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SERVICE DATE - MAY 16, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34299

GULF & OHIO RAILWAYS HOLDING CO., INC., H. PETER CLAUSSEN AND LINDA C. CLAUSSEN—CONTINUANCE IN CONTROL EXEMPTION—CHATTAHOOCHEE & GULF RAILROAD CO., INC.

Decided: May 9, 2003

By petition filed on February 28, 2003, Gulf & Ohio Railways Holding Co., Inc. (G&O), a noncarrier, and H. Peter Claussen and Linda C. Claussen (the Claussens) (collectively referred to as Petitioners),¹ seek 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 & Gulf Railroad Co., Inc. (CGR), upon CGR's becoming a rail carrier.² We will grant the exemption.

BACKGROUND

G&O is a noncarrier holding company and a Tennessee corporation wholly owned by the Claussens. G&O wholly owns the following Class III rail carriers: Conecuh Valley Railroad Co., Inc., which operates in Alabama; Knoxville & Holston River Railroad Co., Inc., which operates in eastern Tennessee; Laurinburg & Southern Railroad Co., Inc., which operates in North Carolina; Lexington & Ohio Railroad Co., Inc., which operates in northern and central Kentucky; Piedmont & Atlantic Railroad, Inc., which operates in northwestern North Carolina under the trade name of Yadkin Valley

¹ On March 3, 2003, Petitioners filed an "Errata Sheet," amending the petition.

² In a related transaction, CGR filed a verified notice of exemption to acquire and operate a 24.2-mile line (and 2.8 miles of specified incidental overhead trackage rights) (the line) of the Central of Georgia Railroad Company (CGA). See Chattahoochee & Gulf Railroad Co., Inc.—Acquisition and Operation Exemption—Line of Central of Georgia Railroad Company, STB Finance Docket No. 34298 (STB served Mar. 26, 2003). The line extends from milepost J357.8 at the Hilton, GA station to milepost J382.0 at the Dothan, AL station (plus incidental overhead trackage rights from milepost J355.0 to milepost J357.8 at or near Hilton) in Houston and Henry Counties, AL, and Early County, GA.

Railroad; Rocky Mount & Western Railroad Co., Inc., which operates in central North Carolina as Nash County Railroad; Three Notch Railroad Co., Inc., which operates in Alabama; and Wiregrass Central Railroad Company, Inc., which operates in southeastern Alabama. In addition, the Claussens wholly own H&S Railroad Co., Inc. (H&S), which operates in southeastern Alabama.

At the time of the filing of this exemption, Petitioners stated that CGA and CGR were close to reaching an agreement on the terms of the proposed sale transaction and hoped to consummate their acquisition and operation transaction on or soon after March 7, 2003, the date the notice in STB Finance Docket No. 34298 became effective. Accordingly, Petitioners anticipate transferring control of CGR into an independent, irrevocable voting trust to prevent any unauthorized control pending the disposition of this proceeding. Petitioners state that the general nature and scope of operations will remain the same with no current shipper on the CGR line facing a reduction in transportation options.

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),³ 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 enabling Petitioners to integrate CGR into their existing family of Class III carriers, with attendant administrative and other support, an exemption will foster sound economic conditions in transportation 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. Petitioners have indicated that there will be no adverse impact on rail operations or lessening of rail competition. No shippers will lose access to rail service on the CGR line. Nevertheless, to ensure that

³ Petitioners state that CGR's tracks connect with those of its indirect affiliate, H&S, thereby necessitating the filing of this petition for exemption rather than a notice under the class exemption at 49 CFR 1180.2(d)(2).

the shippers are informed of our action, we will require Petitioners to serve a copy of this decision on all shippers on the line within 5 days of the service date of this decision and to certify to us that they have 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), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. However, Congress has determined that we may not impose labor protection for transactions occurring pursuant to 49 U.S.C. 11324-25 that involve only Class III rail carriers. 49 U.S.C. 11326(c). Accordingly, we may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

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.

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 Petitioners' continuance in control of CGR.
2. Petitioners shall serve a copy of this decision on all shippers on the line within 5 days after the service date of this decision and certify to the Board that they have done so.
3. Notice will be published in the Federal Register on May 16, 2003.
4. This exemption will be effective on June 15, 2003. Petitions for stay must be filed by June 2, 2003. Petitions to reopen must be filed by June 10, 2003.

By the Board, Chairman Nober and Commissioner Morgan.

Vernon A. Williams
Secretary