

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35573

WATCO HOLDINGS, INC. AND WATCO TRANSPORTATION SERVICES, L.L.C.—  
ACQUISITION OF CONTROL EXEMPTION—WISCONSIN & SOUTHERN RAILROAD,  
L.L.C.

Digest:<sup>1</sup> The Board denies a request to revoke the previously granted authority for Watco Holdings, Inc. and Watco Transportation Services, L.L.C. to acquire the Wisconsin & Southern Railroad, L.L.C.

Decided: March 21, 2012

On November 29, 2011, Watco Holdings, Inc. (Watco Holdings) and Watco Transportation Services, L.L.C. (Watco Services) (collectively, Watco) filed a verified notice of exemption pursuant to 49 C.F.R § 1180.2(d)(2) for Watco Holdings to acquire indirect control, and for Watco Services to acquire direct control, of the Wisconsin & Southern Railroad, L.L.C. (WSOR), a Class II railroad. The exemption became effective on December 29, 2011, and the transaction was consummated on January 1, 2012.

On January 6, 2012, Wisconsin State Senator Tim Cullen filed a request for reconsideration of the granted exemption. Senator Cullen supports reconsideration to provide the State of Wisconsin additional time to investigate a number of issues (such as the transaction's effect, if any, on Watco's shipping rates; the impact on existing service to Wisconsin businesses; and the level of capital investment Watco intends to make in Wisconsin's rail infrastructure) and to take a position on the transaction. On January 24, 2012, Watco replied in opposition to the request.

DISCUSSION AND CONCLUSIONS

Because, under our regulatory scheme, an exempted transaction becomes effective on an expedited basis, Senator Cullen's request to reconsider the grant of authority made pursuant to the exemption is properly treated as a petition to revoke that exemption authority under 49 U.S.C. § 10502(d).<sup>2</sup> Under 49 U.S.C. § 10502(d), an exemption may be revoked, in whole or

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<sup>1</sup> 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. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

<sup>2</sup> See, e.g., Elk River R.R.—Constr. & Operation Exemption—Clay & Kanawha Cntys., W. Va., FD 31989, slip op. at 1 n.3 (STB served Apr. 11, 1997).

in part, if the Board finds that regulation of the transaction is necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. § 10101. When, as here, an exemption has become effective, a revocation request is treated as a petition to reopen and revoke, and, under 49 C.F.R. § 1115.3(b), must state in detail whether revocation is supported by material error, new evidence, or substantially changed circumstances. See New York Cent. Lines—Aban. Exemption—in Montgomery & Schenectady Cntys., AB 565 (Sub-No. 14X) (STB served Jan. 22, 2004). The party seeking revocation has the burden of showing that regulation is necessary to carry out the RTP, 49 C.F.R. § 1121.4(f), and petitions to revoke must be based on reasonable, specific concerns demonstrating that reconsideration of the exemption is warranted and more detailed scrutiny of the transaction is necessary. See Consol. Rail Corp.—Trackage Rights Exemption—Mo. Pac. R.R., FD 32662 (STB served June 18, 1998).

Here, Watco met the requirements for a class exemption for acquisition of a nonconnecting carrier under 49 C.F.R. § 1180.2(d)(2). The Board has found that, as a class, such transactions meet the standard for an exemption under 49 U.S.C. § 10502 and thus do not require prior Board review and approval to carry out the RTP. See 49 C.F.R. § 1180.2(d). Senator Cullen's filing does not oppose the acquisition, but rather seeks revocation to provide additional time to investigate a number of issues. However, the filing has not presented specific concerns demonstrating that revocation of the exemption under our regulatory standards is warranted and that additional regulation of the already-consummated transaction is necessary to carry out the RTP. Nor has it been shown that revocation is supported by material error, new evidence, or substantially changed circumstances.

Therefore, the request to reopen and revoke will be denied.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The request to reopen and revoke the exemption is denied.
2. This decision is effective on its date of service.

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