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SERVICE DATE – OCTOBER 1, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34545

GENESEE & WYOMING, INC.–CONTINUANCE IN CONTROL EXEMPTION–TAZEWELL  
& PEORIA RAILROAD, INC.

Decided: September 30, 2004

By petition filed on August 30, 2004, Genesee & Wyoming, Inc. (GWI), a noncarrier, seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 11323-25 to continue in control of Tazewell & Peoria Railroad, Inc. (TPR), upon TPR's becoming a rail carrier in a related transaction involving the lease and operation of a line of the Peoria and Pekin Union Railway Company (PPU).<sup>1</sup> We will grant the continuance in control exemption.

BACKGROUND

GWI is a holding company that directly or indirectly controls Buffalo & Pittsburgh Railroad, Inc. (BPRR), a Class II carrier operating in New York and Pennsylvania, and the following operating Class III rail carriers: Arkansas, Louisiana & Mississippi Railroad Company, which operates in Arkansas and Louisiana; Chattahoochee Industrial Railroad, which operates in Georgia; Commonwealth Railway, Inc., which operates in Virginia; Corpus Christi Terminal Railroad, Inc., which operates in Texas; Dansville and Mount Morris Railroad Company, which operates in New York; Fordyce & Princeton Railroad Company, which operates in Arkansas; Genesee & Wyoming Railroad Company, Inc., which operates in New York; Golden Isles Terminal Railroad, Inc., which operates in Georgia; Illinois & Midland Railroad, Inc. (IMRR), which operates in Illinois; Louisiana & Delta Railroad, Inc., which operates in Louisiana; Portland & Western Railroad, Inc., which operates in Oregon; Rochester & Southern Railroad, Inc., which operates in New York; Salt Lake City Southern Railroad Company, which operates in Utah; Savannah Port Terminal Railroad, Inc., which operates in Georgia; South Buffalo Railway Company, which operates in New York; St. Lawrence & Atlantic Railroad Company, which operates in Vermont, New Hampshire, and Maine; St. Lawrence & Atlantic Railroad (Quebec), Inc., which operates in Vermont; York Railway Company (York), which operates

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<sup>1</sup> See Tazewell & Peoria Railroad, Inc.–Lease and Operation Exemption–Peoria and Pekin Union Railway Company, STB Finance Docket No. 34544 (STB served Sept. 28, 2004).

in Pennsylvania; Talleyrand Terminal Railroad, Inc., which operates in Florida; Utah Railway Company, which operates in Colorado and Utah; and Willamette & Pacific Railroad, Inc., which operates in Oregon. GWI also has control over four non-operating Class III rail carriers. Allegheny & Eastern Railroad, LLC, and Pittsburg & Shawmut Railroad, LLC separately hold certain rail assets over which BPRR operates. Maryland and Pennsylvania Railroad, LLC, and Yorkrail, LLC separately hold the rail assets over which York operates.

At the time of the filing of this exemption, GWI stated that TPR and PPU were close to reaching an agreement on the terms of the proposed lease transaction. In accordance with the labor notice requirements at 49 CFR 1150.32(e), consummation of that transaction will not occur before October 29, 2004.<sup>2</sup> To avoid placing TPR in a voting trust on that date, which GWI is prepared to do in order to prevent unlawful control, it requests expedited handling of its petition and a Board decision on or before October 29, 2004.

According to GWI, but for a single connection of the line to be leased by TPR and a line of GWI's subsidiary, IMRR, at Pekin, IL, this continuance in control transaction would qualify for the Board's class exemption at 49 CFR 1180.2(d)(2). GWI states that the general nature and scope of operations will remain the same with no current shipper facing a reduction in transportation options.

#### 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 (RTP) 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 RTP. Rather, an exemption will promote that policy by minimizing the need for Federal regulatory control over the proposed transaction, ensuring that a sound rail transportation system will continue to meet the needs of the shipping public, and reducing regulatory barriers to entry [49 U.S.C. 10101(2), (4), and (7)]. Also, by enabling GWI to integrate TPR into its existing family of Class II and III carriers, with attendant administrative and other support, an exemption will foster sound economic conditions in transportation and encourage efficient management [49 U.S.C. 10101(5) and (9)]. Other aspects of the RTP will not be adversely affected.

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<sup>2</sup> Id.

Regulation of the transaction is not needed to protect shippers from an abuse of market power. GWI has indicated that there will be no adverse impact on rail operations or lessening of rail competition. No shippers will lose access to rail service on the leased line. Nevertheless, to ensure that the shippers are informed of our action, we will require GWI to serve a copy of this decision on all shippers on the leased line within 5 days of the service date of this decision and to certify to us that it has done so. Given our finding regarding the probable effect of the transaction on market power, we need not determine whether the transaction is limited in scope.

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. Because the transaction involves one Class II and one or more Class III rail carriers, our grant will be made subject to the labor protection requirements of 49 U.S.C. 11326(b).

This continuance in 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.

As indicated, GWI has requested expedited action on its petition for exemption. According to GWI, successful operation of TPR will require GWI to make, as soon as possible, critical business decisions regarding TPR. GWI has advised that, although it has made arrangements to place the stock of TPR into an independent voting trust if it closes on the transaction prior to the Board's decision in this proceeding, interim control of the operations of TPR by a trustee would prevent GWI from giving TPR the specialized treatment it needs, and, therefore, would be detrimental. Under the circumstances cited by GWI, the request for expedited action is reasonable. Accordingly, this decision is being issued on an expedited basis and the exemption is being made effective in less than the normal 30 days.

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 GWI's continuance in control of TPR, subject to the labor protective conditions at 49 U.S.C. 11326(b).

2. GWI shall serve a copy of this decision on all shippers on the leased line within 5 days after the service date of this decision and certify to the Board that it has done so.

3. Notice will be published in the Federal Register on October 7, 2004.
4. This exemption will be effective on October 28, 2004. Petitions for stay must be filed by October 15, 2004. Petitions to reopen must be filed by October 22, 2004.

By the Board, Chairman Nober, Vice Chairman Mulvey, and Commissioner Buttrey.

Vernon A. Williams  
Secretary