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SERVICE DATE - DECEMBER 15, 2008

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35183

GENESEE & WYOMING INC.—CONTROL EXEMPTION—GEORGIA SOUTHWESTERN
RAILROAD, INC.

Decided: December 9, 2008

By petition filed on October 1, 2008, 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 acquire indirect control of Georgia Southwestern Railroad, Inc. (GSWR).¹ The Board will grant the exemption, subject to employee protective conditions.

¹ On the same date, GWI also filed a petition for exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 11323-25, in STB Finance Docket No. 35177, Genesee & Wyoming Inc.—Control Exemption—Aliquippa & Ohio River Railroad Co., et al., to acquire control of Summit View, Inc. (Summit View), a noncarrier, and thereby acquire control of 10 Class III railroads that are controlled by Summit View. These carriers are: Aliquippa & Ohio River Railroad Co.; The Columbus and Ohio River Rail Road Company; The Mahoning Valley Railway Company; Ohio and Pennsylvania Railroad Company; Ohio Central Railroad, Inc.; The Pittsburgh & Ohio Central Railroad Company; Ohio Southern Railroad, Inc.; Youngstown & Austintown Railroad, Inc.; The Youngstown Belt Railroad Company; and the Warren & Trumbull Railroad Company (Ohio Central Railroads). According to GWI, GWI will acquire 100% of the stock of Summit View, which owns 100% of the shares of the Ohio Central Railroads. GWI states that the Ohio Central Railroads do not connect to GSWR, and the transaction that is the subject of STB Finance Docket No. 35177 is unrelated to the transaction at issue here. However, if the Board approves GWI's acquisition of control of the Ohio Central Railroads prior to its action on this petition, GWI requests that the Board deem GWI's petition amended to include the Ohio Central Railroads among the railroads controlled by GWI. Should the Board approve the transaction in that proceeding, GWI will then control 38 Class III railroads.

BACKGROUND

GWI is a noncarrier holding company that directly or indirectly controls one Class II² and 28 Class III railroads,³ and has control over two limited liability companies.⁴ In addition, GWI controls railroads with two of its wholly owned subsidiaries, both of which are noncarrier holding companies: RP Acquisition Company One (RP1) and RP Acquisition Company Two (RP2).⁵

² This carrier is: Buffalo & Pittsburgh Railroad, Inc., operating in New York and Pennsylvania.

³ These carriers are: Arkansas, Louisiana & Mississippi Railroad Company, operating in Arkansas and Louisiana; Chattahoochee Bay Railroad, Inc., operating in Georgia and Alabama; Chattahoochee Industrial Railroad, operating in Georgia; The Chattooga and Chickamauga Railway Company, operating in Tennessee and Georgia; Columbus and Greenville Railway Company, operating in Mississippi; Commonwealth Railway, Inc., operating in Virginia; Corpus Christi Terminal Railroad, Inc., operating in Texas; Dansville and Mount Morris Railroad Company, operating in New York; First Coast Railroad, Inc., operating in Florida and Georgia; Fordyce & Princeton Railroad Company, operating in Arkansas; Genesee & Wyoming Railroad Company, Inc., operating in New York; Golden Isles Terminal Railroad, Inc., operating in Georgia; Illinois & Midland Railroad, Inc., operating in Illinois; Louisiana & Delta Railroad, Inc., operating in Louisiana; Luxapalila Valley Railroad, Inc., operating in Mississippi and Alabama; Maryland Midland Railway, Inc., operating in Maryland; Portland & Western Railroad, Inc., operating in Oregon; Rochester & Southern Railroad, Inc., operating in New York; Salt Lake City Southern Railroad Company, operating in Utah; Savannah Port Terminal Railroad, Inc., operating in Georgia; South Buffalo Railway Company, operating in New York; St. Lawrence & Atlantic Railroad Company, operating in Vermont, New Hampshire, and Maine; St. Lawrence & Atlantic Railroad (Quebec), Inc., operating in Vermont; Talleyrand Terminal Railroad, Inc., operating in Florida; Tazewell & Peoria Railroad, Inc., operating in Illinois; Utah Railway Company, operating in Colorado and Utah; Willamette and Pacific Railroad, Inc., operating in Oregon; and York Railway Company (York), operating in Pennsylvania.

⁴ These companies are: Maryland and Pennsylvania, LLC, and Yorkrail, LLC, non-operating Class III rail carriers that separately hold the rail assets over which York operates.

