

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36346

WISCONSIN CENTRAL LTD.—OPERATION EXEMPTION—HALLETT DOCK NO. 5 IN
DULUTH, MINN.

Digest:¹ This decision grants Wisconsin Central Ltd. the authority to operate a rail/water dock facility, known as Hallett Dock No. 5, located in Duluth, Minn.

Decided: February 26, 2020

On November 8, 2019, Wisconsin Central Ltd. (WCL)² filed a petition seeking an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10901 to operate a rail/water dock facility, known as Hallett Dock No. 5 (the Dock), in Duluth, Minn., after WCL acquires the Dock from its current noncarrier owner, Hallett Dock Company (Hallett). (See WCL Exemption Pet. 1.) Concurrently, WCL filed a petition for establishing a procedural schedule that included a request for expedited consideration of its exemption petition. (See WCL Scheduling Pet. 1-2.)

In a decision served on November 22, 2019, the Board instituted a proceeding under 49 U.S.C. § 10502(b). No comments opposing WCL's petitions were filed.³ For the reasons discussed below, the Board will grant WCL's exemption petition for authority to operate over the Dock trackage as described below.

BACKGROUND

The Dock is a ground-level rail/water bulk commodity transfer and storage dock facility that occupies a total of approximately 100 acres of property and includes a 2,400-foot vessel

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 WCL is a wholly owned, indirect subsidiary of Canadian National Railway Company. (See WCL Exemption Pet. 2 (citing Can. Nat'l Ry.—Control—Wis. Cent. Transp. Corp., 5 S.T.B. 890 (2001)).)

³ WCL initially requested a procedural schedule with an effective date for the exemption of March 27, 2020, to permit implementation of the transaction in time for the start of the Lake Superior shipping season in April. (See WCL Scheduling Pet. 2-3.) On December 17, 2019, WCL filed a request for the Board to further expedite its decision.

berth, two ship loaders, a railcar unloader, a dry storage building, approximately 9,000 feet of rail trackage on the Dock itself, and approximately 6,300 feet of adjacent railcar holding tracks along the shore line. (WCL Exemption Pet. 3.) Hallett currently conducts its own switching operations at the Dock, utilizing its own locomotive and crews for, among other things, water-to-rail transfers of limestone, rail-to-water transfers of blast furnace trim and bentonite, and shipments of small volumes of taconite and salt. (*Id.* at 3-4.) The Dock is directly served by WCL and BNSF Railway Company (BNSF) and is open to Canadian Pacific Railway/Soo Line Railroad Company and Union Pacific Railroad Company via a BNSF reciprocal switch. (*Id.* at 4.) WCL estimates that it moves approximately 90% of the Dock's rail traffic volume. (*Id.*)

WCL states that, in response to Hallett's decision to sell the Dock, it entered into an Asset Purchase Agreement, dated as of November 8, 2019, with Hallett to acquire the Dock and ensure its continued operation. (*Id.* at 4-5.) WCL states that continued operation of the Dock is vital to its customers and to WCL's ability to fulfill its commitments to handle their traffic. (*Id.* at 5.) WCL further asserts that the proposed transaction "will preserve operation of Hallett Dock No. 5 under WCL ownership[.]" (*id.*), and "will bring the dock within the Board's jurisdiction as part of the national rail network," (*id.* at 16). Two shippers have stated their support for WCL's objective. (*See* U.S. Steel Corp. Letter 1 (noting the Dock's importance to United States Steel Corporation's supply chain and urging Board to approve WCL's petition); WCL Request 4, Dec. 17, 2019 (letter from shipper Cleveland-Cliffs Inc. stating the Dock's importance to its supply chain).)

WCL further states that it "does not intend to implement significant changes in the railcar handling and commodity transfer and storage currently conducted at [the Dock]." (WCL Exemption Pet. 5.) Similarly, WCL "expects to retain most if not all" of Hallett's existing employees who operate the Dock. (*Id.*) WCL intends to operate the Dock "as an open dock, with transfer and handling services equally available to any interested parties as capacity and existing customer commitments permit during shipping season." (*Id.*)

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 10901, a rail carrier may not operate an extended or additional railroad line without the prior approval of the Board. However, under 49 U.S.C. § 10502(a), the Board must exempt a transaction or service from regulation upon finding that: (1) regulation is not necessary to carry out the transportation policy of 49 U.S.C. § 10101; and (2) either (a) the transaction or service is of limited 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. § 10901 is not necessary here to carry out the rail transportation policy. The proposed transaction would ensure continued rail/water operations at the Dock. As such, the proposed transaction would, among other things, ensure the continuation of a sound rail transportation system with effective competition among rail carriers (49 U.S.C. § 10101(4)) and foster sound economic conditions in transportation and ensure effective competition (49 U.S.C. § 10101(5)). Further, an exemption from the application process would expedite regulatory action (49 U.S.C. § 10101(2)), reduce regulatory barriers (49 U.S.C. § 10101(7)), and provide for

the expeditious handling and resolution of this proceeding (49 U.S.C. § 10101(15)). Other aspects of the rail transportation policy would not be adversely affected.

Regulation of this transaction is not needed to protect shippers from the abuse of market power. There would be no loss of rail competition and no adverse change in the competitive balance in the transportation market, as WCL would continue operations at the Dock that are currently provided by Hallett. Nor would there be a change in the level of service to any shippers because WCL does not intend to implement significant changes to operations and intends to fulfill Hallett's existing contractual arrangements for Dock services and to make services available to any interested parties as capacity allows.⁴ (See WCL Exemption Pet. at 5.) Moreover, WCL's ownership and operation of the Dock will be subject to WCL's obligations as a common carrier. No shippers have objected to the transaction, and two have stated their support.

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, labor protective conditions may not be imposed on transactions under 49 U.S.C. § 10901. See 49 U.S.C. § 10901(c).

WCL states that the proposed transaction will not result in changes in existing rail carrier operations or existing operations at the Dock that would exceed the applicable thresholds of 49 C.F.R. § 1105.7(e)(4) or (5). Therefore, under 49 C.F.R. § 1105.6(c), this transaction is categorically excluded from environmental review. Similarly, under 49 C.F.R. § 1105.8(b)(1), no historic report is required because the subject transaction is for continued rail service, WCL has indicated no plans to alter railroad properties 50 years old or older, and any abandonment of service would be subject to Board jurisdiction.

As noted above, WCL seeks expedited consideration so that it can commence operation of the Dock in advance of the Lake Superior shipping season. For that reason, the exemption will be effective March 27, 2020, petitions to stay will be due by March 9, 2020, and petitions for reconsideration and petitions to reopen will be due by March 17, 2020.

It is ordered:

1. Under 49 U.S.C. § 10502, the Board exempts WCL's operation of Hallett Dock No. 5 from the prior approval requirements of 49 U.S.C. § 10901.
2. Notice of the exemption will be published in the Federal Register.
3. The exemption will be effective on March 27, 2020.

⁴ Because the Board concludes that regulation is not needed to protect shippers from the abuse of market power, it is unnecessary to determine whether the proposed transaction is limited in scope. See 49 U.S.C. § 10502(a).

4. Petitions to stay must be filed by March 9, 2020. Petitions for reconsideration and petitions to reopen must be filed by March 17, 2020.

By the Board, Board Members Begeman, Fuchs, and Oberman.