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SERVICE DATE - SEPTEMBER 2, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34341

WHEELING & LAKE ERIE RAILWAY COMPANY—
ACQUISITION AND OPERATION EXEMPTION—
CSX TRANSPORTATION, INC.

Decided: August 28, 2003

We are granting the petition of the Wheeling & Lake Erie Railway Company (W&LE) for waiver of the requirement of 49 CFR 1121.4(h)¹ that 60 days' notice be given to employees who may be affected by W&LE's planned acquisition of the rail freight operating easement of CSX Transportation, Inc. (CSXT) over approximately 18 miles of rail line owned by Metro Regional Transit Authority (METRO) between Canton, OH, and Krumroy, OH.

BACKGROUND

The subject line consists of two segments—the southern segment, which extends from Canton to Aultman, OH, and the middle segment, which extends from Aultman to Krumroy.

In October of 1992, W&LE, a Class II rail carrier, leased the southern segment of the line from CSXT. In May 2000, CSXT sold the southern segment, the middle segment, and a third segment of rail line extending from Krumroy to Akron, OH (northern segment) to METRO.² As

¹ Under 49 CFR 1121.4(h), "In transactions for the acquisition or operation of rail lines by Class II rail carriers under 49 U.S.C. 10902, the exemption may not become effective until 60 days after applicant certifies to the Board that it has posted at the workplace of the employees on the affected line(s) and served a notice of the transaction on the national offices of the labor unions with employees on the affected line(s), setting forth the types and numbers of jobs expected to be available, the terms of employment and principles of employee selection, and the lines that are to be transferred."

² In a related proceeding, on May 24, 2000, METRO filed a verified notice of exemption for authority to acquire all three segments from CSXT. It simultaneously filed a motion to dismiss the notice of exemption on jurisdictional grounds. On June 23, 2000, the Board served notice of METRO's notice of exemption, indicating that the Board would address the motion to
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part of that transaction, CSXT retained an exclusive freight easement over all three segments, subject to W&LE's pre-existing lease of the southern segment. Also as part of that transaction, CSXT agreed to transfer its freight easement over the southern and middle segments to METRO or its designee.

According to W&LE, METRO recently designated W&LE to receive the freight easement over the southern and middle segments. Therefore, pursuant to a Purchase and Sale Agreement dated July 1, 2003, between W&LE and CSXT, W&LE proposes to acquire CSXT's freight easement over these two segments. W&LE already provides rail service over the southern segment, pursuant to its lease from CSXT. W&LE states that it has no current plans to provide rail service over the middle segment, over which CSXT discontinued service in 1993,³ but indicates that it will seek further Board authority should it wish to reinstate rail operations on that segment in the future.

On August 1, 2003, W&LE filed a petition under 49 U.S.C. 10502 for an exemption from the prior approval requirements of 49 U.S.C. 10902 to acquire CSXT's freight easement. Also on August 1, 2003, W&LE filed this petition for a waiver of the Board's requirement at section 1121.4(h) for 60 days' advance notice to employees on the affected rail line and to the national office of the labor unions of those employees. In support of its request, W&LE argues that the purpose of the notice requirement is to give railroad employees advance notice of a new owner or operator of the line on which they work, and to allow them to contemplate employment with that new owner or operator. W&LE asserts that this purpose would not be served by requiring notice in this proceeding because no rail employees will be adversely affected. W&LE states that its acquisition of CSXT's freight easement will merely allow it to assume ownership of common carrier interests in a rail line over part of which it has provided service for a decade, thereby enhancing effective rail management and long-term stability of its operations. There is no opposition to this waiver petition.

DISCUSSION AND CONCLUSIONS

The purpose of the notice requirement at 49 CFR 1121.4(h) is to ensure that rail labor unions and employees who would be affected by the transfer of a line are given sufficient notice

²(...continued)

dismiss in a separate decision. See Metro Regional Transit Authority–Acquisition Exemption–CSX Transportation, Inc., Finance Docket No. 33838 (STB served June 23, 2000). A separate Board decision will address that motion.

³ See CSX Transportation, Inc.–Abandonment Exemption–In Summit County, OH, Docket No. AB-55 (Sub-No. 447X) (ICC served Jan. 12, 1993).

of the transaction before consummation.⁴ The Board takes seriously the requirements of the rule, but it does not appear that the purpose behind the notice requirement would be thwarted by the requested waiver.

While the Board does not ordinarily grant waivers of the employee advance notice requirement, it is very unlikely that any railroad employees would be adversely affected by waiver of the requirement here. No CSXT employees should be affected because none has worked on any part of the subject line in more than 10 years. Furthermore, no W&LE employees should be affected because W&LE's status as the sole carrier on the line since its lease of the southern segment in 1992 would remain unchanged.⁵ The planned transaction would merely merge W&LE's current lease rights over the southern segment with CSXT's easement rights over that segment and the middle segment. This union of these rights in W&LE should not affect rail service or the employees involved. Accordingly, there should be no need for advance notice here, and the requested waiver will be granted.⁶

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. W&LE's request for a waiver is granted.

⁴ See Acq. of R. Lines Under 49 U.S.C. 10901 & 10902 – Advance Notice, 2 S.T.B. 592 (1997).

⁵ Specifically, W&LE states that it does not anticipate that any W&LE jobs would be eliminated or that there would be any change in bargaining agreements, working conditions, rates of pay or benefits of W&LE employees stemming from the proposed transaction.

⁶ Even though W&LE does not anticipate that this transaction would result in any adverse affects to its employees, W&LE states that it posted notice of the transaction at the locations where its own employees report for duty. W&LE adds that it also served a copy of this notice on the labor organizations that represent its employees.

2. This decision is effective on its service date.

By the Board, Chairman Nober.

Vernon A. Williams
Secretary