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SERVICE DATE – DECEMBER 30, 2008

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35177

GENESEE & WYOMING INC.—CONTROL EXEMPTION—  
ALIQUIPPA & OHIO RIVER RAILROAD CO., THE COLUMBUS AND OHIO RIVER RAIL  
ROAD COMPANY, THE MAHONING VALLEY RAILWAY COMPANY, OHIO AND  
PENNSYLVANIA RAILROAD COMPANY, OHIO CENTRAL RAILROAD, INC., THE  
PITTSBURGH & OHIO CENTRAL RAILROAD COMPANY, OHIO SOUTHERN  
RAILROAD, INC., YOUNGSTOWN & AUSTINTOWN RAILROAD, INC., THE  
YOUNGSTOWN BELT RAILROAD COMPANY, AND THE WARREN & TRUMBULL  
RAILROAD COMPANY

Decided: December 22, 2008

By petition filed October 1, 2008, Genesee & Wyoming Inc. (GWI) 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 Summit View, Inc. (Summit View), and thereby to acquire control of 10 Class III railroads (Ohio Central Railroads) controlled by Summit View.<sup>1</sup> The Board will grant the exemption, subject to employee protective conditions.

BACKGROUND

GWI is a noncarrier holding company that directly or indirectly controls Buffalo & Pittsburgh Railroad, Inc., a Class II rail carrier, which operates in New York and Pennsylvania, and 28 Class III railroads,<sup>2</sup> and has control over two limited liability companies: Maryland and

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<sup>1</sup> Simultaneously with this petition, GWI filed a petition for exemption to acquire indirect control of Georgia Southwestern Railroad, Inc. (STB Finance Docket No. 35183). That transaction involves the Georgia Southwestern Railroad, which does not connect to the Ohio Central Railroads, and is unrelated to this transaction. That petition was granted by a Board decision served on December 15, 2008, with that exemption scheduled to become effective on January 14, 2009. Also on October 1, 2008, GWI filed a motion for a protective order, which the Board granted by decision served on October 10, 2008.

<sup>2</sup> The 28 Class III railroads are: Arkansas, Louisiana & Mississippi Railroad Company, which operates in Arkansas and Louisiana; Chattahoochee Bay Railroad, Inc., which operates in Georgia and Alabama; Chattahoochee Industrial Railroad, which operates in Georgia; The Chattooga and Chickamauga Railway Company, which operates in Tennessee and Georgia; Columbus and Greenville Railway Company, which operates in Mississippi; Commonwealth Railway, Inc., which operates in Virginia; Corpus Christi Terminal Railroad, Inc., which

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Pennsylvania, LLC, and Yorkrail, LLC, non-operating Class III rail carriers that separately hold the rail assets over which York operates. GWI also controls additional railroads with two of its wholly owned subsidiaries that are noncarrier holding companies, RP Acquisition Company One (RP1) and RP Acquisition Company Two (RP2).<sup>3</sup> Summit View is a noncarrier that controls the Ohio Central Railroads.<sup>4</sup> The railroads operate in Pennsylvania and Ohio, several of which connect with one another. All shares in Summit View are owned by Jerry Joe Jacobsen. GWI proposes to acquire control of the 10 railroads and operate them as part of the GWI system.

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operates in Texas; Dansville and Mount Morris Railroad Company; which operates in New York; First Coast Railroad, Inc., which operates in Florida and Georgia; Fordyce & Princeton Railroad Company, which operates in Arkansas; Genesee & Wyoming Railroad Company, Inc., which operates in New York; Golden Isles Terminal Railroad, Inc., which operates in Georgia; Illinois & Midland Railroad, Inc., which operates in Illinois; Louisiana & Delta Railroad, Inc., which operates in Louisiana; Luxapalila Valley Railroad, Inc., which operates in Mississippi and Alabama; Maryland Midland Railway, Inc., which operates in Maryland; Portland & Western Railroad, Inc., which operates in Oregon; Rochester & Southern Railroad, Inc., which operates in New York; Salt Lake City Southern Railroad Company, which operates in Utah; Savannah Port Terminal Railroad Inc., which operates in Georgia; South Buffalo Railway Company, which operates in New York; St. Lawrence & Atlantic Railroad Company, which operates in Vermont, New Hampshire, and Maine; St. Lawrence & Atlantic Railroad (Quebec), Inc., which operates in Vermont; Talleyrand Terminal Railroad, Inc., which operates in Florida; Tazewell & Peoria Railroad, Inc., which operates in Illinois; Utah Railway Company, which operates in Colorado and Utah; Willamette and Pacific Railroad, Inc., which operates in Oregon; and York Railway Company (York), which operates in Pennsylvania.

