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SERVICE DATE – FEBRUARY 5, 2015

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SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35738

THE PULLMAN SLEEPING CAR COMPANY, LLC—PETITION FOR EXEMPTION FROM  
49 U.S.C. SUBTITLE IV

Digest:<sup>1</sup> The Board finds that it has jurisdiction over a company providing sleeping car service and dining and lounge facilities on passenger trains, but exempts that company from most of the Board’s regulations.

Decided: February 3, 2015

The Pullman Sleeping Car Company, LLC (Pullman or Petitioner), seeks a finding from the Board that its passenger rail service is not subject to the Board’s regulatory oversight. In the alternative, Pullman seeks an exemption from 49 U.S.C. Subtitle IV should the Board determine that the Board has jurisdiction over Pullman’s operations. According to Pullman, the Board should grant a blanket exemption from the Board’s regulations because Pullman has no desire or ability to provide freight rail service.

As discussed further below, the Board finds that the service Pullman offers is subject to Board jurisdiction. However, given the factual circumstances here, it is reasonable to exempt Pullman from most of the Board’s regulations. We will therefore exempt Pullman’s operations, as described in the petition, from Subtitle IV, except for those provisions specifically precluded

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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. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

from exemption by statute.<sup>2</sup> We will also exempt Pullman’s parent corporation from 49 U.S.C. § 11323, so that it need not seek authority to continue in control of Pullman.

## BACKGROUND

Pullman, a wholly-owned corporate subsidiary of Iowa Pacific Holdings, LLC (IPH), provides interstate passenger service between New Orleans, La., and Chicago, Ill.<sup>3</sup> Pursuant to private car tariffs issued by the National Railroad Passenger Corporation (Amtrak), Pullman moves sleeping cars and dining and lounge facilities in Amtrak train consists.<sup>4</sup> Although Pullman’s cars are attached to Amtrak trains pulled by Amtrak locomotives, Pullman individually markets and sells tickets for its passenger service to the general public.

Pullman has been operating since September 2012, and states that it had not previously sought authority for its operations because it did not believe that such authority was required.<sup>5</sup> Pullman claims that it is now seeking authority, in part, because of its similarity to the operator in American Orient Express Railway—Petition for Declaratory Order, FD 34502 (American Orient Express I) (STB served Dec. 29, 2005), aff’d sub nom. American Orient Express Railway v. STB (American Orient Express II), 484 F.3d 554 (D.C. Cir. 2007). There, the Board found that it had jurisdiction over the operations of a company providing passenger service by moving sleeping cars and dining and lounge facilities in Amtrak train consists. In that case, on its own motion, the Board exempted the operator from the licensing provisions at 49 U.S.C. § 10901. Pullman argues that should it be found subject to Board jurisdiction, its operations should be exempted from all of the provisions of 49 U.S.C. Subtitle IV.

## DISCUSSION AND CONCLUSIONS

Under § 10501(a), the Board has jurisdiction over “transportation” by “rail carrier” as part of the interstate rail network. Pullman’s operations meet this definition.

Transportation clearly is a part of Pullman’s vacation packages. “Transportation” means, among other things, services related to the movement of passengers, property, or both by rail. 49 U.S.C. § 10102(9). The service Pullman offers includes the movement of passengers by rail.

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<sup>2</sup> The Board is statutorily precluded from exempting Pullman’s operations from certain aspects of Subtitle IV, such as labor protection and some damage liability issues. See 49 U.S.C. §§ 10502(e) and (g).

<sup>3</sup> Pet. 3.

<sup>4</sup> Id. at 3-6.

<sup>5</sup> Id. at 4, 7-8.

The statute does not require that transportation encompass movement from an origin to destination as its sole or main purpose, only that movement be involved. 49 U.S.C. §§ 10102(9), 10501(a)(2). Moreover, the transportation Pullman offers is interstate, between Chicago and New Orleans.

Additionally, Pullman is a rail carrier—“a person providing common carrier railroad transportation for compensation.” 49 U.S.C. § 10102(5). The transportation Pullman offers is railroad transportation, as “railroad” embraces not only road owned and operated directly, but also road operated under an agreement. 49 U.S.C. § 10102(6)(B). Pullman’s arrangement with Amtrak is such an agreement. And Pullman “holds itself out to the general public as engaged in the business of transporting persons or property from place to place for compensation” and is therefore a common carrier. American Orient Express II, 484 F.3d at 557. Pullman notes that it offers its service to a very limited clientele.<sup>6</sup> However, in American Orient Express I, the Board concluded that the passenger carrier there need not hold itself out to serve all of the public at all times to qualify as a common carrier; rather, it may establish a business niche, as Pullman has done here. As in American Orient Express I, although Pullman “only targets a subset of the public, it nevertheless holds itself out to the groups to which it markets its services.” American Orient Express I, slip op. at 5.

