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SERVICE DATE - JULY 15, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33595

DELAWARE AND HUDSON RAILWAY COMPANY, INC.—ACQUISITION AND
OPERATION EXEMPTION—CONSOLIDATED RAIL CORPORATION

Decided: June 29, 1998

By petition filed June 8, 1998,¹ Delaware and Hudson Railway Company, Inc. (D&H)² seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10902 to acquire from Consolidated Rail Corporation (Conrail) 1.7 miles of rail line in Lackawanna County, PA. We will exempt the transaction, subject to the labor protection requirements of 49 U.S.C. 10902(d).

BACKGROUND

Pursuant to a purchase agreement entered into by D&H and Conrail, D&H will acquire by purchase approximately 1.7 route miles of Conrail's Taylor Yard Industrial Track between milepost 135.84 and milepost 136.7, in Lackawanna County, PA. Included in this is the segment of Conrail's Keyser Wye track between milepost 135.84 and milepost 136.37. As the map attached to the petition shows, the line is in the shape of a "V" with one long and one short arm, with the end of the short arm connected to the long arm.

As part of the purchase agreement, D&H agreed to grant Conrail overhead trackage rights over a portion of the Taylor Secondary, Keyser Valley Industrial Track, and Wye Track. Those rights were the subject of a notice of exemption in Consolidated Rail Corporation—Trackage Rights Exemption—Delaware and Hudson Railway Company, Inc., STB Finance Docket No. 33599 (STB

¹ The petition replaced a notice of exemption filed May 27, 1998. The notice was incorporated by reference into the petition.

² D&H, a Class II rail carrier, owns or leases and operates approximately 1,400 miles of rail lines. D&H's Class II status will continue after consummation of the transaction.

served June 16, 1998).³ Because Conrail has transferred or will transfer its rights to RBMN, D&H and RBMN will be the operators of the rail line and yard trackage acquired in this transaction.

DISCUSSION AND CONCLUSIONS

Under section 10902, a Class II rail carrier's acquisition of a rail line requires prior Board approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation if we find that: (1) application of a provision of law administered by the Board 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) application of such provision is not necessary to protect shippers from the abuse of market power.

An exemption from the requirements of section 10902 for D&H's acquisition is consistent with the standards set forth in section 10502. Detailed scrutiny of the transaction, through an application for review and approval under section 10902, is not necessary to carry out the rail transportation policy established in 49 U.S.C. 10101. D&H maintains that the administrative expense and potential delay that would accompany compliance with the Board's regulatory requirements of 49 U.S.C. 10902 to acquire the 1.7-mile line would be unreasonable. Thus, the exemption will reduce the need for Federal regulatory control over the rail transportation system, and will expedite regulatory decision making [49 U.S.C. 10101(2)].

Regulation is not necessary to protect shippers from an abuse of market power. D&H states that service to shippers will continue unchanged, and that the acquisition is not expected to have any effect upon RBMN's operations. However, to ensure that the shippers on the subject lines are informed of our action, we will require D&H to serve a copy of this decision on them within 5 days of the decision's service date and to certify to us that it has done so. Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

Under section 10502(g), we may not use our exemption authority to relieve a rail carrier of its obligation to protect the interests of adversely affected employees. Section 10902(d) provides for labor protection in line acquisitions by Class II rail carriers. As a condition to this exemption, any employees affected by the acquisition will be protected as required by 49 U.S.C. 10902(d), subject to the standards and procedures established in Wisconsin Central Ltd.--Acquisition Exemption--Lines of Union Pacific Railroad Company, STB Finance Docket No. 33116 (STB served Apr. 17,

³ Conrail previously conveyed to the Reading, Blue Mountain & Northern Railroad (RBMN) all of its property and operating rights in the vicinity of Taylor Yard, including the Taylor Secondary, Keyser Valley Industrial Track, and the trackage rights to Bridge 60 in Scranton, and has leased to RBMN all of its rights to the tracks in Taylor Yard which DHC is acquiring in this proceeding. See Reading Blue Mountain & Northern Railroad Company--Acquisition and Operation Exemption--Consolidated Rail Corporation, STB Finance Docket No. 33004 (STB served Aug. 30, 1996).

1997). As required by 49 CFR 1121.4(h), D&H has certified to the Board that it has posted a notice of the transaction at the workplace of potentially affected employees and served the same on the national organizations representing them.

D&H states that this transaction is excepted from environmental reporting requirements under 49 CFR 1105.6(c)(2)(i) and that an historic report is not required under 49 CFR 1105.8(b)(1). Our Section of Environmental Analysis has reviewed the transaction and has concluded that this transaction is exempt from the environmental and historic reporting requirements.⁴

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 D&H's acquisition of the above-described lines from the prior approval requirements of 49 U.S.C. 10902, subject to the labor protective conditions implementing 49 U.S.C. 10902(d) as provided in this decision.
2. D&H must serve a copy of this decision on all shippers on the above-described lines within 5 days after the service date of this decision and certify to the Board it has done so.
3. Notice will be published in the Federal Register on July 15, 1998.
4. This exemption will be effective on August 14, 1998.⁵

⁴ This transaction does not involve a significant change in operations. D&H has no plans to dispose of or alter historic properties, and further Board approval would be required for D&H to abandon any service.

⁵ The exemption could not have been effective in any event before July 26, 1998 (60 days after D&H's May 27, 1998 certification to the Board that it had posted and served the requisite notice for the benefit of employees).

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4. Petitions to stay must be filed by July 30, 1998. Petitions to reopen must be filed by August 10, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary