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SERVICE DATE - FEBRUARY 5, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34453

GENESEE & WYOMING INC.
— CONTROL EXEMPTION —

ARKANSAS, LOUISIANA & MISSISSIPPI RAILROAD COMPANY
AND FORDYCE & PRINCETON RAILROAD COMPANY

Decided: January 29, 2004

By petition filed December 19, 2003, as supplemented by a letter filed January 23, 2004, Genesee & Wyoming Inc. (GWI) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 11323 *et seq.* to acquire control of two Class III rail carriers (Arkansas, Louisiana & Mississippi Railroad Company (AL&M) and Fordyce & Princeton Railroad Company (F&P)) by purchase of all of the stock of each from Georgia Pacific Corporation. The exemption will be granted.

BACKGROUND

As of January 23, 2004, GWI, a noncarrier holding company, controlled 24 rail carriers. (a) *Directly Controlled Carriers.* GWI directly controlled one Class II carrier (Buffalo & Pittsburgh Railroad, Inc., operating in New York and Pennsylvania) and 13 Class III carriers (Chattahoochee Industrial Railroad, operating in Georgia; Corpus Christi Terminal Railroad, Inc., operating in Texas; Dansville and Mount Morris Railroad Company, operating in New York; Genesee & Wyoming Railroad Company, Inc., operating in New York; Golden Isles Terminal Railroad, Inc., operating in Georgia; Illinois & Midland Railroad, Inc., operating in Illinois; Louisiana & Delta Railroad, Inc., operating in Louisiana; Portland & Western Railroad, Inc., operating in Oregon; Rochester & Southern Railroad, Inc., operating in New York; Savannah Port Terminal Railroad Inc., operating in Georgia; South Buffalo Railway Company, operating in New York; Utah Railway Company, operating in Colorado and Utah; and Willamette & Pacific Railroad, Inc., operating in Oregon). (b) *Indirectly Controlled Carriers.* GWI indirectly controlled 10 additional Class III carriers. Through its ownership of noncarrier Rail Link, Inc., GWI indirectly controlled two Class III carriers (Commonwealth Railway, Inc., operating in Virginia; and Talleyrand Terminal Railroad, Inc., operating in Florida). Through its ownership of Emons Transportation Group, Inc., which in turns owns Emons Railroad Group, Inc., GWI indirectly controlled three Class III carriers (St. Lawrence & Atlantic Railroad Company, operating in Vermont, New Hampshire, and Maine; St. Lawrence & Atlantic Railroad (Quebec) Inc., operating in Vermont; and York Railway Company, operating in Pennsylvania). Through

its ownership of Utah Railway Company, GWI indirectly controlled one Class III carrier (Salt Lake City Southern Railroad Company, operating in Utah). Through its ownership of Buffalo & Pittsburgh Railroad, Inc., GWI indirectly controlled two non-operating Class III carriers (Allegheny & Eastern Railroad, LLC; and Pittsburg & Shawmut Railroad, LLC) that separately hold certain rail assets over which Buffalo & Pittsburgh Railroad, Inc., operates. Finally, through its ownership of Emons Transportation Group, Inc., GWI indirectly controlled two non-operating Class III carriers (Maryland and Pennsylvania Railroad, LLC; and Yorkrail, LLC) that separately hold the rail assets over which York Railway Company operates.

On December 19th, as supplemented by the letter filed January 23rd, GWI filed the instant petition, which concerns the acquisition, by GWI, of control of two additional Class III carriers (F&P, which operates an approximately 57-mile line that runs between a point at or near Fordyce, AR, and a point at or near Crosset, AR; and AL&M, which operates an approximately 53-mile line that runs between a point at or near Crosset, AR, and a point at or near Monroe, LA) by purchase of all of the stock of each from Georgia Pacific Corporation. The AL&M/F&P transaction is not subject to handling under the 49 CFR 1180.2(d)(2) "class exemption" procedure because, although the lines operated by AL&M and F&P do not connect with any of the lines operated by any member of the GWI corporate family, the line operated by AL&M does connect with the line operated by F&P.

GWI advises that, once it has acquired from Georgia Pacific Corporation all of the stock of AL&M and F&P and taken control of AL&M and F&P: AL&M and F&P will continue to be operated in a coordinated manner to provide rail service to the shippers they now serve (one of which is Georgia Pacific Corporation) and to any other shippers that request service; no shipper currently served by AL&M or F&P will experience a reduction in transportation options as a result of the AL&M/F&P transaction; and, as members of the GWI family of shortline railroads, AL&M and F&P likely will be able to provide a more flexible and responsive service to local shippers, and will have a sounder financial future. GWI further advises that, after it has taken control of AL&M and F&P, AL&M will continue to interchange with The Kansas City Southern Railway Company at Monroe, and F&P will continue to interchange with Union Pacific Railroad Company at Fordyce.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 11323(a)(5), 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 Board approval. Under 49 U.S.C. 10502(a), however, the Board must exempt a transaction or service from regulation upon finding that: (1) regulation is not necessary to carry out the rail transportation policy 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 AL&M/F&P transaction is not necessary to carry out the rail transportation policy. Rather, an exemption will promote that policy by minimizing the need for Federal regulatory control over the transaction [49 U.S.C. 10101(2)] and by ensuring that a sound rail transportation system will continue to meet the needs of the shipping public [49 U.S.C. 10101(4)]. Specifically, an exemption will permit GWI to ensure the continuation of rail service currently provided by AL&M and F&P while permitting Georgia Pacific Corporation to extricate itself from ownership of two railroads it no longer wishes to retain. In addition, by enabling GWI to integrate AL&M and F&P into its existing corporate family, with attendant capital, logistics, and administrative support, an exemption will foster sound economic conditions in transportation, ensure effective coordination among carriers, and encourage efficient management [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be adversely affected.

Regulation of the transaction is not needed to protect shippers from an abuse of market power, as there will be no adverse impact on rail operations or any lessening of rail competition as a result of the AL&M/F&P transaction. Through this transaction, two small carriers that operate in a limited geographic area are being added to a group of carriers that are already controlled by GWI. There will be no change in the existing operations of AL&M or F&P, and no shipper will lose rail service options as a result of the transaction. The more likely result would be an enhancement of shippers' rail service options, as AL&M and F&P are integrated into the GWI railroad family. And, in view of the finding regarding the probable effect of the transaction on market power, there is no need to determine whether the transaction is limited in scope.

Notwithstanding these findings, to ensure that shippers now served by AL&M and/or F&P are informed of this decision, GWI will be required to serve a copy of this decision on those shippers within 5 days of the service date of this decision and to certify to the Board that it has done so.

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

The AL&M/F&P 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 AL&M/F&P 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.

GWI has requested expedited action on the petition for exemption. According to GWI, successful operation of AL&M and F&P will require GWI to make, as soon as possible, critical

business decisions regarding these two railroads. GWI has advised that, although it has made arrangements to place the stock of AL&M and F&P 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 AL&M and F&P by a trustee would prevent GWI from giving these two railroads the specialized treatment they need 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.

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, the AL&M/F&P transaction is exempted from the prior approval requirements of 49 U.S.C. 11323 et seq., 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 now served by AL&M and/or F&P within 5 days of 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 February 5, 2004.
4. This exemption will be effective on March 6, 2004. Petitions for stay must be filed by February 20, 2004. Petitions for reconsideration must be filed by March 1, 2004.

By the Board, Chairman Nober.

Vernon A. Williams
Secretary