Pullman acknowledges the similarities to American Orient Express I<sup>7</sup> but nevertheless states that it does not believe its service constitutes common carrier rail service.<sup>8</sup> Pullman argues it is not a common carrier because Amtrak is a common carrier and there are many companies owning cars qualified to operate on Amtrak that also sell transportation in those cars.<sup>9</sup> But the fact that there are other entities capable of providing the same service as Pullman does not change Pullman’s status. Nor does Pullman distinguish the facts here from those in American Orient Express I.

In sum, for the reasons discussed above and as set forth in American Orient Express I and American Orient Express II, we find that the service Pullman provides is “transportation” by “rail carrier” and thus subject to our jurisdiction under 49 U.S.C. § 10501. Having done so, we next must consider whether and to what extent regulation is appropriate.

Under 49 U.S.C. § 10502, we exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101 (RTP); and (2) either (a) the transaction or service is of limited scope, or (b)

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<sup>6</sup> Pet. 13.

<sup>7</sup> Pet. 9-10.

<sup>8</sup> Pet. 7.

<sup>9</sup> Id.

regulation is not necessary to protect shippers from the abuse of market power. In American Orient Express I, the Board exempted the common carrier there from the Board's licensing requirements under 49 U.S.C. § 10901. Here, Pullman asks for a broader, blanket exemption from Subtitle IV. In support, Pullman points to multiple cases where such authority has been granted.<sup>10</sup>

We find that regulation by the Board is not necessary to carry out the RTP. An exemption here from Subtitle IV would be consistent with 49 U.S.C. § 10101(2) by minimizing the need for regulatory control over transportation for which such control is unnecessary. In addition, consistent with 49 U.S.C. §§ 10101(5), (7) & (9), an exemption would foster sound economic conditions in transportation and encourage efficient management by allowing Pullman to enter and exit passenger routes without the need for regulatory approval. Pullman has stated that it may adopt new routes in the future over which it would provide the same service and that an exemption from the requirement of seeking Board authority in each instance would allow Pullman more flexibility in meeting demands for its services.<sup>11</sup> Requiring Pullman to come to the Board for authority each time it proposes a new route would be an unnecessary burden. American Orient Express I, slip op. at 7. Other aspects of the rail transportation policy would not be adversely affected.

Also, Pullman's service would not result in market power abuse as the record indicates that its customers have many other transportation options available to them (*i.e.*, other luxury passenger service, numerous flights, charter bus trips, etc.). And Pullman's proposal is also of limited scope in that it is only offering its luxury passenger service via Amtrak between designated points for select customers.

Accordingly, Pullman's request for exemption from Subtitle IV for the operations as described in its petition will be granted, with the exception of those specifically precluded from exemption by statute. The exemption granted by this decision, however, applies only to Pullman's operations as described in its petition (*i.e.* passenger railcars attached to Amtrak trains providing passenger rail service), and does not extend to any new activities, or new types of operations or services, that Pullman may offer in the future or to any service offered in conjunction with any carrier other than Amtrak.<sup>12</sup> Though broader than the exemption granted in American Orient Express I, this decision is consistent with the findings there that requiring Board approval is an unnecessary burden for this specific type of service.

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<sup>10</sup> Pullman relies primarily upon Metro North Commuter Railroad Company—Acquisition Exemption—The Maybrook Line (Metro North), FD 32639, *et al.*, (ICC served Jan. 13, 1995). Although, unlike the situation here, Metro North involved the acquisition of a rail line for commuter operations, the Board there reaffirmed its ability to grant rail carriers exemptions from multiple provisions of the Interstate Commerce Act, *i.e.*, blanket exemptions.

<sup>11</sup> Pet. 9.

<sup>12</sup> In other words, Pullman would need to seek prior Board approval in such situations.

Furthermore, we will exempt IPH from 49 U.S.C. § 11323 regarding its ownership of Pullman. The purpose of that section of the statute is to ensure that common ownership of rail carriers does not result in one rail carrier being “managed in the interest of the other rail carrier.” 49 U.S.C. § 11323(c). As Pullman’s operations are unrelated to IPH’s ownership of freight lines, such regulation is unnecessary as neither could be managed in the interest of the other.<sup>13</sup>

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

It is ordered:

1. Pullman’s operations, as described in its petition, are exempted from 49 U.S.C. Subtitle IV, except for those provisions statutorily precluded from exemption.
2. IPH is exempted from 49 U.S.C. § 11323 regarding its ownership of Pullman.
3. The exemption granted to Pullman here shall also apply to any future route that Pullman may undertake, so long as the operations and services are as those described by Pullman in its petition.
4. This decision is effective on the date of service.

By the Board, Acting Chairman Miller and Vice Chairman Begeman.

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<sup>13</sup> IPH and several of its subsidiaries do provide some tourist and/or railroad passenger service (Petition 4), but from the record it does not appear that any of those services come under our jurisdiction.