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SERVICE DATE – JANUARY 11, 2011

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35343

SUSQUEHANNA UNION RAILROAD COMPANY—CONTROL EXEMPTION—NORTH SHORE RAILROAD COMPANY, NITTANY & BALD EAGLE RAILROAD COMPANY, SHAMOKIN VALLEY RAILROAD COMPANY, JUNIATA VALLEY RAILROAD COMPANY, LYCOMING VALLEY RAILROAD COMPANY, AND UNION COUNTY INDUSTRIAL RAILROAD COMPANY

Decided: January 6, 2011

Digest:¹ This decision permits Susquehanna Union Railroad Company, a holding company owned by Richard D. Robey, to own all of the stock of 6 Class III railroads also owned and controlled by Robey.

On April 12, 2010, Susquehanna Union Railroad Company (SURC), a noncarrier holding company, filed a petition for exemption (petition) from the prior approval requirements of 49 U.S.C. § 11323(a)(4) to acquire 100% stock control of 6 Class III railroads: North Shore Railroad Company, Nittany & Bald Eagle Railroad Company, Shamokin Valley Railroad Company, Juniata Valley Railroad Company, Lycoming Valley Railroad Company, and Union County Industrial Railroad Company (collectively, System Carriers). By a decision served on August 27, 2010, the Board instituted a proceeding. The Board will grant the exemption.²

BACKGROUND

SURC is a noncarrier holding company owned by Richard D. Robey. Robey also is the sole owner of the System Carriers. Currently, significant management, budgeting, maintenance, and operational functions for the 6 System Carriers take place at a central office in Northumberland, Pa., all overseen by Robey. SURC states that, for the purpose of conforming

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 SURC's petition also requested that the Board preempt and nullify, under 49 U.S.C. § 11321(a), a provision of an operating agreement between SEDA-COG Joint Rail Authority (JRA) and certain System Carriers that lease and operate separate lines owned by JRA. The provision requires JRA to approve any change of control of certain System Carriers. In a letter filed on July 28, 2010, JRA states that the parties successfully concluded settlement negotiations and that it consents to the proposed transaction.

the corporate structure of the System Carriers with the day-to-day functional management and operations of the System Carriers, it seeks to consolidate the System Carriers into SURC. SURC would obtain 100% stock control of the System Carriers by a noncash tender of 100% of shares in the System Carriers stock from Robey to SURC in exchange for issuance of additional shares of SURC to Robey. As a result, Robey would own and control the 6 System Carriers through SURC.

DISCUSSION AND CONCLUSIONS

The acquisition of control of at least 2 rail carriers by a person that is not a rail carrier requires prior approval by the Board under 49 U.S.C. § 11323(a)(4). Under 49 U.S.C. § 10502(a), however, the Board must exempt a transaction or service from regulation if it finds 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.³

In this case, an exemption from the prior approval requirements of 49 U.S.C. §§ 11323-25 is consistent with the standards of 49 U.S.C. § 10502. 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 and ensuring the development and continuation of a sound rail transportation system that will continue to meet the needs of the shipping public. 49 U.S.C. §§ 10101(2) and (4). By allowing the consolidation of control of the System Carriers through SURC, an exemption would encourage the efficient management of the System Carriers. 49 U.S.C. § 10101(9). An exemption also would allow for the expeditious handling and resolution of this transaction. 49 U.S.C. § 10101(15). Other aspects of the RTP will not be adversely affected.

Regulation of this transaction is not needed to protect shippers from an abuse of market power. SURC has indicated that the proposed transaction will not result in a change in rail operations or a lessening of competition. The transaction involves only a nominal change of control by means of consolidating 100% stock control of the System Carriers, which Robey currently owns and controls, into a noncarrier holding company, which is owned and controlled

³ This transaction would normally be subject to the Board's class exemption under 49 C.F.R. § 1180.2(d)(3), which exempts a transaction that is within a corporate family that does not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family. However, SURC instead filed a petition for exemption in light of the now resolved issues arising from the operating agreement with JRA.

by Robey, as well. 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), 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 §§ 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here because all the carriers involved are Class III rail carriers.

The acquisition of control is exempt from environmental reporting requirements under 49 C.F.R. § 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 C.F.R. § 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, the Board exempts from the prior approval requirements of 49 U.S.C. §§ 11323-25 SURC's acquisition of stock control of the System Carriers.
2. Notice will be published in the Federal Register on January 11, 2011.
3. This exemption will be effective on February 10, 2011. Petitions for stay must be filed by January 21, 2011. Petitions to reopen must be filed by January 31, 2011.

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