

SERVICE DATE – DECEMBER 15, 2020

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36452

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

Digest:¹ The Board grants Wisconsin & Southern Railroad, L.L.C., the authority to acquire and operate over approximately 4.79 miles of rail line, subject to standard employee protective conditions, and waives a 60-day advance notice requirement.

Decided: December 14, 2020

On November 17, 2020, Wisconsin & Southern Railroad, L.L.C. (WSOR), a Class II rail carrier, filed a petition under 49 U.S.C. § 10502 for an exemption from the prior approval requirements of 49 U.S.C. § 10902 to acquire and operate over approximately 4.79 miles of rail line owned by Soo Line Railroad Company (Soo Line). The rail line extends from milepost 93.20 (at Hampton Avenue) to milepost 88.41 (south of State Street) in the City of Milwaukee, Milwaukee County, Wis. (the Line). WSOR concurrently filed a petition for waiver of the 60-day advance notice requirement of 49 C.F.R. § 1121.4(h). For the reasons discussed below, the Board will grant the petition for exemption and the petition for waiver.

BACKGROUND

In 2007, WSOR received Board authority to lease and operate over the Line. Wis. & S. R.R.—Lease & Operation Exemption—Soo Line R.R. (Lease Decision), FD 35012, slip op. at 1, 3 (STB served July 17, 2007).² According to WSOR, it has continued to lease, maintain, dispatch, and operate over the Line since 2007, but now seeks to purchase the Line from Soo

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 Pol’y Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² The petition for exemption notes that the Lease Decision listed the Line’s southern limit as milepost 88.4, whereas the Asset Purchase Agreement governing the sale of the Line here lists it as milepost 88.41. WSOR states that this “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.” (Pet. for Exemption 1 n.1.)

Line.³ (Pet. for Exemption 1-2.) WSOR states that, through ownership of the Line, it “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.” (*Id.* at 3.) WSOR states that the parties hope to close on their transaction before the end of the year and asks the Board, at Soo Line’s request, for expedited consideration of its petition for exemption. (*Id.* at 2.)

WSOR also petitions the Board for a waiver of the 60-day notice requirement under 49 C.F.R. § 1121.4(h). Unless waived, § 1121.4(h) would require WSOR, at least 60 days before the exemption becomes effective, to post a notice of its intent to undertake the proposed transaction setting forth certain information at the workplace of the employees on the affected lines, serve a copy of the notice on the national offices of the labor unions with employees on the affected lines, and certify to the Board that it has done so. WSOR argues that the notice requirement would serve no useful purpose under the circumstances, pointing out that no Soo Line employees have worked on the Line for more than 13 years and that, because WSOR has operated the Line during that time, there is no new carrier. (Pet. for Waiver 3.) WSOR states that it “has no plans to modify its operation of the Line once its leasehold interest is converted to ownership,” and, therefore, no employees would be adversely affected by the proposed acquisition. (*Id.* at 2.)

No opposition to either the petition for exemption or the petition for waiver has been filed.

DISCUSSION AND CONCLUSIONS

Exemption from 49 U.S.C. § 10902. Under 49 U.S.C. § 10902, the acquisition of a rail line by a Class II rail carrier requires the prior approval of the Board. Under 49 U.S.C. § 10502(a), however, the Board must exempt a transaction or service from regulation when it finds 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 of limited scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

In this case, an exemption from the prior approval requirements of § 10902 is consistent with § 10502(a). Detailed scrutiny of the proposed transaction under § 10902 is not necessary to carry out the RTP. An exemption from the application process would minimize the need for federal regulatory control, reduce regulatory barriers to entry, and result in the expeditious handling of this proceeding. *See* 49 U.S.C. § 10101(2), (7), (15). Other aspects of the RTP would not be adversely affected by use of the exemption process.

³ WSOR states that its proposed transaction with Soo Line also includes the transfer of a portion of Soo Line’s Glendale Yard known as the “B” yard. (Pet. for Exemption 1.) The 2007 transaction also included the “B” yard. Lease Decision, FD 35012, slip op. at 1.

Moreover, regulation of the proposed transaction under § 10902 is not needed to protect shippers from the abuse of market power.⁴ There would be no loss of rail competition and no adverse change in the competitive balance in the transportation market, as WSOR has been the carrier providing service over the Line since 2007. Nor would there be a change in the level of service to any shippers because “WSOR does not intend as a result of the proposed transaction to change materially its existing operations over the Line.” (Pet. for Exemption 3.)

Waiver of 49 C.F.R. § 1121.4(h). As noted, WSOR has petitioned for waiver of the 60-day notification requirement under 49 C.F.R. § 1121.4(h). The purpose of that requirement is to ensure that rail labor unions and employees who would be affected by the transfer of a line are given sufficient notice of the transaction before consummation. The Board takes seriously the requirements of the regulation, but it does not appear that the purpose behind the notice requirement would be thwarted if the requested waiver is granted in this case.

The record indicates that no railroad employees would be adversely affected by waiver of the requirement here. As WSOR explains, “[n]o Soo [Line] employees have worked on any portion of the Line in more than 13 years, and they (and the unions representing them) were advised of the transition to WSOR operation of the Line in connection with the Lease Decision transaction as of May 24, 2007.” (Pet. for Waiver 3.) WSOR also states that “[n]o Soo [Line] employees will be displaced[,]” and that WSOR “will continue in [its] capacity” as the operator of the Line following the proposed transaction. (*Id.*) Because no employees would be adversely affected by the requested waiver of the 60-day notice period, the Board will grant the waiver. See, e.g., Wis. & S. R.R.—Acquis. & Operation Exemption—City of Fitchburg, Wis., FD 35838, slip op. at 4 (STB served Nov. 18, 2014).

Employee Protection. Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Section 10902(d) provides for labor protection in line acquisitions by Class II rail carriers. As a condition to this exemption, any employees affected by the acquisition will be protected as required by 49 U.S.C. § 10902(d), subject to the standards and procedures established in Wisconsin Central Ltd.—Acquisition Exemption—Lines of Union Pacific Railroad, 2 S.T.B. 218 (1997), *aff’d in relevant part sub nom. Association of American Railroads v. STB*, 162 F.3d 101 (D.C. Cir. 1998).

Environmental and Historic Review. Under 49 C.F.R. § 1105.6(c)(1), this action, which will not result in significant changes in carrier operations, 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, WSOR has indicated no plans to alter railroad properties 50 years old or older, and any abandonment would be subject to Board jurisdiction.

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).

Effective Date. WSOR requests authority to acquire and operate the Line by December 28, 2020, so that the parties may close the transaction before the end of the year. The exemption will take effect on December 28, 2020, unless it is stayed.

It is ordered:

1. Under 49 U.S.C. § 10502, the Board exempts from the prior approval requirements of 49 U.S.C. § 10902 WSOR's acquisition of and operation over the Line, subject to the employee protective conditions implementing 49 U.S.C. § 10902(d) as provided in this decision.
2. Notice of the exemption will be published in the Federal Register.
3. WSOR's request for a waiver of the advance notice requirement under 49 C.F.R. § 1121.4(h) is granted.
4. This exemption will become effective on December 28, 2020.
5. Petitions to stay must be filed by December 22, 2020. Petitions to reopen must be filed by January 4, 2021.

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