

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35621

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

Digest:¹ This decision allows Genesee & Wyoming Inc. to continue in control of Columbus & Chattahoochee Railroad, Inc. (CCR) when CCR becomes a Class III carrier.

Decided: June 7, 2012

By petition filed on April 27, 2012, Genesee & Wyoming Inc. (GWI) 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 Columbus & Chattahoochee Railroad, Inc. (CCR), upon CCR's becoming a rail carrier in a related transaction involving the lease from Norfolk Southern Railway Company (NSR) and operation of 25.50 miles of rail line between Girard and Mahrt, Ala., (the line).² 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, and 59 Class III rail carriers.³ As relevant here, the NSR line that CCR will lease and operate indirectly connects with Georgia Southwestern Railroad, Inc. (GSWR), a Class III carrier also controlled by GWI, at Columbus Yard in Columbus, Ga.

GWI states that, because GSWR already operates a rail line that connects with NSR in Columbus Yard, GWI's control of CCR will allow for better coordination and improved efficiency of service. According to GWI, service also will be improved because CCR has agreed, as part of its lease with NSR, to maintain the line at the Federal Railroad Administration

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² See Columbus & Chattahoochee R.R.—Lease and Operation Exemption—Norfolk S. Ry., FD 35620 (STB served May 11, 2012).

³ A list of all the railroads controlled by GWI is contained in Exhibit A of its petition.

(FRA) class II level. GWI further notes that CCR will be able to take advantage of the administrative services and localized marketing presence that GWI and its other short lines in that region can provide.

GWI requests expedited handling of its petition for exemption so that it would have the authority to control CCR at the time CCR proposes to commence operations on July 1, 2012, and would avoid the cost and complexity of creating a voting trust in which to place the stock of CCR until continuance in control authority is effective.

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 here to carry out the RTP. Rather, an exemption will promote the RTP 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 enabling GWI to integrate CCR into its existing family of Class III carriers (with attendant experience, resources, capital, and administrative support), an exemption will help to foster sound economic conditions in transportation, enhance 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.⁴ Shippers should not experience a reduction in access to rail service, because CCR will merely substitute for NSR in handling traffic between the shippers on the line and their connection with NSR in NSR's Columbus Yard. According to GWI, CCR has agreed to maintain the line at FRA class II level, and shippers will not lose access to any connecting Class I carriers. In addition, CCR and, in turn, local shippers, should benefit from the experience and marketing efforts of GSWR and other GWI railroads in the region to develop additional local business. Therefore, there should be no adverse impacts on rail operations or lessening of rail competition. Moreover, no shipper (or any other entity) has objected to this continuance in control transaction or CCR's proposed lease and operation of the NSR line in Docket No.

⁴ Given our finding regarding the probable effect of the transaction on market power, we need not determine whether the transaction is limited in scope.

FD 35620. 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 line to be leased and operated by CCR within five days of the service date of this decision, and to certify to the Board that it has done so.

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) and Wisconsin Central Ltd.—Acquisition Exemption—Lines of Union Pacific Railroad, 2 S.T.B. 218 (1997).

This continuance in control transaction is exempt from environmental reporting requirements under the Board's regulations, because it should not result in a significant change in carrier operations (generally an increase of 3 or 8 trains per day depending on whether the area is in attainment under the Clean Air Act). See 49 C.F.R. §§ 1105.6(c)(2)(i), 1105.7(e)(4), and (5). Similarly, the transaction is exempt from the historic reporting requirements under 49 C.F.R. § 1105.8(b)(3), because it should not substantially change the level of maintenance of railroad properties.

As indicated, GWI has requested expedited action on its petition for exemption so that it can continue in control of CCR by the time CCR is scheduled to begin its operations. Based on our analysis above, the request is reasonable. Accordingly, this decision is being issued on an expedited basis, and the exemption is being made effective on July 1, 2012.

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 CCR, subject to the labor protective conditions at 49 U.S.C. § 11326(b) and Wisconsin Central Ltd.—Acquisition Exemption—Lines of Union Pacific Railroad, 2 S.T.B. 218 (1997).
2. GWI shall serve a copy of the decision on all shippers on the line to be leased and operated by CCR within five 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 June 13, 2012.

4. This exemption will be effective on July 1, 2012. Petitions for stay must be filed by June 19, 2012. Petitions to reopen must be filed by June 25, 2012.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Begeman.