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Office of Proceedings
November 17, 2020
Part of
Public Record

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November 17, 2020

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

Re: **Docket No. FD 36452**
Wisconsin & Southern Railroad, L.C.C. — Acquisition and
Operation Exemption — Soo Line Railroad Company

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding are a **Petition for Exemption of Wisconsin & Southern Railroad, L.L.C. Pursuant to 49 U.S.C. § 10502**, and a **Petition for Waiver of the Requirements of 49 C.F.R. § 1121.4(h)**, both dated November 17, 2020. The sum of \$8,500, representing the appropriate fee for these filings, has been tendered electronically via Pay.gov.

Please note that, at Soo Line Railroad Company's request, Wisconsin & Southern Railroad, L.L.C. is seeking expedited Board consideration of these Petitions.

If you have any questions regarding this filing, please feel free to contact me.
Thank you for your assistance on this matter.

Respectfully submitted,

/s/ *R. A. Wimbish*

Robert A. Wimbish
Attorney for Wisconsin & Southern
Railroad, L.C.C.

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Enclosures

FEE RECEIVED
November 17, 2020
SURFACE
TRANSPORTATION BOARD

FILED
November 17, 2020
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36452

WISCONSIN & SOUTHERN RAILROAD, L.L.C.
– ACQUISITION AND OPERATION EXEMPTION –
SOO LINE RAILROAD COMPANY

**PETITION FOR EXEMPTION
PURSUANT TO 49 U.S.C. § 10502(a)**

EXPEDITED CONSIDERATION REQUESTED

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**ATTORNEY FOR WISCONSIN &
SOUTHERN RAILROAD, L.L.C.**

Dated: November 17, 2020

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36452

WISCONSIN & SOUTHERN RAILROAD, L.L.C.
– ACQUISITION AND OPERATION EXEMPTION –
SOO LINE RAILROAD COMPANY

**PETITION FOR EXEMPTION
PURSUANT TO 49 U.S.C. § 10502(a)**

EXPEDITED CONSIDERATION REQUESTED

Wisconsin & Southern Railroad, L.L.C. (“WSOR”), a Class II railroad common carrier, hereby files this petition (the “Petition”) pursuant to 49 U.S.C. § 10502 for an exemption from the formal requirements of 49 U.S.C. § 10902 to purchase and operate approximately 4.79 miles of railroad (the “Line”) in the City of Milwaukee, Milwaukee County, WI, owned by Soo Line Railroad Company (“Soo”). The Line extends southerly from milepost 93.20 (at Hampton Avenue) to milepost 88.41 (south of State Street). The proposed transaction also includes the transfer of a portion of Soo’s Glendale Yard known as the “B” yard, although that element of the transaction does not require Board authorization. WSOR has leased the Line from Soo and has operated it since 2007.¹

¹ *Wisconsin & Southern R.R. Co. — Lease and Operation Exemption — Soo Line R.R. Co. d/b/a Can. Pac. Ry.*, FD 35012 (STB served Jul. 13, 2007) (“*Lease Decision*”). In the *Lease Decision*, the southern milepost of the Line was listed as “milepost 88.4,” whereas in the Asset Purchase Agreement governing the sale of the Line, the southern limit of the Line is listed as “milepost 88.41.” The minimal difference in mileposts – less than 53 feet – is believed to be a rounding error, and was not intended to signify a different point on the Line.

As discussed below, the purchase of a rail line that has been leased, maintained, dispatched and operated for over a decade by the proposed acquirer (WSOR) clearly satisfies the exemption standards of Section 10502. As reflected in the *Lease Decision*, the original WSOR lease transaction qualified for an exemption under Section 10502. Moreover, converting WSOR's leasehold interest into an ownership interest will result in no changes to rail service, operations, maintenance, or dispatching; and the transaction will have no impact on WSOR employees, the environment or on historic resources.

The parties to the proposed transaction hope to close the Transaction before the end of this year; however, WSOR will not consummate the transaction until it has received the exemption requested herein. At Soo's request, WSOR has agreed to ask for expedited Board consideration of this Petition in light of the nominal significance of the transaction, with a decision granting the exemption to be effective no later than December 28, 2020.

INFORMATION ABOUT THE PROPOSED TRANSACTION

In furtherance of its Petition, and in accordance with the substantive requirements of 49 C.F.R. § 1121.3, WSOR provides the following:

The Petitioner

WSOR is a Class II railroad common carrier. WSOR's business address is 315 W 3rd Street, Pittsburg, KS 66762. Currently, WSOR operates approximately 802 miles of railroad in southern Wisconsin and northern Illinois.

