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SERVICE DATE – DECEMBER 23, 2014

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35857

HOUSATONIC RAILROAD COMPANY, INC. AND HOUSATONIC TRACK COMPANY,
INC.—INTRA-CORPORATE FAMILY TRANSACTION EXEMPTION

Digest:¹ Housatonic Railroad Company, Inc. (HRRC) and Housatonic Track Company, Inc. (TRACK) do not need retroactive Board authorization for their 2000 merger because TRACK is not a carrier and the merger is not subject to the Board's jurisdiction.

Decided: December 22, 2014

The Board is granting the motion filed by Housatonic Railroad Company, Inc. (HRRC), a Class III common carrier, and Housatonic Track Company, Inc. (TRACK), a Massachusetts corporation (collectively, applicants), to dismiss the notice of exemption filed in this proceeding for an intra-corporate family transaction that took place in 2000 (2000 merger).

BACKGROUND

HRRC and TRACK were wholly owned subsidiaries of Housatonic Transportation Company (HTC), a noncarrier holding company. HRRC and TRACK state that they merged in 2000, under applicable state law, with HRRC as the surviving corporate entity. Applicants state that they relied on agency precedent finding that TRACK was not a common carrier when they proceeded with the 2000 merger without prior Board approval.²

¹ 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).

² See Housatonic R.R.—Operation Exemption—Lines of Conn. Dep't of Transp. & Housatonic Track Co., FD 31780 (ICC served Dec. 28, 1990); Housatonic R.R.—Continuance in Control Exemption—Danbury Terminal R.R. & Housatonic R.R., FD 32163 (ICC served Oct. 5, 1993).

HRRC has reached an agreement to sell a 36.3-mile rail line to the Commonwealth of Massachusetts Department of Transportation (MassDOT).³ In furtherance of that transaction, on September 19, 2014, applicants filed a verified notice of exemption under 49 C.F.R. § 1180.2(d)(3) seeking retroactive authority for the 2000 merger. According to applicants, they filed the notice of exemption out of an abundance of caution to cure any potential regulatory defect in advance of the sale.

On October 17, 2014, the Board's Director of Proceedings served a decision holding this proceeding in abeyance and directing applicants to file either an explanation of what precedent they believe may indicate that Board approval was required or a motion to dismiss the notice with an explanation of why Board approval of the transaction was unnecessary. Applicants filed a motion to dismiss on November 4, 2014. For the reasons discussed below, we will grant the motion to dismiss.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 11323(a)(4), Board approval is required for the acquisition of control of at least two rail carriers by a person that is not a rail carrier. No Board action is required for an intra-corporate family transaction between a carrier and a noncarrier.

In Housatonic Railroad Co.—Operation Exemption—Lines of Connecticut Department of Transportation & Housatonic Track Co., FD 31780 (ICC served Dec. 28, 1990), the Board's predecessor, the Interstate Commerce Commission (ICC), determined that TRACK was not a rail carrier. The ICC confirmed that finding in Housatonic Transportation Co.—Continuance in Control Exemption—Danbury Terminal Railroad Co. & Housatonic Railroad Co., FD 32163 (ICC served Oct. 5, 1993) concluding that TRACK was not a rail carrier "within the meaning of the control provisions of § 11343" (now § 11323). As a result, the ICC concluded that HTC's control of TRACK did not require agency approval or exemption from approval.

These prior agency decisions concluding that TRACK is not a common carrier are final and were not appealed. TRACK represents that no changes occurred between the date of these two decisions and the date of the merger that would have changed the regulatory status of TRACK for purposes of § 11323. Because TRACK was a noncarrier, the intra-corporate family transaction in 2000 between TRACK and HRRC, a carrier, did not require Board approval. Accordingly, applicants' motion to dismiss the notice seeking authority for that 2000 merger will be granted.

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

³ See Mass. Dep't. of Transp.—Acquis. Exemption—Certain Assets of Housatonic R.R., FD 35866 (STB served Oct. 31, 2014); Mot. to Dismiss, Mass. Dep't. of Transp.—Acquis. Exemption—Certain Assets of Housatonic R.R., Docket No. FD 35866 (filed Oct. 16, 2014).

It is ordered:

1. The motion to dismiss the notice filed by HRRC and TRACK is granted and the notice is dismissed.

2. This decision will be effective on its service date.

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