

SERVICE DATE – JULY 18, 2012

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35642

TWIN CITIES & WESTERN RAILROAD COMPANY, THE ESTATE OF DOUGLAS M.
HEAD, AND THE DMH TRUST FBO MARTHA M. HEAD
—CONTINUANCE IN CONTROL EXEMPTION—
SISSETON MILBANK RAILROAD COMPANY

Digest:¹ This decision allows Twin Cities & Western Railroad Company and the Estate of Douglas M. Head to continue in control of Sisseton Milbank Railroad Company (SMRC) when SMRC becomes a Class III rail carrier.

Decided: July 13, 2012

By petition filed on June 15, 2012, Twin Cities & Western Railroad Company (TCW), the Estate of Douglas M. Head (the Estate), and the DMH Trust fbo Martha M. Head (the Trust) (collectively, petitioners) seek an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 11323 to continue in control of Sisseton Milbank Railroad Company (SMRC) upon SMRC's becoming a rail carrier in a related transaction. That related transaction involves SMRC's acquisition from Sisseton Milbank Railroad, Inc. (SMRR) and SLA Property Management Limited Partnership (SLA) of their interests in, and operation of, approximately 37.1 miles of rail line situated in Grant and Roberts Counties, S.D. (the Line).² As discussed below, we will grant the exemption for TCW and the Estate to continue in control of SMRC upon SMRC's becoming a rail carrier. The petition for exemption, as it applies to the Trust, will be denied.

BACKGROUND

The Estate currently controls TCW, a Class III rail carrier that operates in Minnesota and South Dakota. TCW, in turn, controls Minnesota Prairie Line, Inc. (MPL), also a Class III rail carrier, which operates in Minnesota. TCW and MPL connect at Norwood, Minn. TCW also controls SMRC, currently a noncarrier, which was formed to acquire the Line. Petitioners state

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 See Sisseton Milbank R.R.—Acquis. & Operation Exemption—SLA Prop. Mgmt. Ltd. P'ship, FD 35641 (STB served June 29, 2012).

that after consummation of the acquisition transaction in Docket No. FD 35641, SMRC will continue to be maintained and managed as a separate entity from TCW. Petitioners further note that SMRC and TCW will connect in or near Milbank, S.D.

The Trust controls Red River Valley & Western Railroad (RRVW), a Class III rail carrier that operates in Minnesota and North Dakota. RRVW, in turn, controls Rutland Line, Inc. (Rutland), a Class III rail carrier that also operates in Minnesota and North Dakota.³ Petitioners indicate that the Estate will soon distribute TCW stock to the Trust, so that the Trust will control TCW in the near future.

Petitioners state that SMRC, SMRR, and SLA have reached an agreement for SMRC to purchase the Line and that TCW has entered into a voting trust agreement, pursuant to 49 C.F.R. part 1013, under which the shares of SMRC will be deposited into a voting trust to prevent any unauthorized control pending TCW's receipt of Board authority to continue in control of SMRC. Petitioners request expedited consideration of the petition for exemption so as to avoid any adverse effects on operations due to lengthy interim control of SMRC by a trustee pursuant to a voting trust agreement.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 11323, prior approval by the Board is required for the acquisition of control of a rail carrier by any number of rail carriers (49 U.S.C. § 11323(a)(3)), or by a person that is not a rail carrier, but that controls any number of rail carriers (49 U.S.C. § 11323(a)(5)). Under 49 U.S.C. § 10502(a), 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 here to carry out the RTP. Rather, an exemption will promote the RTP by minimizing the need for Federal regulatory control over the proposed transaction and reducing regulatory barriers to entry. 49 U.S.C. §§ 10101(2) and (7). Also, by allowing SMRC to become part of an existing family of short line carriers (with attendant experience and administrative support), the exemption will help to ensure that a sound rail transportation system will continue to meet the needs of the shipping public, help to foster sound economic conditions in transportation, enhance coordination between rail carriers, and encourage efficient management. 49 U.S.C. §§ 10101 (4), (5), and (9). Other aspects of the RTP will not be adversely affected.

³ Petitioners state that the Trust inadvertently failed to obtain Board authority to control RRVW and Rutland when the Estate transferred the stock of RRVW to the Trust but that the Trust will file for such authority in the near future.

Regulation of the transaction is not needed to protect shippers from an abuse of market power.⁴ According to petitioners, common carrier rail service will continue to be available to shippers who request it. Shippers should not experience a reduction in access to rail service, because SMRC will handle the traffic that is currently being handled by SMRR. Therefore, there should be no adverse impacts on rail operations or lessening of rail competition. Moreover, no shipper (or any other entity) has objected to this continuance in control transaction or SMRC's proposed acquisition and operation of the Line in Docket No. FD 35641. Nevertheless, to ensure that the shippers are informed of our action, we will require petitioners to serve a copy of this decision on all shippers on the Line to be acquired and operated by SMRC within five days of the service date of this decision and to certify to the Board that they have done so.

The transaction as proposed involves the continuance of control of SMRC by TCW, the Estate, and the Trust. However, because the Trust does not now have any ownership rights in SMRC, it appears that the only parties currently eligible to "continue in control" of SMRC are TCW and the Estate, which currently control SMRC. Moreover, the Trust will need to obtain Board authority in any event to acquire TCW,⁵ any rail carrier subsidiaries of TCW, or any other rail carrier, under 49 U.S.C. § 11323, and under the facts presented to us, the acquisition of control of TCW would include control over SMRC. Therefore, we will deny petitioners' request for a continuance-in-control exemption as it applies to the Trust.⁶

Under 49 U.S.C. § 10502(g), we may not use our 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 of the carriers involved are Class III carriers.

This transaction 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.

⁴ Given our finding regarding the probable effect of the transaction on market power, we need not determine whether the transaction is limited in scope.

⁵ As discussed above, petitioners indicate that the Estate will soon distribute TCW stock to the Trust, so that the Trust will control TCW in the near future.

⁶ As noted by petitioners, no Board authority has been sought for the Trust's acquisition of control of RRVW and Rutland. We admonish the Trust to do so promptly and the petitioners to comply with all statutory and regulatory requirements in the future.

As indicated, petitioners have requested expedited action on its petition for exemption. Based on our analysis above, the request is reasonable. Accordingly, this decision is being issued on an expedited basis, and the exemption is being made effective on August 7, 2012.

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 TCW's and the Estate's continuance in control of SMRC.
2. The petition for exemption, as it applies to the Trust, will be denied.
3. Petitioners shall serve a copy of the decision on all shippers on the Line within five days after the service date of this decision and certify to the Board that they have done so.
4. Notice will be published in the Federal Register on July 23, 2012.
5. This exemption will be effective on August 7, 2012. Petitions for stay must be filed by July 26, 2012. Petitions to reopen must be filed by August 1, 2012.

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