The Proposed Transaction and Operational/Service Impact

In 2007, pursuant to the authority issued in the *Lease Decision*, WSOR leased the Line from Soo, and has operated it since. The Line extends from milepost 93.20 near Hampton Avenue to milepost 88.41, near State Street, roughly 4.79 route miles in length. A map of the

Line is included as Exhibit A. Among other things, the lease allowed WSOR to use Soo's "B" Yard, enhancing WSOR's car handling and switching abilities in the Milwaukee area, and permitting WSOR to offer additional locations for siting new rail customers.

Now, some 13 years after WSOR commenced operations over the Line under a lease, Soo has agreed to transfer ownership to WSOR. Through ownership of the rail line, WSOR will be able to exercise more complete control over investment decisions, and will be better positioned to offer responsive and efficient rail service into the future.

WSOR does not intend as a result of the proposed transaction to change materially its existing operations over the Line. WSOR maintains and dispatches the Line, and that will not change under WSOR's ownership. Moreover, WSOR's purchase of the Line will not have any impact on Soo employees – such impacts, if any, occurred back in 2007, when WSOR commenced operations over the Line in place of Soo. WSOR employees will be unaffected by the nominal conversion of WSOR's leasehold interest in the Line to an ownership interest.

Interchange Commitment

In accordance with 49 C.F.R. § 1121.3(d), WSOR hereby certifies that the proposed purchase and sale of the Line does not involve a provision or agreement that may limit future interchange with a third-party connecting carrier. Thus, the balance of the information required under Section 1121.3(d) is not applicable to this transaction.

THE EXEMPTION STANDARDS AT 49 U.S.C. § 10502 HAVE BEEN MET

The acquisition of a railroad line by a Class II rail carrier is governed by the provisions of 49 U.S.C. § 10902, which requires the filing of an application and the Board's approval of that application prior to closing on the purchase of the rail line. However, pursuant

to Section 10502 (and as it did in *Lease Decision*), the Board, “to the maximum extent consistent with this part, shall exempt” a transaction “whenever the Board finds that the application in whole or in part of a provision of this part—

(1) is not necessary to carry out the transportation policy of section 10101 of this title; and

(2) either—

(A) the transaction or service is of limited scope; or

(B) the application in whole or in part of the provision is not needed to protect shippers from the abuse of market power.”

As demonstrated below, the proposed railroad line acquisition satisfies Section 10502’s statutory criteria.

A. Detailed Scrutiny Under 49 U.S.C. § 10902 Is Not Necessary To Carry Out The Rail Transportation Policy of 49 U.S.C. § 10101

Granting WSOR’s Petition to acquire the Line is clearly consistent with the goals articulated in the National Rail Transportation Policy (“RTP”) set forth in 49 U.S.C. § 10101. The RTP favors minimizing federal regulatory control over the rail transportation system; expediting regulatory decisions; and reducing barriers to entry and exit from the industry. 49 U.S.C. §§ 10101(2), (7), and (15). The individual exemption eliminates the need for expensive, unnecessary, and time-consuming processes attendant to preparing and reviewing a formal application to acquire a rail line under Section 10902. Reliance here on the adequate and expeditious individual exemption procedures minimizes regulation and reduces the regulatory burden on WSOR, thereby furthering important RTP policy considerations.

In addition, the proposed purchase of the Line will allow WSOR to more efficiently operate its railroad system in furtherance of 49 U.S.C. § 10101(9). Once WSOR

owns the Line, it will be better-suited to make long-term maintenance and capital investment decisions free of concerns associated with its current, impermanent lease arrangement.

Beyond the many RTP goals discussed above that would be advanced by granting the subject Petition, favorable Board action would not run thwart any RTP objectives. For these reasons, granting the subject Petition would not only be consistent with the RTP, but denial of the Petition would run counter to the objectives of Sections 10101 and 10502.

B. The Proposed Acquisition Is Of Limited Scope

The subject transaction involves WSOR's (a Class II carrier) acquisition of a roughly 4.79-mile-long railroad located in one county in Wisconsin. The Line has been leased to, and operated by, WSOR for 13 years. The transfer of Line ownership is not expected to have any impact on service, dispatching, maintenance, employees, the environment, or historic resources. As such, the proposed acquisition clearly is of limited scope.

