

SERVICE DATE – JULY 31, 2024

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36764 (Sub-No. 1)

GREAT LAKES TERMINAL RAILROAD, LLC—ACQUISITION AND
OPERATION EXEMPTION—GREAT LAKES TERMINAL, LLC, CRRC
SIFANG AMERICA INCORPORATED, AND CHICAGO ENTERPRISE
OWNERS' ASSOCIATION

Digest:¹ The Board grants Great Lakes Terminal Railroad, LLC, after-the-fact authority to lease and operate approximately 22,568 feet of track in Chicago, Ill.

Decided: July 30, 2024

On May 2, 2024, Great Lakes Terminal Railroad, LLC (GLTRR), a Class III carrier, filed for an exemption under 49 U.S.C. 10502 from the provisions of 49 U.S.C. 10902 for after-the-fact authorization to acquire and operate approximately 22,568 feet of track in Chicago, Ill., owned by Great Lakes Terminal, LLC (GLT), CRRC Sifang America Incorporated (CRRC), and Chicago Enterprise Center Owners' Association (Owners' Association). For the reasons explained below, the Board will grant GLTRR's petition.

BACKGROUND

GLTRR's petition seeks after-the-fact authority for the acquisition and operation of 22,568 feet of track (the Line) located in and adjacent to a transloading facility at 13535 South Torrence Avenue in Chicago (the Facility). GLTRR states that ownership of the Line is divided between GLT² (owning 14,215 feet of track inside the Facility), CRRC (owning 850 feet of track outside the Facility), and the Owners' Association (owning 7,503 feet of track outside the Facility). (GLTRR Petition 3, 6 & n.11.) According to GLTRR, it previously operated over 12,500 feet of track that is now part of the Line that was owned by CenterPoint Chicago Enterprise, LLC (CenterPoint), leased to Great Lakes Reloading LLC (GLR), an affiliate of GLTRR, and operated by GLTRR under a sublease between GLTRR and GLR. GLTRR Notice 4 & n.5, Great Lakes Terminal R.R.—Acquis. & Operation Exemption—Norfolk S. Ry., FD 36764. GLTRR's authority to operate those 12,500 feet of track under the sublease with GLR was obtained through a notice of exemption. See Great Lakes Terminal R.R.—Lease & Operation Exemption—Rail Line of Great Lake Reloading, LLC (January 5, 2018 Decision),

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 Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

² GLT is an affiliate of GLTRR, both of which are owned by the Transload Group, LLC.

FD 36160 (STB served Jan. 5, 2018). GLTRR asserts that a few months after the January 5, 2018 Decision, in April 2018, GLT acquired a fee simple interest in the Facility from CenterPoint, including the portion of the Line inside the Facility, and that as part of that transaction, GLT obtained rights held by CenterPoint allowing it to conduct rail operations over the Owners' Association's and CRRC's tracks.³ (GLTRR Pet. 6.) GLTRR further states that in April 2018, soon after GLT's acquisition of these rights and the fee simple interest in the Facility, GLT entered into an agreement (2018 Agreement) with GLTRR to lease GLTRR the track it acquired from CenterPoint and to assign to GLTRR the rights to conduct rail operations over CRRC's and the Owners' Association's tracks. (Id. at 6, 10.) As GLTRR explains, it did not seek Board authority to enter into the 2018 Agreement. (Id. at 6-7.) GLTRR claims that it did not seek authority for the 2018 Agreement at that time based on a mistaken belief that no additional authority was needed because it had just received Board authority to operate at the Facility under a sublease with GLT in Docket No. FD 36160 and would continue to operate at the Facility. (See id. at 5.)

Prior to GLTRR filing its petition, it filed a notice of exemption stating that GLT planned to sell its portion of the Line to Norfolk Southern Railway (NSR) and that GLTRR would then lease that portion of the Line from NSR and continue to operate as it does today. GLTRR Notice 5, Great Lakes Terminal R.R.—Acquis. & Operation Exemption—Norfolk S. Ry., FD 36764. The verified notice sought Board authority to enter into the lease with NSR and to continue to operate over the track that would be sold to NSR, as well as the track that would continue to be owned by CRRC and the Owners' Association. Id. In that verified notice, GLTRR also explained its previous failure to seek authority for GLTRR's 2018 acquisition by lease and operation of GLT's tracks and requested that the Board grant, "on its own motion," after-the-fact authority for that transaction. Id. at 4-5.

