New York; St. Lawrence & Atlantic Railroad Company, which operates in Vermont, New Hampshire and Maine; St. Lawrence & Atlantic Railroad (Quebec), Inc., which operates in Vermont; Talleyrand Terminal Railroad, Inc., which operates in Florida; Tazewell & Peoria Railroad, Inc., which operates in Illinois; Utah Railway Company, which operates in Colorado and Utah; Willamette and Pacific Railroad, Inc., which operates in Oregon; and York Railway Company (York), which operates in Pennsylvania. In addition, GWI has control over Maryland and Pennsylvania, LLC and Yorkrail, LLC, non-operating Class III rail carriers that separately hold the rail assets over which York operates.

³ Rail Partners, L.P., is a noncarrier limited partnership that holds all non-managing membership interests or all limited partnership interests (as applicable) in each of the Class III rail carriers that GWI and RP1 and RP2 control together. RP1 acquired the entire general partnership interest of Rail Partners, L.P.

⁴ These carriers are: Atlantic & Western Railway, Limited Partnership; East Tennessee Railway, L.P.; Galveston Railroad, L.P.; Georgia Central Railway, L.P.; Little Rock & Western Railway, L.P.; Tomahawk Railway, Limited Partnership; Valdosta Railway, L.P.; and Wilmington Terminal Railroad, Limited Partnership.

⁵ RP2 acquired the entire limited partnership interest of Rail Partners, L.P.

⁶ They include: AN Railway, L.L.C.; The Bay Line Railroad, L.L.C. (Bay Line); M&B Railroad, L.L.C.; Riceboro Southern Railway, L.L.C.; and Western Kentucky Railway, L.L.C.

In support of its petition, GWI states that it does not anticipate that any shipper currently served on the lines being acquired by CBRR in the underlying acquisition and operation exemption will experience a reduction in its rail transportation options as a result of GWI's continuance in control of CBRR once it becomes a Class III rail carrier. In fact, GWI submits that service options may improve given the synergies the proposed transaction will create.

DISCUSSION AND CONCLUSIONS

The acquisition of control of a rail carrier by a person that is not a rail carrier but that controls any number of rail carriers requires prior approval by the Board under 49 U.S.C. 11323(a)(5). 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 (RTP) 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.

Detailed scrutiny of the proposed transaction through an application for review and approval under 49 U.S.C. 11323-25 is not necessary to carry out the RTP. Rather, an exemption will promote that policy by minimizing the need for Federal regulatory control over the proposed transaction, ensuring that a sound rail transportation system will continue to meet the needs of the shipping public, and reducing regulatory barriers to entry [49 U.S.C. 10101(2), (4), and (7)]. Also, by allowing GWI to integrate CBRR into its existing family of Class II and III carriers, with attendant experience, resources, capital, and administrative support, an exemption will foster sound economic conditions in transportation, ensure effective competition and coordination between rail carriers, and encourage efficient management [49 U.S.C. 10101(5) and (9)]. Other aspects of the RTP will not be adversely affected.

Regulation of the transaction is not needed to protect shippers from an abuse of market power. GWI has indicated that there will be no adverse impacts on rail operations or lessening of rail competition. No shippers will lose access to rail service on the involved lines. The proposed transaction will result in new connections within the same corporate family: (a) the rail line that CBRR will acquire from CHAT connects to GWI's affiliate Bay Line, and by trackage rights over CGRC's line to GWI's affiliate CIRR; and (b) the exclusive freight easement that CBRR will acquire from H&S and operate as an integrated part of the CHAT Line connects to Bay Line. Nevertheless, to ensure that the shippers are informed of our action, we will require GWI to serve a copy of this decision on all shippers on the acquired line and easement within 5 days of the service date of this decision and to certify to the Board that it has done so. Given our finding regarding the probable effect of the transaction on market power, we need not determine whether the 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 its employees. Because the transaction involves one Class II and one or more Class III rail carriers, our grant will be made subject to the labor protection requirements of 49 U.S.C. 11326(b).

This continuance in control 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.

As indicated, GWI has requested expedited action on its petition for exemption. It states that prolonged interim control of the operations of CBRR by an independent trustee may cause inefficiencies, preventing GWI and the public from capitalizing on the potential benefits of the proposed transaction, such as improved efficiencies resulting from the new connections between CBRR and the GWI affiliates. The request is reasonable. Accordingly, this decision is being issued on an expedited basis and the exemption is being made effective 15 days after publication.

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, we exempt from the prior approval requirements of 49 U.S.C. 11323-25 GWI's continuance in control of CBRR, subject to the labor protective conditions at 49 U.S.C. 11326(b).
2. GWI shall serve a copy of the decision on all shippers on the acquired line and easement within 5 days after the service date of this decision and certify to the Board that it has done so.
3. Notice will be published in the Federal Register on November 9, 2006.
4. This exemption will be effective on November 24, 2006. Petitions for stay must be filed by November 20, 2006. Petitions to reopen must be filed by December 4, 2006.

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

Vernon A. Williams
Secretary