

SERVICE DATE - MAY 17, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34026

SUMMIT VIEW, INC.–CONTROL EXEMPTION–MAHONING VALLEY  
RAILROAD COMPANY

Decided: May 11, 2001

By petition filed April 6, 2001, Summit View, Inc. (Summit or petitioner) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 11323, et seq., to acquire control of Mahoning Valley Railroad Company (MVRC). We will grant the exemption.

BACKGROUND

Summit is a noncarrier holding company that controls eight Class III rail carriers: Ohio Central Railroad, Inc., Ohio Southern Railroad, Inc., Youngstown Belt Railroad, Inc., Warren & Trumbull Railroad, Ohio & Pennsylvania Railroad (O&P), Youngstown & Austintown Railroad, Pittsburgh & Ohio Central Railroad, and Columbus & Ohio River Railroad Company. MVRC, a Class III carrier, is a small switching carrier that moves freight between connecting roads and various shipping points, including manufacturing facilities operated by LTV Steel Company (LTV). All of MVRC's operations are concentrated in the immediate vicinity of Youngstown, OH. MVRC's capital stock is owned by Cuyahoga Valley Railway Company which, in turn, is a wholly owned subsidiary of LTV.<sup>1</sup>

According to petitioner, while ownership of MVRC would change after the transaction, the nature and scope of MVRC's operations, including in particular the frequency of service, will remain the same or improve. Service will continue to be provided to and from all stations on MVRC's lines, and no shipper currently served by or accessible to MVRC will experience a reduction in or other adverse alteration of its transportation options. Finally, petitioner asserts that MVRC will benefit from incorporation into the Summit railroad family in the form of capital support and economies of scale and scope.

Pursuant to 49 CFR 1013, petitioner submitted a proposed voting trust agreement to be

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<sup>1</sup> LTV, MVRC's largest shipper, is presently engaged in voluntary reorganization proceedings under Chapter 11 of the U.S. Bankruptcy Code. LTV has sought and secured conditional approval from the Bankruptcy Court to sell MVRC and other non-core assets as promptly as practicable in order to streamline LTV's operations and emerge a stronger and more efficient organization by selling a number of assets that are either unproductive or nonessential.

entered into by Summit and MVRC for review and an informal opinion by Board staff. As stated in the agreement, Summit intends to consummate a purchase of 100% of the shares of MVRC and, in order to avoid creating a violation of 49 U.S.C. 11323, petitioner intends to place all of the MVRC shares in an irrevocable voting trust free from the control or influence of petitioner. The voting trust is to be used to avoid unauthorized control by Summit of MVRC, pending Board action on the petition for exemption.<sup>2</sup>

## DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 11323(a)(5), 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 Board approval.<sup>3</sup> 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 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 is not necessary to carry out the rail transportation policy. Rather, an exemption will promote that policy by minimizing the need for Federal regulatory control over the transaction and reducing regulatory barriers to entry [49 U.S.C. 10101(2) and (7)] and ensuring that a sound rail transportation system will continue to meet the needs of the shipping public [49 U.S.C. 10101(4)]. By enabling Summit to integrate MVRC into its existing family of Class III carriers, with attendant capital, logistics and administrative support, an exemption will foster sound economic conditions in transportation, ensure effective coordination among carriers, and encourage efficient management [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be adversely affected.

Regulation of the transaction is not needed to protect shippers from an abuse of market power as there will be no adverse impact on rail operations or any lessening of rail competition as a result of the proposed transaction. Through this transaction, a small switching carrier that operates in a limited geographic area is being added to a group of Class III carriers that are already controlled by Summit. There will be no change in MVRC's existing operations and no shipper will lose rail service options as a result of the transaction. The more likely result would be an enhancement of shippers' rail service options. MVRC would move from being an isolated element of a larger corporate enterprise, itself engaged in court-supervised reorganization, to an

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<sup>2</sup> On April 12, 2001, the Board's Secretary, Vernon A. Williams, issued an informal opinion in which he concluded that the voting trust "effectively insulates Summit and its subsidiaries and affiliates from unauthorized control of MVRC."

<sup>3</sup> Petitioner states that, were it not for the fact that MVRC's tracks connect with those of an existing Summit subsidiary, O&P, the acquisition of control would be automatically exempt pursuant to 49 CFR 1180.2(d)(2).

integrated member of an efficient and well-capitalized regional railroad family. Given our finding regarding the probable effect of the transaction on market power, we need not determine whether the transaction is limited in scope.

To ensure that MVRC's shippers are informed of our action, we will require Summit to serve a copy of this decision on them within 5 days of the service date of this decision and to certify to us that it has done so.

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 sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, we may not, under the statute, impose labor protective conditions. Accordingly, we will not do so.

This 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.

Petitioner requests expedited action on the petition for exemption because of the uncertainty arising from LTV's bankruptcy proceedings, and the need to provide a prompt and efficient transition of control so as to reassure shippers and affected communities of the continued availability of reliable service. The request is reasonable. Accordingly, we will grant the request by shortening the effective date of the exemption from the normal 30-day period to 15 days.

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, et seq., Summit's acquisition of control of MVRC.
2. Summit shall serve a copy of this decision on MVRC's shippers within 5 days of the service date of this decision and certify to the Board that it has done so.
3. Notice will be published in the Federal Register on May 17, 2001.
4. This exemption will be effective on June 1, 2001. Petitions for stay must be filed by May 22, 2001. Petitions for reconsideration must be filed by June 6, 2001.

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By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams  
Secretary