The verified notice was rejected on the grounds that this case was not appropriate for the notice of exemption process, which is designed for routine cases that do not raise issues requiring significant scrutiny. Great Lakes Terminal R.R.—Acquis. & Operation Exemption—Norfolk S. Ry. (Director Order), FD 36764, slip op. at 2-3 (STB served Apr. 26, 2024). The Director Order explained that use of a notice of exemption to seek after-the-fact authority for a prior transaction that is not the subject of the notice is not routine. Id. at 2. The Director Order further stated that the verified notice had raised unanswered questions regarding whether GLTRR should have also sought Board authority to enter into agreements with CRRC and the Owners' Association to operate over their tracks. Id. at 2-3. The Board ordered GLTRR to file a petition for exemption for after-the-fact authority for the prior acquisition and operation of GLT's tracks and to file a petition for exemption for after-the-fact authority for the acquisition and operation of CRRC's and the Owners' Association's tracks or to explain why such authority is not required. Id. at 3.⁴

³ GLTRR states that CenterPoint obtained the right to conduct rail operations on the Owners' Association's property pursuant to a March 23, 2018 declaration and obtained an easement to conduct rail operations over CRRC's property pursuant to an August 2017 easement.

⁴ The Director Order further stated that once GLTRR obtains all necessary after-the-fact authority for prior transactions, it can proceed with a notice of exemption for its proposed lease with NSR. Id. at 3.

As explained below, GLTRR's petition adequately addresses the questions raised by the Board and otherwise provides information sufficient to grant its petition.⁵

DISCUSSION AND CONCLUSIONS

GLTRR's verified notice failed to explain why GLTRR had never requested authority for agreements pursuant to which it operated over the Owners' Association's and CRRC's tracks. Director Order, FD 36764, slip op. at 3. Rather, GLTRR only stated that at some point after the January 5, 2018 Decision authorized GLTRR to operate 12,500 feet of track at the Facility, "additional trackage was added," and that GLTRR now operates over 22,568 feet of track, including the track owned by the Owners' Association and CRRC. Id. at 2. In its petition, GLTRR clarifies that its agreement to lease the track GLT acquired from CenterPoint also included an assignment to GLTRR of the rights GLT acquired from CenterPoint to operate over track owned by CRRC and the Owner's Association.⁶ (GLTRR Pet. 5-6.) For the reasons explained below, the Board will grant GLTRR's petition for exemption for after-the-fact authority for the Line.

The acquisition of a rail line by a Class III carrier requires prior approval from the Board under 49 U.S.C. 10902(a). Under 49 U.S.C. 10502(a), however, the Board shall, to the maximum extent consistent with U.S. Code Title 49, subtitle IV, part A, exempt a transaction from the detailed application procedures of 49 U.S.C. 10902 when it finds that: (1) those procedures are not necessary to carry out the rail transportation policy of 49 U.S.C. 10101 (RTP); and (2) either (a) the proposal is of limited scope, or (b) the full application procedures are not necessary to protect shippers from an abuse of market power.

The Board finds an after-the-fact exemption should be granted to GLTRR for its acquisition and operation of the Line pursuant to the 2018 Agreement. Prior to the 2018 Agreement, in January 2018, GLTRR sought and obtained authority to sublease from GLR and operate track at the Facility. See January 5, 2018 Decision, FD 36160. A few months later, the Facility was sold to GLT and GLTRR entered into the 2018 Agreement so that it could continue its operations at that facility after the change in ownership.⁷ (See GLTRR Pet. 5.) GLTRR states that it failed to seek authority for the 2018 Agreement and subsequent operations because it mistakenly believed that the authority it obtained in January 2018 to operate pursuant

⁵ GLTRR requested expedited consideration of its petition. (GLTRR Pet. 4.) On July 12, 2024, GLTRR filed a letter renewing its request for expedited consideration.

