

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33340

STATESRAIL, INC.--ACQUISITION OF CONTROL EXEMPTION--  
KYLE RAILWAYS INC.

STB Finance Docket No. 33341

KAURI L.L.C.--CONTINUANCE IN CONTROL EXEMPTION--STATESRAIL, INC.

Decided: April 4, 1997

By petition filed January 15, 1997, StatesRail, Inc. (StatesRail) and its parent, Kauri L.L.C. (Kauri), both noncarriers, seek exemptions under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 11323-25: (1) in STB Finance Docket No. 33340, for StatesRail to acquire via stock purchase control of Kyle Railways Inc. (Kyle), a holding company that owns 100 percent of the stock and controls five nonconnecting Class III railroads; and (2) in STB Finance Docket No. 33341, for Kauri's continuance in control of StatesRail, because Kauri currently controls StatesRail L.L.C., which owns and controls the Kiamichi Railroad Company L.L.C. (Kiamichi), a nonconnecting Class III carrier. We will grant the exemptions.

BACKGROUND

StatesRail has entered into an agreement to acquire 100 percent of the stock and control of Kyle from Kyle's individual stockholders, by which transaction StatesRail will also acquire control of five Class III railroads owned and controlled by Kyle. The five railroads are: (1) The Arizona Eastern Railway Company, which operates over 133.5 route miles between Miami, AZ, and Bowie, AZ; (2) The Eastern Alabama Railway, which operates over 25.4 route miles between Talladega, AL, and Gantt's Junction near Sylacauga, AL; (3) The Kyle Railroad Company, which operates over 695.5 route miles within the states of Colorado, Kansas, and Nebraska between Mahaska, NE, and Limon, CO, and over leased track between Salina, KS, and Lenora and Stockton, KS, between Beloit, KS, and Yuma Junction, KS, and between Burr Oak, KS, and Blue Rapids, KS; (4) The San Joaquin Valley Railroad Company, which operates over 299.3 route miles between Bakersfield, CA, and the Fresno area in the San Joaquin Valley, and over 36.3 miles of track between Ducor, CA, and Exeter, CA, and between Jastro, CA, and Oil City, CA, owned by the Tulare Valley Railroad Company pursuant to a contract to operate; and (5) SWKR Operating Co., Inc., dba San Pedro Southwestern Railway, which operates over 68.64 route miles between Bensen, AZ, and Douglas Yard near Bisbee, AZ. Kyle also controls the Lahaina Kaanapali & Pacific Railroad, an unregulated six-mile excursion railroad on the Island of Maui in Hawaii.<sup>1</sup> Kiamichi, a Class III freight carrier controlled by StatesRail and Kauri, operates over 229.2 route miles in the states of Arkansas, Oklahoma, and Texas between Madill, OK, and Hope, AR.

Petitioners assert that approval of these transactions will yield several benefits to the rail transportation system, including efficiencies resulting from consolidation of certain functions and other activities. Consummation of StatesRail's acquisition of the stock of Kyle was scheduled for January 15, 1997. Upon consummation, the Kyle stock was to be placed in an independent, irrevocable voting trust in accordance with 49 CFR 1013, pending a decision from the Board exempting the acquisition of control and continuance in control transactions.

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<sup>1</sup> Kyle also currently controls the Yreka Western Railroad Company (Yreka Western), a Class III railroad in Yreka, CA, which is not involved in these transactions. Before StatesRail acquires control of Kyle, Kyle will distribute the stock of Yreka Western to Kyle's shareholders; therefore, neither StatesRail nor Kauri will acquire direct or indirect control of Yreka Western.

## DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10502, we must exempt a transaction or service from regulation if we find that: (1) continued 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 of limited scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

Regulation of these transactions is not necessary to carry out the transportation policy of 49 U.S.C. 10101. By allowing the Board to consider the acquisition of control of Kyle by StatesRail and the continued control of StatesRail by Kauri under expedited procedures, an exemption would "minimize the need for Federal regulatory control" [49 U.S.C. 10101(2)]. By facilitating Kyle's sale and StatesRail's purchase, the exemption serves "to reduce barriers to entry into and exit from" the rail industry [49 U.S.C. 10101(7)]. Because Kauri is an experienced railroad holding company, an exemption allowing Kauri to control Kyle through StatesRail will preserve the operational efficiency of Kyle and thereby "foster sound economic conditions in transportation" [49 U.S.C. 10101(5)] and promote "efficient management of railroads" [49 U.S.C. 10101(9)]. Other aspects of the rail transportation policy are not affected adversely.

Regulation is not needed to protect shippers from the abuse of market power. None of the Kyle railroads involved interconnects with any other or with the Kiamichi or even operates in the same states. Each railroad serves its own local industries and each has an entirely different traffic mix from that of the others. The transactions involve only a change in stock ownership and control with no resulting changes in the operation of the railroads. Given our market power finding, we need not also determine whether these transactions are limited in scope.

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. Section 11326(c), however, does not provide for labor protection for transactions under section 11324 and 11325 that involve only Class III rail carriers. Because these transactions involve only Class III rail carriers, the Board, under the statute, may not impose labor protective conditions.

The transactions are exempt from environmental reporting requirements under 49 CFR 1105.6(c)(2)(i) because they will not result in a significant change in carrier operations. Similarly, these transactions are exempt from historic reporting requirements under 49 CFR 1105.8(b)(3) because they 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, we exempt from the prior approval requirements of 49 U.S.C. 11323-25 the acquisition of control via stock purchase of Kyle Railways Inc. by StatesRail, Inc. and the continuance in control of StatesRail, Inc. by Kauri L.L.C.
2. Notice will be published in the *Federal Register* on April 17, 1997.
3. These exemptions will be effective on May 17, 1997.

4. Petitions to stay must be filed by April 28, 1997, and petitions to reopen must be filed by May 7, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams  
Secretary