<sup>3</sup> GWI, RP1, and RP2 control Rail Partners, L.P. (Rail Partners), a noncarrier limited partnership that holds all non-managing membership interests or all limited partnership interests (as applicable) in each of the Class III rail carriers that GWI and RP1 and RP2 control together. RP1 acquired the entire general partnership interest of Rail Partners and RP2 acquired the entire limited partnership interest of Rail Partners. GWI and RP1 control eight Class III rail carriers formed as limited partnerships: Atlantic & Western Railway, Limited Partnership; East Tennessee Railway, L.P.; Galveston Railroad, L.P.; Georgia Central Railway, L.P.; Little Rock & Western Railway, L.P.; Tomahawk Railway, Limited Partnership; Valdosta Railway, L.P.; and Wilmington Terminal Railroad, Limited Partnership. GWI and RP2 control KWT Railway Inc., a Class III rail carrier, and five Class III rail carriers organized as limited liability companies: AN Railway, L.L.C; The Bay Line Railroad, L.L.C; Meridian & Bigbee Railroad, L.L.C., Riceboro Southern Railway, L.L.C.; and Western Kentucky Railway, L.L.C.

<sup>4</sup> The 10 Class III railroads are: Aliquippa & Ohio River Railroad Co.; The Columbus & Ohio River Rail Road Company; The Mahoning Valley Railway Company; Ohio and Pennsylvania Railroad Company; Ohio Central Railroad, Inc.; Ohio Southern Railroad, Inc.; The Pittsburgh & Ohio Central Railroad Company; The Warren & Trumbull Railroad Company; Youngstown & Austintown Railroad, Inc.; and The Youngstown Belt Railroad Company.

On October 1, 2008, GWI acquired Summit View (and the 10 Class III railroads), by purchasing all the stock of Summit View from Jerry Joe Jacobson, pursuant to a Stock Purchase Agreement. Because GWI cannot control Summit View without prior approval by the Board, the stock was immediately transferred to Norman Carlson as the Voting Trustee under a Voting Trust Agreement, dated October 1, 2008.

GWI states that it does not anticipate making any material changes in the scope or nature of the railroads' operations or of the maintenance of their lines. GWI states that senior managers of the Ohio Central Railroads will report to a regional manager of GWI, facilitating coordination in the operation and marketing of the Ohio Central Railroads' services. GWI further states that there would be no reduction in service options; rather, shippers would benefit from being on the GWI system, with access to enhanced financial resources, more robust management support for operations and safety systems, and a broader set of relationships with Class I railroads.

On November 3, 2008, Daniel Van Epps filed a comment and requested several conditions regarding various line segments owned and/or operated by Summit View in Ohio.<sup>5</sup> GWI filed a reply on November 19, 2008.

#### 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. 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.

An exemption from the prior approval requirements of 49 U.S.C. 11323, *et seq.*, is consistent with the standards of 49 U.S.C. 10502. Detailed scrutiny of the proposed transaction is not necessary to carry out the rail transportation policy. Rather, an exemption will promote that policy by ensuring that a sound rail transportation system will continue to meet the demands of the shipping public [49 U.S.C. 10101(4)] and by fostering sound economic conditions in transportation, ensuring effective coordination among carriers, and encouraging efficient management [49 U.S.C. 10101(5) and (9)]. Specifically, an exemption will enhance the efficient management of GWI and the Ohio Central Railroads, to the benefit of shippers that use the Ohio Central Railroads. Other aspects of the rail transportation policy will not be adversely affected.

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<sup>5</sup> Though Mr. Van Epps filed his comment as a "Motion to Compel," it would be more appropriate to treat his filing as a comment and request for conditions, based on the content of the filing.

Regulation of this transaction is not necessary 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. As noted, there will be no material changes in GWI's existing operations or line maintenance. 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. Given our market power finding, it is not necessary to determine whether the transaction is limited in scope.

Mr. Van Epps's allegations stem from an operating agreement between the Ohio Rail Development Commission and GWI that governs the operation of the Panhandle Rail Line in Ohio. Mr. Van Epps seeks to restructure ownership and operation patterns of these lines to "ensure unimpeded rail access," after the transaction. Mr. Van Epps fails to show how any of his allegations or requested conditions relate to the transaction. Nor does Mr. Van Epps address the specifics of GWI's petition or any of the criteria the Board weighs in granting an exemption. Therefore, Mr. Van Epps's request for conditions will be denied.

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 carriers, the exemption is subject to the labor protection requirements of 49 U.S.C. 11326(b).

This 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.

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, the above-described transaction is exempted from the prior approval requirements of 49 U.S.C. 11323, et seq., subject to the labor protective conditions at 49 U.S.C. 11326(b).
2. The request for conditions by Mr. Van Epps is denied.
3. Notice will be published in the Federal Register on December 30, 2008.

4. This exemption will be effective on January 29, 2009. Petitions to stay must be filed by January 12, 2009. Petitions to reopen must be filed by January 21, 2009.

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

Anne K. Quinlan  
Acting Secretary