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SERVICE DATE - NOVEMBER 20, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33678

EMONS TRANSPORTATION GROUP, INC., AND EMONS RAILROAD GROUP, INC.
--CONTINUANCE IN CONTROL EXEMPTION--
ST. LAWRENCE & ATLANTIC RAILROAD (QUEBEC) INC.

Decided: November 13, 1998

By petition filed October 28, 1998, Emons Transportation Group, Inc., and Emons Railroad Group, Inc. (petitioners) seek an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 11323-25 for their continuance in control of St. Lawrence & Atlantic Railroad (Quebec) Inc. (SL&AQ). SL&AQ will become a Class III rail carrier upon consummation of an acquisition transaction that is the subject of a notice of exemption in St. Lawrence & Atlantic Railroad (Quebec) Inc.--Acquisition and Operation Exemption--Line of Canadian National Railway Company, STB Finance Docket No. 33677 (STB served Nov. 19, 1998, and published the same day in the Federal Register). We will grant the exemption.

BACKGROUND

Petitioners are noncarriers that currently control through stock ownership four Class III rail common carriers: Maryland and Pennsylvania Railroad Company (M&P), Yorkrail, Inc. (YRK), Penn Eastern Rail Lines, Inc. (PERL), and St. Lawrence & Atlantic Railroad Company (SL&A).¹ M&P owns and operates 26 miles of rail line between York and Hanover, PA. YRK owns and operates approximately 16 miles of rail line between York and Porters Sideling, PA. PERL owns or operates 45 miles of rail line consisting of seven segments in southeastern Pennsylvania.

SL&A owns or operates 165 miles of rail line between Portland, ME, and the United States/Canada border at Norton, VT. SL&A acquired the line from Canadian National Railway Company (CN) in 1989. At that time, CN retained overhead trackage rights between the United States/Canada border (milepost 15.83 on CN's Sherbrooke Subdivision) and Island Pond, VT (milepost 0.00 on CN's Sherbrooke Subdivision), a distance of 15.83 miles. CN retained the trackage rights so that it and SL&A could efficiently effect interchange at Island Pond.

SL&AQ is a new entity, controlled by petitioners, which plans to acquire certain CN rail lines in Canada that terminate at the United States/Canada border near Norton. In addition, in the above-noted finance exemption proceeding, SL&AQ is seeking to acquire the overhead trackage

¹ Emons Transportation Group, Inc. controls all four carriers; Emons Railroad Group, Inc., controls YRK, PERL, and SL&A.

rights that CN retained on the 15.83-mile line segment between Norton and Island Pond. It is SL&AQ's intention to operate as a Class III rail carrier, providing the same overhead rail service as CN currently provides. Specifically, it intends to handle traffic originating at points in Canada and destined to points south of Island Pond, as well as traffic originating at points in the United States and destined to points north of the border. CN does not serve any shippers on the subject line segment; nor does SL&AQ propose to serve any. SL&A, which owns and operates the subject line segment, serves the one shipper on the segment and intends to continue doing so. No material change in operations on the line is proposed.

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 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 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 and reducing regulatory barriers to entry [49 U.S.C. 10101(2) and (7)]; ensuring that a sound rail transportation system will continue to meet the needs of the shipping public [49 U.S.C. 10101(4)]; and fostering sound economic conditions in transportation, ensuring effective coordination among carriers, and encouraging 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 noted, there will be no change in rail operations or any lessening of rail competition as a result of the proposed transaction. Given our finding regarding the probable effect of the transaction on market power, we need not determine whether the transaction is limited in scope.

To ensure that the shipper on the line is informed of our action, we will require petitioners to serve a copy of this decision on it within 5 days of the service date of this decision and to certify to us that they have 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. Under 49 U.S.C. 11326(c), however, we may not impose labor protection for transactions under 49 U.S.C. 11324-25 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, labor protective conditions may not be imposed.

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.

Due to business considerations, petitioners request that the Board make its decision effective on or before November 30, 1998. We will accommodate the request.

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 petitioners' continuance in control of SL&AQ.
2. Petitioners shall serve a copy of this decision on the line's shipper within 5 days of the service date and certify to the Board that they have done so.
3. Notice will be published in the Federal Register on November 20, 1998.
4. This exemption will be effective on November 30, 1998. Petitions for stay must be filed by November 25, 1998. Petitions for reconsideration must be filed by December 21, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary