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SERVICE DATE – OCTOBER 17, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34730

JAMES GEORGE AND J&JG HOLDING COMPANY, INC.–CONTINUANCE IN CONTROL  
EXEMPTION–SAGINAW BAY SOUTHERN RAILWAY COMPANY

Decided: October 14, 2005

By petition filed on September 1, 2005, James George (George) and J&JG Holding Company, Inc. (J&JG) (collectively referred to as Petitioners), seek 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 Saginaw Bay Southern Railway Company (SBS), upon SBS's becoming a rail carrier.<sup>1</sup> We will grant the exemption.

BACKGROUND

J&JG is a noncarrier holding company and a Michigan corporation controlled through a revocable, living trust by George, who is the trustee. Petitioners control a Class III rail carrier, Lake State Railway Company (Lake State), which operates in Michigan. Lake State's lines extend from Bay City, MI, north to Alpena and Gaylord, MI.

At the time of the filing of this exemption, Petitioners stated that SBS and CSXT were close to finalizing the terms of their agreement on the proposed acquisition transaction. In accordance with the labor notice requirements of 49 CFR 1150.32(e), consummation of that transaction will not occur before October 28, 2005.<sup>2</sup> To avoid placing the shares of SBS into a voting trust pending the Board's decision, Petitioners request expedited handling of their petition and a Board decision on or before October 28, 2005.

According to Petitioners, but for connection of the line to be acquired by SBS with those of Lake State, near Bay City, MI, this continuance in control transaction would qualify for the

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<sup>1</sup> In a related transaction, SBS filed a verified notice of exemption to acquire and operate 67 miles of rail line of CSX Transportation, Inc. (CSXT). See Saginaw Bay Southern Railway Company-Acquisition and Operation Exemption-Rail Line of CSX Transportation, Inc., STB Finance Docket No. 34729 (STB served Sept. 27, 2005).

<sup>2</sup> Id.

Board's class exemption at 49 CFR 1180.2(d)(2). Petitioners state that, while the possessor and operator<sup>3</sup> of the line will change, the general nature of the operations will remain the same.

## 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 Petitioners to integrate SBS into their existing family of Class 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.

Regulation of the transaction is not needed to protect shippers from an abuse of market power. Petitioners have 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 SBS line. Nevertheless, to ensure that the shippers are informed of our action, we will require Petitioners to serve a copy of this decision on all shippers on the line within 5 days of the service date of this decision and to certify to us that they have 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), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. However, Congress has determined that we may not impose labor protection for transactions occurring pursuant to 49 U.S.C. 11324-25 that involve only Class III rail carriers. 49 U.S.C. 11326(c). Because the transaction involves only Class III carriers, labor protective conditions may not be imposed.

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

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<sup>3</sup> SBS plans to provide service over the line through the use of Lake State as a contract operator.

under 49 CFR 1105.8(b)(3) because it will not substantially change the level of maintenance of railroad properties.

As indicated, Petitioners have requested expedited action on their petition for exemption. According to Petitioners, successful operation of the line by SBS will be enhanced if initial business decisions regarding the line can be made without the need to operate under a voting trust agreement. The request 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 Petitioners' continuance in control of SBS.
2. Petitioners shall serve a copy of this decision on all shippers on the line within 5 days after the service date of this decision and certify to the Board that they have done so.
3. Notice will be published in the Federal Register on October 20, 2005.
4. This exemption will be effective on October 28, 2005. Petitions for stay must be filed by October 21, 2005. Petitions to reopen must be filed by October 25, 2005.

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

Vernon A. Williams  
Secretary