⁵ GWI, RP1, and RP2 control Rail Partners, L.P. (Rail Partners), 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 and RP2 acquired the entire limited partnership interest of Rail Partners. GWI and RP1 control eight Class III rail carriers formed as limited partnerships: 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. GWI and RP2 control KWT Railway Inc.,

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GSW Acquisition Sub Inc. (GSW Sub),⁶ a noncarrier wholly owned direct subsidiary of GWI, entered into the Agreement, dated October 1, 2008, with GWI, Terry R. Small (Small), and David L. Smoot (Smoot) to acquire from Small and Smoot 10 shares of common stock of GSWR, a Class III rail carrier that operates lines located generally in Georgia and Alabama.⁷ These shares comprise all of the issued and outstanding capital stock of GSWR. Upon consummation of the purchase, GSW Sub will acquire direct control of GSWR and, because GSW Sub is a wholly owned direct subsidiary of GWI, GWI will acquire indirect control of GSWR. GWI states that GSWR connects to the Chattahoochee Industrial Railroad through trackage rights that GSWR has over the line of CSX Transportation, Inc. (CSXT).

In its petition, GWI indicates that the transaction may be consummated prior to the issuance of a decision in this proceeding. In that event, GWI states that it will have the shares of GSWR placed into an independent, irrevocable voting trust, pursuant to 49 CFR part 1013, to prevent any unauthorized control of GSWR pending the Board's disposition of this proceeding. To avoid prolonged interim control of the operations of GSWR by an independent trustee, GWI requests expedited handling of its petition for exemption.

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a Class III rail carrier, and five Class III rail carriers organized as limited liability companies: AN Railway, L.L.C; The Bay Line Railroad, L.L.C; Meridian & Bigbee Railroad, L.L.C., Riceboro Southern Railway, L.L.C.; and Western Kentucky Railway, L.L.C.

⁶ According to GWI, GSW Sub is not listed as a petitioner in this petition for exemption because GSW Sub will obtain control of only one carrier (GSWR) following consummation of the proposed purchase and therefore does not need to obtain an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 11323.

⁷ These lines generally are located: (i) between approximately milepost R 12.0 in Florida Rock, Harris County, GA, south through Columbus, Chattahoochee County, GA, and continuing southwest through Americus, Sumter County, GA, to approximately milepost J 297.0 in Albany, Dougherty County, GA; (ii) from approximately milepost SLB 0.38 in Columbus, southwest to approximately milepost SLB 23 in Cusseta, Marion County, GA; (iii) from approximately milepost H 278 in Smithville, Lee County, GA, west through Cuthbert, Randolph County, GA, to approximately milepost H 349 in White Oak, Barbour County, AL; (iv) from approximately milepost 63.55 in Dawson, Terrell County, GA, southwest to approximately milepost 72.88 in Sasser, Terrell County; (v) from approximately milepost SLC 160.0 in Cuthbert, south to approximately milepost SLC 91.68 in Bainbridge, Decatur County, GA; (vi) from approximately milepost SLC 91.68 in Bainbridge, west to approximately milepost MPAN 760 in Saffold, Early County, GA; and (vii) from approximately milepost SLC 91.68 in Bainbridge, south to approximately milepost SLC 90.62 at State Docks Lead (State Ports Authority), Decatur County.

In support of its petition, GWI states that it does not anticipate material changes in the general scope and nature of operations on GSWR's lines. GWI also states that it does not anticipate that any shipper currently served on GSWR's lines will experience a reduction in its rail transportation options as a result of GWI's indirect control of GSWR. In fact, GWI submits that service options may in some cases improve.

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, 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.

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, promoting a safe and efficient rail transportation system, 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), (3), (4), and (7)]. Also, by allowing GWI to integrate GSWR into its existing family of Class II and Class 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 this 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 transportation or lessening of rail competition. GWI simply will be incorporating GSWR into its family of short line carriers without materially changing the operations of GSWR. As a result, shippers potentially will benefit from greater efficiencies while receiving the same service. No shipper located on GSWR's lines is expected to lose rail service options as a result of the control transaction. The more likely result would be enhanced rail service, as shippers will benefit from the substantial experience and resources of GWI and from the connection between GSWR and the GWI affiliates. The proposed transaction will result in new connections within the same corporate family: GSWR's trackage rights over the line of CSXT will provide a connection with one of GWI's existing lines, the Chattahoochee Industrial Railroad in Saffold. 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. Because the transaction involves the control of at least one Class II and one or more Class III rail carriers, the exemption is subject to the labor protection requirements of 49 U.S.C. 11326(b).

The acquisition of control 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, the Board exempts from the prior approval requirements of 49 U.S.C. 11323-25 GWI's indirect control of GSWR, subject to the employee protective conditions at 49 U.S.C. 11326(b).
2. Notice will be published in the Federal Register on December 15, 2008.
3. This exemption will be effective on January 14, 2009. Petitions for stay must be filed by December 26, 2008. Petitions to reopen must be filed by January 5, 2009.

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

Anne K. Quinlan
Acting Secretary