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SERVICE DATE - MARCH 3, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33527

PROVIDENCE AND WORCESTER RAILROAD COMPANY--ACQUISITION AND
OPERATION EXEMPTION--CONNECTICUT CENTRAL RAILROAD COMPANY

Decided: February 23, 1998

By petition filed December 3, 1997, Providence and Worcester Railroad Company (P&W) seeks an exemption, under 49 U.S.C. 10502, from the prior approval requirements of 49 U.S.C. 11323, et seq., to acquire, via a stock exchange, and operate the Connecticut Central Railroad Company (CCCL). MSR, Inc. and Primary Steel, Inc. filed letters in support of the acquisition. On December 18, 1997, the United Transportation Union (UTU) filed a protest to the transaction, which UTU later withdrew. UTU expresses its support for the transaction. We will grant the petition for exemption.

BACKGROUND

P&W is a Class III rail carrier that operates in Connecticut, Massachusetts, Rhode Island and New York. It operates over approximately 520 miles of rail line and has approximately 150 employees.

CCCL is a Class III rail carrier that currently operates 17 miles of rail line, comprised of five branches, in the area of Middletown, CT. The track is owned by the Connecticut Department of Transportation (C-DOT) and leased to CCCL pursuant to a 30-year lease that terminates in 2017.¹ The five branches operated by CCCL are as follows: (1) the Wethersfield Industrial track between milepost 16.2 in Middletown and milepost 14 in Cromwell, CT, a distance of approximately 2 miles; (2) the Berlin Industrial track between an intersection with the Wethersfield Industrial track at milepost 16.0 and its terminus, a distance of approximately 2 miles; (3) the Portland Industrial track between Middletown and its terminus at milepost 1.0, a distance of approximately 1 mile; (4)

¹ See Connecticut Central Railroad Company--Exemption Operation--Certain Lines of the State of Connecticut, Finance Docket No. 31056 (ICC served June 3, 1987).

the Laurel Secondary track between Middletown and milepost 5, a distance of approximately 5 miles; and (5) the Middletown Secondary track between milepost 22.2 in Middletown and milepost 15.0, a distance of approximately 7 miles. CCCL also has authority to operate other lines owned by C-DOT, but those lines are not currently in operation.² CCCL employs 5 full-time and 11 part-time employees.

P&W has entered into a "Stock Exchange Agreement" (the Agreement), dated October 30, 1997, with all of the shareholders of CCCL. Pursuant to the Agreement, P&W will issue its common stock to the shareholders of CCCL in exchange for all of the outstanding stock of CCCL. Upon consummation of the Agreement, CCCL will become a wholly owned subsidiary of P&W.

According to petitioner, four shippers are currently located on the lines. These customers generate approximately 700 carloads of traffic annually, which move between CCCL's lines and points beyond. CCCL also moves approximately 400 carloads of sludge per year from Middletown to the Mattabassett Treatment Plant. Upon consummation of this transaction, P&W states that it will operate the lines of CCCL with P&W trains and crews and serve CCCL customers via a local train it presently operates between New Haven and Wallingford, CT. It appears that CCCL employees are not represented by a labor union. P&W, however, states that it intends to offer employment to certain of the full-time employees and perhaps one or more of the part-time employees of CCCL. According to P&W, those not employed by P&W will be eligible for severance payments in accordance with CCCL's employee policies.

CCCL indicates that, after consummation of the Agreement, the shippers located on the line will have new competitive options. Where, prior to the Agreement, CCCL interchanged traffic only with Conrail at New Haven, operation of CCCL by P&W will allow shippers new interchanges with the Guilford System at Gardner, MA, with the Canadian Pacific via the Green Mountain Gateway, and between P&W and Canadian National via the New England Central Railroad.

DISCUSSION AND CONCLUSIONS

Prior approval by the Board is required under 49 U.S.C. 11323(a)(3) for a rail carrier to acquire control of another rail carrier and under 49 U.S.C. 11323(a)(2) for the operation of the property of one rail carrier by another rail carrier. Under 49 U.S.C. 10502, however, the Board must exempt a transaction or service from regulation if it finds 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 needed to protect shippers from the abuse of market power.

² See Connecticut Central Railroad Company, Inc.-- Modified Rail Certificate, STB Finance Docket No. 33125 (STB served Oct. 17, 1996), and Connecticut Central Rail Company, Inc.--Modified Rail Certificate, STB Finance Docket No. 33515 (STB served Dec. 22, 1997).

Regulation of this transaction is not necessary to carry out the transportation policy of 49 U.S.C. 10101. By reducing the administrative time and expense of the application process, an exemption will “minimize the need for Federal regulatory control” and “reduce regulatory barriers to entry into and exit from” the rail industry [49 U.S.C. 10101(2)]. More efficient operation of CCCL will result from integrating CCCL into the P&W system, and thereby “foster sound economic conditions in transportation [49 U.S.C. 10101(5)] and promote “efficient management of railroads” [49 U.S.C. 10101(9)]. Other aspects of the rail transportation policy are not affected adversely.

Regulation is not needed to protect shippers from the abuse of market power. Shippers will benefit from P&W’s existing interline connections and relationships with other rail carriers. These new interline connections for CCCL shippers should result in improved service and competitive rates. Indeed, two shippers filed comments in support of the proposed transaction. Nevertheless, we will require P&W to serve a copy of this decision on all shippers on CCCL’s lines within 5 days of the service date of this decision and certify to the Board that it has done so. Given our market power finding, we need not also determine whether these transactions are limited in scope.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of a 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. Because this transaction involves only Class III rail carriers, the Board, under the statute, may not impose labor protective conditions for this transaction.

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

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 the above-described acquisition from the prior approval requirements of 49 U.S.C. 11323, et seq.
2. P&W shall serve a copy of this decision on all shippers on CCCL’s lines within 5 days of 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 March 3, 1998.
4. This exemption will be effective on April 2, 1998.

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5. Petitions to stay must be filed by March 18, 1998. Petitions to reopen must be filed by March 30, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary