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SERVICE DATE – AUGUST 2, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35063

MICHIGAN CENTRAL RAILWAY, LLC
– ACQUISITION AND OPERATION EXEMPTION –
LINES OF NORFOLK SOUTHERN RAILWAY COMPANY

Decided: July 30, 2007

AGENCY: Surface Transportation Board.

ACTION: Notice of commencement of proceeding, revocation of exemption, and issuance of procedural schedule.

SUMMARY: By this decision and notice, the Board is commencing a proceeding under 49 U.S.C. 10502(b) and 49 CFR 1121.1 to consider the petition of Michigan Central Railway, LLC (MCR) to exempt its acquisition and operation of certain railroad lines of the Norfolk Southern Railway Company (NSR) in Michigan and Indiana. To allow this proceeding to go forward, we are granting MCR's petition to revoke the application of the class exemption, which would otherwise apply to this transaction. Our revocation of the class exemption as to this transaction will allow us to consider the transaction in greater detail than it could be considered under our regulations for processing notices invoking the class exemption, and it will facilitate the participation of interested persons pursuant to the procedural schedule we are adopting.

DATES: Comments on MCR's petition for exemption may be filed by any interested person by September 4, 2007. Replies by MCR and NSR are due by September 17, 2007. The Board will issue its final decision on October 11, 2007.

ADDRESSES: Any filing submitted in this proceeding must refer to STB Finance Docket No. 35063 and may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing must attach a document and otherwise comply with the instructions found on the Board's "www.stb.dot.gov" website, at the "E-FILING" link. Any person submitting a filing in the traditional paper format must submit an original and 10 paper copies of the filing (and also an electronic version) to: Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, one copy of each filing in this proceeding must be sent (and may be sent by e-mail only if service by e-mail is acceptable to the recipient) to: Karl Morell, Of Counsel, Ball Janik, LLP, Suite 225, 1455 F Street, N.W., Washington, DC 20005; and G. Paul Moates, Sidley & Austin LLP 1501 K Street, N.W., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 245-0395. [Federal Information Relay Service (FIRS) for the hearing impaired: 1-800-877-8339.]

SUPPLEMENTARY INFORMATION: By petition filed on July 13, 2007, in STB Finance Docket No. 35063, MCR requests, pursuant to 49 U.S.C. 10502, an exemption under the Board's formal (case-by-case) exemption procedures at 49 CFR 1121.1 to authorize it to acquire some 299 miles of rail line from NSR,¹ to acquire through assignment from NSR some 85.5 miles of existing trackage rights² and lease rights,³ and to acquire yards and stations that are related to this track.⁴ A map of the area to be served by MCR appears in Exhibit 1 attached to its petition for exemption.

If MCR becomes a carrier pursuant to the exemption sought here, it will grant limited local trackage rights to NSR, approval for which is being sought in a notice of exemption filed in a related proceeding.⁵ If the proposed transaction is consummated, MCR would become a Class II rail carrier and would hire approximately 118 employees to operate these rail lines. Under that trackage rights agreement, NSR will retain the right to serve, under certain specified conditions, the General Motors facilities at Grand Rapids and Lansing, MI, and the RSOC of Michigan LLC

¹ The NSR rail lines run generally between Elkhart, IN and Grand Rapids, MI; between Kalamazoo, MI, and a point near Ypsilanti, MI; and between Jackson, MI, and Lansing, MI. More specifically, the rail lines to be acquired run between the following mileposts: milepost KH 1.4 at Elkhart, IN, and milepost KH 27.4 at Three Rivers, MI; milepost FB 27.3 at Three Rivers and milepost FB 102.3 at Grand Rapids, MI; milepost MH 143.03 at CP BO in Kalamazoo, MI, and milepost MH28 at CP Ypsi; and milepost LZ 0.0 at Jackson, MI, and milepost LZ 36.9 at Lansing, MI.

² MCR will acquire through assignment by NSR 80 miles of trackage rights over the line of the National Railroad Passenger Corporation (Amtrak) between milepost MH 143.3 near Kalamazoo, MI, and milepost MH 222.8 at the Michigan/Indiana border (east of Michigan City, IN). Additionally, MCR will exercise NSR's trackage rights over lines of CSX Transportation, Inc. (CSXT) between: mileposts 0.0 - 1.0 M9 in Grand Rapids, MI; and mileposts LZ 36.8 - 37.9 and 0.0 - 2.2 HZ in Lansing, MI. MCR will also exercise NSR's trackage rights over a Canadian National Railway Company (CN) line between mileposts 176.7 - 175.5 in Battle Creek, MI. MCR will host trackage rights to CSXT for a short stretch of track between mileposts LZ 36.8 - 37.9 in Lansing, MI. Finally MCR will host trackage rights for CN between mileposts UP 2.2 - UP 0.0, KY 0.0 - KY 0.4, and FB 54.0 - FB 56.3 in Kalamazoo, MI.

