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FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35537]

Genesee & Wyoming Inc. — Acquisition of Control Exemption—Arizona Eastern
Railway Company

Genesee & Wyoming Inc. (GWI), a noncarrier, has filed a verified notice of exemption to acquire control of Arizona Eastern Railway Company (AZER), a Class III rail carrier. GWI intends to consummate the transaction on September 1, 2011, the effective date of the exemption (30 days after the exemption was filed).

GWI directly or indirectly controls one Class II rail carrier, Buffalo & Pittsburgh Railroad, Inc., and 57 Class III rail carriers operating in 23 states. For a complete list of these Class III carriers, and the states within which they operate, see GWI's notice of exemption filed on August 2, 2011. The notice is available on the Board's website at "WWW.STB.DOT.GOV".

AZER currently owns and operates approximately 200 route miles of rail line between Bowie and Miami, Ariz. and between Lordsburg, N.M. and Clifton, Ariz. AZER is a wholly owned subsidiary of Permian Basin Railways, Inc. (Permian Basin), which in turn is a wholly owned subsidiary of Iowa Pacific Holdings, LLC, a noncarrier

holding company. As a result of the proposed transaction, GWI will obtain control of AZER through the purchase of all of AZER's stock from Permian Basin.¹

Applicants represent that: (1) the rail lines to be acquired by GWI do not connect with any other railroad in the corporate family;² (2) the transaction is not part of a series of anticipated transactions that would connect AZER's rail lines with any other railroad in the GWI 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).³

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 transaction is subject to the labor protection requirements of 49 U.S.C. § 11326(b).

¹ GWI states that if it acquires the stock prior to the September 1, 2011 effective date of the exemption, it would place the stock into an irrevocable, independent voting trust pursuant to 49 C.F.R. § 1013, pending the effectiveness of the exemption. GWI states that it would notify the Board of any such occurrence and would submit a copy of the agreement governing the voting trust for AZER's stock.

² AZER's lines are located in Arizona and New Mexico. GWI's carriers do not currently operate in the states of Arizona or New Mexico.

³ A redacted Stock Purchase Agreement was filed with the notice of exemption. The Applicants concurrently filed a motion for protective order pursuant to 49 C.F.R. § 1104.14(b) to allow the filing under seal of the unredacted Stock Purchase Agreement. That motion will be addressed in a separate decision.

If the verified 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 will not automatically stay the effectiveness of the exemption. Stay petitions must be filed no later than August 25, 2011 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35537, 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 Thomas J. Litwiler, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606.

Board decisions and notices are available on our website at
“WWW.STB.DOT.GOV.”

Decided: August 12, 2011.

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