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SERVICE DATE – MARCH 27, 2014

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35800]

Genesee & Wyoming Inc.—Continuance in Control Exemption—Rapid City, Pierre & Eastern Railroad, Inc.

Genesee & Wyoming Inc. (GWI), a noncarrier, has filed a verified notice of exemption pursuant to 49 C.F.R. § 1180.2(d)(2), to continue in control of Rapid City, Pierre & Eastern Railroad, Inc. (RCP&E), a noncarrier, together with other railroads in GWI's corporate family, upon RCP&E's becoming a Class II railroad.

This transaction is related to a concurrently filed verified notice of exemption in Rapid City, Pierre & Eastern Railroad, Inc.—Acquisition and Operation Exemption Including Interchange Commitment—Dakota, Minnesota & Eastern Railroad Corporation, Docket No. FD 35799, wherein RCP&E seeks Board approval under 49 C.F.R. § 1150.35 to acquire from Dakota, Minnesota & Eastern Railroad Corporation d/b/a Canadian Pacific (DM&E)¹ and to operate approximately 670 miles of rail lines

¹ In Canadian Pacific Railway—Control—Dakota, Minnesota & Eastern Railroad, FD 35081 (STB served Sept. 30, 2008), the Board approved an application allowing Canadian Pacific Railway Company (CP) to acquire indirect control of DM&E and DM&E's wholly owned rail subsidiary, Iowa, Chicago & Eastern Railroad Corporation (IC&E).

known as the DM&E West Lines.² Upon consummation, RCP&E would own and operate rail lines in Nebraska, Minnesota, South Dakota, and Wyoming.³ RCP&E would also acquire approximately 219 miles of incidental trackage rights over connecting lines of DM&E and other carriers.

The purpose of this verified notice of exemption is to enable GWI to continue in control of RCP&E, together with the other railroads in GWI's corporate family, upon RCP&E's becoming a Class II carrier. GWI points out that the transaction would allow RCP&E to take advantage of the administrative, marketing, and operational support that GWI can provide. In addition, according to GWI, as a long-term holder of short line railroads, GWI's ownership of RCP&E should provide shippers with the comfort of stable ongoing rail service.

Although this exemption could become effective on April 10, 2014 (30 days after the notice of exemption was filed), the parties do not intend to consummate this transaction until the concurrently filed notice of exemption in Docket No. FD 35799 becomes effective and all other closing conditions have been met. That exemption could become effective on April 25, 2014 (45 days after that exemption was filed).⁴

² The DM&E West Lines also are the subject of an ongoing proceeding before the Board. In that proceeding, the State of South Dakota, by and through its Department of Transportation (State), filed a petition asking the Board to enforce three representations allegedly made by CP during the 2008 acquisition-of-control proceeding regarding investments that CP would make in DM&E and IC&E (collectively in that proceeding, DME). The Board issued decisions allowing the State to engage in discovery concerning those claims and setting a procedural schedule. See Canadian Pac. Ry.—Control—Dakota, Minn. & E. R.R., FD 35081 (Sub-No. 2) (STB served Dec. 20, 2013, and Mar. 10, 2014). Discovery remains ongoing in that proceeding.

³ RCP&E will also be acquiring a line in Nebraska that is currently leased to and operated by Nebraska Northwestern Railroad, Inc.

⁴ See 49 C.F.R. § 1150.35(e).

GWJ notes that it currently controls, directly or indirectly, one Class II carrier and 100 Class III carriers operating in the United States.⁵

GWJ represents that: (1) none of the railroads controlled by GWJ would connect with the rail lines being acquired by RCP&E, or with the incidental trackage rights associated with RCP&E's acquisition; (2) the continuance in control is not part of a series of anticipated transactions that would connect RCP&E with the rail lines of any other carriers in GWJ's corporate family; and (3) the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. § 11323. See 49 C.F.R. § 1180.2(d)(2).

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. As a condition to the use of this exemption, any employees adversely affected by this transaction will be protected by the conditions set forth in New York Dock Railway—Control—Brooklyn Eastern District Terminal, 360 I.C.C. 60 (1979).

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke would not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than April 3, 2014 (at least 7 days before the exemption becomes effective).

⁵ GWJ was authorized, subject to conditions, to control RailAmerica, Inc., and its subsidiary railroads in Genesee & Wyoming Inc.—Control—RailAmerica, Inc., FD 35654 (STB served December 20, 2012). GWJ provides with its notice of exemption a map showing the locations of the GWJ-controlled railroads.

An original and 10 copies of all pleadings, referring to Docket No. FD 35800 must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on Eric M. Hocky, Clark Hill PLC, One Commerce Square, 2005 Market Street, Suite 1000, Philadelphia, PA 19103.

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Decided: March 24, 2014.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.