

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35568

GENESEE & WYOMING INC.–CONTINUANCE IN CONTROL EXEMPTION–HILTON &
ALBANY RAILROAD, INC.

Digest:¹ This decision allows Genesee & Wyoming Inc. to continue in control of Hilton & Albany Railroad, Inc. (HAL) upon HAL's becoming a Class III carrier.

Decided: December 15, 2011

By petition filed on November 18, 2011, Genesee & Wyoming Inc. (GWI) seeks an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. §§ 11323-25 to continue in control of Hilton & Albany Railroad, Inc. (HAL), upon HAL's becoming a rail carrier in a related transaction involving the lease from Norfolk Southern Railway Company (NSR) and operation of a 55.5-mile rail line between Hilton and Albany, Ga. (the line).² We will grant the exemption, subject to labor protective conditions.

BACKGROUND

GWI is a noncarrier holding company that directly or indirectly controls Buffalo & Pittsburgh Railroad, Inc., a Class II rail carrier, and 58 Class III rail carriers.³ As relevant here, the NSR line that HAL will lease and operate connects directly with 3 rail lines controlled by GWI: Chattahoochee Bay Railroad (CHAT), Chattahoochee Industrial Railroad, and Georgia Southwestern Railroad, and indirectly with a fourth, the Bay Line Railroad (via CHAT) (collectively, the connecting lines).

GWI states that, because the line to be operated by HAL is the outlet for 4 existing GWI subsidiary railroads, GWI's control of HAL will allow for better coordination and improved efficiency of service. According to GWI, service will be improved because HAL has agreed, as part of its lease, to upgrade the line. GWI further notes that HAL will be able to take advantage

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² See Hilton & Albany R.R.—Lease & Operation Exemption—Norfolk S. Ry., FD 35567 (STB served Dec. 2, 2011).

³ A list of all the railroads controlled by GWI is contained in Exhibit A of its petition.

of the administrative services and localized marketing presence that GWI and its short lines can provide.

GWI requests expedited handling of its petition for exemption so that it would have the authority to control HAL at the time HAL proposes to commence operations on January 1, 2012, and to avoid the cost and complexity of creating a voting trust in which to place the stock of HAL until continuance in control authority is effective.

DISCUSSION AND CONCLUSIONS

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 approval by the Board under 49 U.S.C. § 11323(a)(5). 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 (RTP) 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 through an application for review and approval under 49 U.S.C. §§ 11323-25 is not necessary here to carry out the RTP. Rather, an exemption will promote the RTP by minimizing the need for Federal regulatory control over the proposed transaction, ensuring that a sound rail transportation system will continue to meet the needs of the shipping public, and reducing regulatory barriers to entry. 49 U.S.C. §§ 10101(2), (4), and (7). Also, by enabling GWI to integrate HAL into its existing family of Class III carriers (with attendant experience, resources, capital, and administrative support), an exemption will help to foster sound economic conditions in transportation, ensure effective competition and coordination between rail carriers, and encourage efficient management. 49 U.S.C. §§ 10101(5) and (9). Other aspects of the RTP will not be adversely affected.

Regulation of the transaction is not needed to protect shippers from an abuse of market power.⁴ Shippers should not experience a reduction in access to rail service, because HAL will operate and handle the traffic currently handled by NSR. In addition, it appears that shippers on each of the 4 connecting carriers in the GWI family also have access to connections with CSX Transportation, Inc.⁵ Therefore, there will be no adverse impacts on rail operations or lessening of rail competition. Moreover, no shipper or other interested entity has objected to this continuance in control transaction or HAL's proposed lease and operation of the NSR line in

⁴ Given our finding regarding the probable effect of the transaction on market power, we need not determine whether the transaction is limited in scope.

⁵ See The Official Railway Equipment Register, Vol. 126, No. 4 (April 2011). We also note that there are no interchange commitments contained in the lease. See HAL's Notice of Exemption at 3 (filed Nov. 18, 2011), in Hilton & Albany Inc.—Lease & Operation Exemption—Norfolk S. Ry., FD 35567.

Docket No. FD 35567. Nevertheless, to ensure that the shippers are informed of our action, we will require GWI to serve a copy of this decision on all shippers on the line to be leased and operated by HAL, and on the 4 connecting lines in the GWI family, within 4 days of the service date of this decision, and to certify to the Board 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) and Wisconsin Central Ltd.—Acquisition Exemption—Lines of Union Pacific Railroad, 2 S.T.B. 218 (1997).

This continuance in control transaction is exempt from environmental reporting requirements under 49 C.F.R. § 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 C.F.R. § 1105.8(b)(3) because it will not substantially change the level of maintenance of railroad properties.

As indicated, GWI has requested expedited action on its petition for exemption so that it can continue in control of HAL by the time HAL begins its operations. Based on our analysis above, the request is reasonable. Accordingly, this decision is being issued on an expedited basis, and the exemption is being made effective December 30, 2011.

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. §§ 11323-25 GWI's continuance in control of HAL, subject to the labor protective conditions at 49 U.S.C. § 11326(b) and Wisconsin Central Ltd.—Acquisition Exemption—Lines of Union Pacific Railroad, 2 S.T.B. 218 (1997).

2. GWI shall serve a copy of the decision on all shippers on the line to be leased and operated by HAL and on the 4 connecting lines in the GWI family within 4 days after 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 December 21, 2011.

4. This exemption will be effective on December 30, 2011. Petitions for stay must be filed by December 27, 2011. Petitions to reopen must be filed by December 27, 2011.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.