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SERVICE DATE - NOVEMBER 21, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34107

GENESEE & WYOMING INC.–CONTROL EXEMPTION–SOUTH BUFFALO
RAILWAY COMPANY

Decided: November 14, 2001

By petition filed October 1, 2001, Genesee & Wyoming Inc. (GWI 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 South Buffalo Railway Company (SB). We will grant the exemption.

BACKGROUND

GWI is a noncarrier holding company that directly controls Buffalo & Pittsburgh Railroad, Inc. (BPRR), a Class II carrier that operates primarily in New York and Pennsylvania and connects with SB near Buffalo, NY. GWI also directly controls 13 Class III rail carriers: Allegheny & Eastern Railroad, Inc., Bradford Industrial Rail, Inc., Corpus Christi Terminal Railroad, Inc., Dansville and Mount Morris Railroad Company, Genesee & Wyoming Railroad Company, Inc., Golden Isles Terminal Railroad, Inc., Savannah Port Terminal Railroad, Inc., Illinois & Midland Railroad, Inc., Louisiana & Delta Railroad, Inc., Pittsburgh & Shawmut Railroad, Inc., Portland & Western Railroad, Inc., Rochester & Southern Railroad, Inc., and Willamette & Pacific Railroad, Inc. GWI indirectly controls three Class III rail carriers through its ownership of noncarrier Rail Link, Inc.: Carolina Coastal Railway, Inc., Commonwealth Railway, Inc., and Talleyrand Terminal Railroad, Inc.

GWI seeks to acquire all of the stock of SB, a Class III railroad that operates over approximately 12 miles of line, and extensive switching and yard track, in the Buffalo area. SB is wholly owned by its primary customer, Bethlehem Steel Corporation (Bethlehem). SB additionally serves Ford Motor Company and Republic Technologies. In addition to BPRR, SB interchanges with other carriers that include Norfolk Southern Railway Company, CSX Transportation, Inc., Canadian National Railway Company, and Canadian Pacific Railway Company.

Bethlehem has agreed to sell 100 percent of the capital stock of SB to GWI. While ownership of SB would change, GWI anticipates that the nature and scope of SB's operations, including the frequency of service, would remain the same or improve. That is because SB would be able to avail itself of capital support offered by the GWI organization. Service would continue to be provided to and from all shippers on SB's lines. No shipper currently served by or

accessible to SB would experience a reduction or other adverse change in its transportation options.

Pursuant to 49 CFR 1013, petitioner submitted a proposed voting trust agreement to be entered into by GWI and William P. Quinn acting as trustee. Placing SB's stock into a voting trust will permit petitioner to close the transaction and avoid creating a violation of 49 U.S.C. 11323. Petitioner acknowledges that GWI would be precluded from taking control of SB and fully integrating the carrier into GWI's railroad family as long as the trust remains in effect.

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.¹ 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 [49 U.S.C. 10101(2)] and ensuring that a sound rail transportation system will continue to meet the needs of the shipping public [49 U.S.C. 10101(4)]. Specifically, an exemption will permit GWI to ensure the continuation of rail service currently provided by SB while permitting Bethlehem to extricate itself from ownership of a railroad it no longer wishes to retain. In addition, by enabling GWI to integrate SB 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 GWI. There will be no change in SB'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. SB would move from being a subsidiary of a steel

¹ Petitioner notes that, were it not for the fact that SB's tracks connect with those of an existing GWI subsidiary, BPRR, the acquisition of control would be exempt pursuant to 49 CFR 1180.2(d)(2). Due to the nature of their systems and the connection between them, petitioner asserts, SB and BPRR do not compete for the same traffic.

manufacturer to being an integrated member of a 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.

Notwithstanding these findings, to ensure SB's shippers are informed of our action, we will require GWI 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. Because the transaction involves one Class II and one or more Class III rail carriers, our grant will be made subject to the labor protection requirements of 49 U.S.C. 11326(b).

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.

GWI requests expedited action on the petition for exemption because of adverse financial circumstances in the steel industry and the economy at large. GWI seeks to acquire, and Bethlehem seeks to divest itself of, the SB property as soon as possible. Petitioner contends that the longer SB's purchase remains pending, the more difficult it becomes for Bethlehem to move forward in pursuit of economic stability, assured that it has permanently divested itself of the responsibilities and expense of owning a railroad it no longer has any interest in running. Petitioner further states that expedited action is in the best interest of shippers who use and rely on SB's service. Petitioner contends that, while Bethlehem may historically have been SB's largest shipper, it is not the only current or prospective customer. Petitioner further contends that the longer SB's future remains unsettled, the greater the anxiety and uncertainty will be among those dependent upon SB's rail service, and the higher the risk of traffic diversions and other adverse economic impacts on the communities adjacent to SB's lines. 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. GWI's acquisition of control of SB, subject to the labor protective conditions at 49 U.S.C. 11326(b).

2. GWI shall serve a copy of this decision on SB'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 November 21, 2001.

4. This exemption will be effective on December 6, 2001. Petitions for stay must be filed by November 26, 2001. Petitions for reconsideration must be filed by December 11, 2001.

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

Vernon A. Williams
Secretary