⁶ The Director Order also noted GLTRR's statement that "today GLTRR is leasing 14,215 linear feet (2.69 miles) of trackage from NSR and will continue to operate over [it]," and explained that "[t]his language suggests that GLT has already sold the track to NSR and GLTRR has entered into a lease with NSR without the necessary Board authority." Director Order, FD 36764, slip op. at 3. GLTRR's petition explains that the language quoted by the Board contained a typo and should have referred to GLT rather than NSR as the party currently leasing the track to GLTRR, and that NSR has not yet purchased GLT's track or consummated a lease with GLTRR. (GLTRR Pet. 7.)

⁷ As noted above, the 2018 Agreement also allowed GLTRR to operate over additional trackage immediately outside the Facility owned by the Owners' Association and CRRC.

to an agreement with one of its affiliates, GLR, was sufficient to allow it to continue to operate at the Facility pursuant to an agreement with another of its affiliates, GLT. (*Id.*) Based on the nature of the transaction at issue and the inadvertent nature of the failure to seek an exemption prior to completing the transaction, an exemption from the prior approval requirements of section 10902 is consistent with section 10502(a) and detailed scrutiny of the transaction through an application for review under 49 U.S.C. 10902 is not necessary here to carry out the RTP.⁸ Granting an exemption to correct GLTRR's past error so that it is authorized to continue operations at the Facility and can proceed to file a notice of exemption for its proposed transaction with NSR would promote the RTP by minimizing the need for regulatory control over the transaction (49 U.S.C. 10101(2)), ensuring the development and continuation of a sound rail transportation system able to compete with other modes of transportation and meet the needs of the public (49 U.S.C. 10101(4)), minimizing the need for regulatory barriers for entry into and exit from the industry (49 U.S.C. 10101(7)), and providing for the expeditious handling and resolution of proceedings required or permitted to be brought under this part (49 U.S.C. 10101(15)). 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. GLTRR states that both before and after the 2018 Agreement, its operations consisted of providing transloading services to shippers seeking to ship steel rebar and steel piping by truck after arrival at the Facility by rail, as well as agriculture and construction equipment by rail after arrival at the Facility by truck. (GLTRR Pet. 10.) Granting the requested exemption for after-the-fact authority would give GLTRR authority to provide these same services to shippers that it has been providing since 2018.⁹ In addition, and as GLTRR contends, there was no apparent loss of rail competition and no change in the level of rail service to the shippers as a result of the 2018 Agreement.

Under 49 CFR 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 CFR 1105.8(b)(1), no historic report is required because the subject transaction is for continued rail service, GLT does not intend to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older, (GLTRR Pet. 14), and discontinuance of service or abandonment by GLTRR would be subject to Board jurisdiction.

⁸ The Board has granted after-the-fact authority in similar circumstances. See Ark.-Okla. R.R.—Acquis. & Operation Exemption—Okla., FD 36323 (STB served Sept. 19, 2019) (granting an exemption for after-the-fact authority where a carrier was previously authorized by the Board to operate a rail line pursuant to a lease but mistakenly believed it did not require additional authority to exercise a purchase option and continue its operations as owner of the line); Elk River R.R.—Merger Exemption—Buffalo Creek R.R., FD 36434 (STB served Nov. 6, 2020) (granting an exemption for after-the-fact authority where a rail carrier authorized by the Board to operate mistakenly believed it did not need additional authority to merge with its affiliate and for the surviving entity to continue operations post-merger).

⁹ Because regulation of the proposed acquisition and operation is not needed to protect shippers from the abuse of market power, the Board need not determine whether the transaction is limited in scope. 49 U.S.C. 10502(a)(2).

It is ordered:

1. Under 49 U.S.C. 10502, the Board grants GLTRR's petition for exemption for after-the-fact authority to acquire and operate the Line.
2. Notice of this exemption will be published in the Federal Register.
3. This decision will be effective on August 30, 2024. Petitions for stay must be filed by August 12, 2024. Petitions to reopen must be filed by August 20, 2024.

By the Board, Board Members Fuchs, Hedlund, Primus, and Schultz.