³ Specifically, MCR will become lessor of the rail line leased to CN between Kalamazoo (MP 9.51) and Pavilion (MP 0.4).

⁴ MCR plans to acquire and to operate NSR yards at: Kalamazoo, MI (Botsford); Grand Rapids, MI (Hughart); Jackson, MI; Lansing, MI (Saginaw); and Battle Creek (Hinman), MI.

⁵ See NSR's notice invoking the class exemption at 49 CFR 1180.2(d)(7), currently filed on July 13, 2007, in Norfolk Southern Railway Company – Trackage Rights Exemption – Michigan Central Railway, LLC, STB Finance Docket No. 35065 (STB served July 27, 2007).

automotive steel processing facility at Holt, MI, as well as any subsequent occupant(s) of any of these facilities.

In another related proceeding, Watco Companies Inc. and its wholly owned subsidiary, Watco Transportation Services, Inc. (collectively, Watco), have filed a notice of exemption to continue in control of MCR upon MCR's becoming a rail carrier through its proposed acquisition and operation of these rail lines.⁶ NSR will contribute these rail lines, trackage rights, and related assets to MCR, subject to certain traffic restrictions, in exchange for a noncontrolling 33% membership interest in MCR. Watco will contribute \$18 million in cash and locomotives over time to MCR in exchange for a controlling 67% membership interest. According to MCR, it will invest more than \$20 million in these lines over the first 3 years, provide responsive service to local shippers, and develop a new traffic base. MCR states that there will be no adverse effect on overhead traffic and that no shipper will suffer a reduction in competition as a result of the proposed transaction.

MCR simultaneously filed a petition asking the Board to revoke the class exemption at 49 CFR 1150.31 that otherwise would apply to allow the agency to consider the transaction in greater detail than it could be considered under the regulations for processing notices invoking the class exemption. Under 49 U.S.C. 10502(d), the Board may revoke an exemption when it finds that application of regulation is necessary to carry out the Rail Transportation Policy of 49 U.S.C. 10101. We make such a finding here based on the particular circumstances of this transaction. Thus, the class exemption at 49 CFR 1150.31 will be revoked as to this transaction to permit MCR to proceed with seeking Board approval for the transaction through its petition for exemption.

As part of its revocation petition, MCR also has proposed a procedural schedule providing for comments from interested persons 50 days from the date MCR filed its petition, replies by MCR and NSR 65 days from the date the petition was filed, and a final Board decision by 90 days from the date the petition was filed. The proposed schedule will facilitate the participation of interested persons in this proceeding and will provide a timely process for our issuing a final decision. Accordingly, we will adopt the proposed procedural schedule.

MCR's petition for exemption raises issues that require consideration by the Board. Pursuant to 49 U.S.C. 10502(b), the Board must determine whether to begin a proceeding within 90 days of the filing of a petition for exemption. A decision must then be issued within 9 months of the date when the proceeding is formally instituted. The 90th day in this proceeding is October 11, 2007. In compliance with the statute, this order will be issued, and a proceeding will be formally instituted. The deadlines for the submission of comments are set forth above.

Board decisions, notices, and filings are available on its website at www.stb.dot.gov.

⁶ See Watco's notice invoking the class exemption at 49 CFR 1180.2(d), concurrently filed on July 13, 2007, in Watco Companies, Inc., and Watco Transportation Services, Inc. – Continuance in Control Exemption – Michigan Central Railway, LLC, STB Finance Docket No. 35064 (STB served July 27, 2007).

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

It is ordered:

1. MCR's petition to revoke the class exemption is granted.
2. Under 49 U.S.C. 10502(b) a proceeding is commenced to hear MCR's petition for exemption under the formal (case-by-case) exemption procedures at 49 CFR 1121.1, and comments in this proceeding will be due by the dates set forth above.
3. This decision will be published in the Federal Register on August 2, 2007.
4. This decision is effective on August 2, 2007.

By the Board, Chairman Nottingham, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon Williams
Secretary