C. Regulation Is Not Necessary To Protect Shippers From Market Power Abuse

Since this acquisition of the Line demonstrably is of limited scope, WSOR is not required to prove that regulation is not needed to protect shippers from market power abuse. Even so, transfer of Line ownership will not subject shippers to any market power abuse. The proposed transaction would continue the longstanding service and competition *status quo*.

LABOR PROTECTION

WSOR anticipates no adverse impact to employees as a result of the proposed transaction. However, the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of employees adversely affected by the transfer of Line ownership. 49 U.S.C. § 10502(g). Furthermore, where a Class II carrier (like WSOR) seeks an exemption to acquire a line of railroad, 49 U.S.C. § 10902(d) provides the appropriate

level of labor protection. WSOR acknowledges that Board approval of the Petition would be subject to the employee protective conditions established in *Wisconsin Central Ltd.—Acquisition Exem.—Union Pac. R.R.*, 2 S.T.B. 218 (1997), *rev'd in part sub nom. Association of American R.R. v. STB*, 162 F.3d 101 (D.C. Cir. 1998).

Also, WSOR acknowledges that the labor-related advance notice requirements of 49 C.F.R. §1121.4(h) generally apply to individual exemptions sought by Class II carriers, such as WSOR. However, the present transaction preserves an operational and employment *status quo* by converting WSOR's 13-year-old lease arrangement into ownership. In similar such situations, the Board regularly has held that advance notice requirements to employees serves not practical purpose, and has granted railroads relief from the otherwise applicable regulation. *See, e.g., Wheeling & Lake Erie Railway Company – Acquisition and Operation Exemption – CSX Transportation, Inc.*, FD 34341 (STB served Sep. 2, 2003); and *Wisconsin & Southern Railroad, L.L.C. – Acquisition and Operation Exemption – Union Pacific Railroad Company*, FD 35848 (STB served Nov. 6, 2014). Accordingly, WSOR has filed along with this Petition a request for a waiver from the advance notice requirements of Section 1121.4(h).

ENVIRONMENTAL REVIEW

As previously stated, except for the identity of the owner of the Line, WSOR does not anticipate any changes flowing from the proposed transaction. As pertinent here, 49 CFR § 1105.6(c)(1)(i) provides that transactions involving a railroad line acquisition that would not result in operational changes exceeding the thresholds found at 49 C.F.R. § 1105.6(b)(4) and 1105.7(e)(4) or (5) normally require no environmental review. WSOR anticipates that the proposed transaction will have no impact upon railroad service levels, and it acknowledges that

the transaction does not include plans to construct any railroad lines. Accordingly, the Board should find, as it did in *Lease Decision* that no environmental review is required.

HISTORIC REVIEW

The Board's regulations provide that historic review normally is not required for a railroad line acquisition such as the one proposed here. And, in any event, "further [Board] approval is required to abandon any service," and as is the case here, "there are no plans to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older." *Lease Decision*, 3, and see 49 CFR § 1105.8(b)(1). Again, as it did in *Lease Decision*, the Board should conclude here, also, that granting the subject Petition requires no historic resources impact analysis by the Board.

REQUEST FOR EXPEDITED CONSIDERATION

As noted above, at Soo's request, WSOR has agreed to ask the Board to issue its decision on this Petition with an effective date of December 28, 2020, to allow closing in 2020. The facts presented in this individual Petition provide no reason why extended review of the proposed transaction should be required. The operator of the Line will not change after ownership is conveyed, but will remain as it has been for 13 years. Customers should not note any differences in service as a result of WSOR's ownership status. Functions such as dispatching and maintenance will be unchanged. There are no labor effects anticipated to either Soo or WSOR that will be associated with the ownership transfer. Moreover, granting this Petition on an expedited basis is consistent with the goals of the RTP, 49 U.S.C. § 10101 – (2) to minimize the need for regulatory control, (7) to reduce regulatory barriers to entry, and (15) to provide for expeditious handling of proceedings.

CONCLUSION

For the foregoing reasons, WSOR respectfully requests that the Board expeditiously grant the exemption sought in this Petition, subject to contemporaneous waiver of the advance notice provisions of 49 C.F.R. §1121.4(h), and permit the proposed railroad line acquisition transaction to be consummated before the end of 2020.

Respectfully submitted,

By: /s/ *R. A. Wimbish*

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**ATTORNEY FOR WISCONSIN &
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Dated: November 17, 2020

EXHIBIT A

MAP

