

SERVICE DATE – MAY 1, 2023

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36659¹

PAUL DIDEILIUS—CONTINUANCE IN CONTROL EXEMPTION—RAINIER RAIL LLC

Docket No. FD 36658

RAINIER RAIL LLC—ACQUISITION AND CHANGE OF OPERATORS EXEMPTION—
CITY OF TACOMA, WASH., DEPARTMENT OF PUBLIC WORKS D/B/A TACOMA RAIL
MOUNTAIN DIVISION

Docket No. FD 36692

RAINIER RAIL LLC AND WRL LLC—INTRA-CORPORATE FAMILY TRANSACTION
EXEMPTION

Digest:² This decision allows Paul Didelius, a noncarrier individual, to continue in control of Rainier Rail LLC when it becomes a Class III rail carrier in a related transaction involving the acquisition of and change of operators on certain rail lines in Washington. This decision also sets an effective date for two pending class exemptions, which the Board previously held in abeyance.

Decided: April 30, 2023

By petition filed on March 8, 2023, in Didelius—Continuance in Control Exemption—Rainier Rail LLC, Docket No. FD 36659, Paul Didelius (Didelius), a noncarrier individual, seeks an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 11323 to continue in control of Rainier Rail LLC (Rainier Rail) when Rainier Rail becomes a Class III rail carrier. As discussed below, the Board will grant Didelius’s petition for exemption.

¹ These proceedings are not consolidated. A single decision is being issued for administrative purposes.

² 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).

BACKGROUND

Rainier Rail is a noncarrier that has been organized to acquire and operate certain rail lines owned by the City of Tacoma, Wash., Department of Public Works d/b/a Tacoma Rail Mountain Division (TRMW). (Pet. 3.) Rainier Rail is controlled by Didelius, who also currently controls, directly or indirectly, the following seven Class III rail carriers: CCET LLC; WRL LLC (WRL); RYAL LLC; CWW LLC; Yak Rail LLC; YCR Corporation (YCR);³ and KET LLC. (*Id.* at 3, 4.)

In a related transaction in Rainier Rail LLC—Acquisition & Change of Operators Exemption—City of Tacoma, Wash., Department of Public Works, Docket No. FD 36658, Rainier Rail filed a verified notice of exemption to acquire from TRMW and to operate approximately 41.86 miles of rail line consisting of (1) an approximately 0.8-mile rail line between milepost 28.6 and milepost 27.8C near McKenna, Wash., currently operated by WRL pursuant to a lease with TRMW, and (2) a group of interconnected line segments currently operated by the City of Tacoma, Wash., Department of Public Utilities d/b/a Tacoma Rail (Tacoma Rail) extending between milepost 27.8C at McKenna and milepost 13.09 near Frederickson, Wash., from milepost 13.09 near Frederickson to milepost 5.65 near Tacoma, Wash., and from milepost 13.09 near Frederickson to milepost 32 near Eatonville, Wash. (the Lines). Notice of the exemption was served and published in the Federal Register on March 24, 2023 (88 Fed. Reg. 17,915). The notice held the effective date of the exemption in abeyance pending review of the petition for exemption in Docket No. FD 36659.

Didelius states that immediately after Rainier Rail acquires the Lines, he intends to merge Rainier Rail and WRL via an intra-corporate family transaction, with Rainier Rail emerging as the surviving company. (Pet. 4 n.2.) On April 4, 2023, Rainier Rail and WRL filed a verified notice of exemption for the proposed merger in Rainier Rail LLC & WRL LLC—Intra-Corporate Family Transaction Exemption, Docket No. FD 36692. Notice of the exemption was served and published in the Federal Register on April 20, 2023 (88 Fed. Reg. 24,461). The notice held the effective date of the exemption in abeyance pending review of the petition for exemption in Docket No. FD 36659.

In the petition for exemption, Didelius explains that the proposed control transaction does not qualify for the class exemption under 49 C.F.R. § 1180.2(d)(2) because, as a result of the transaction, Rainier Rail and WRL would connect at milepost 28.6 near McKenna. (Pet. 3.) Didelius states that the transaction is intended only to connect Rainier Rail and WRL, and would not connect any of the other rail carriers controlled by Didelius. (*Id.* at 4.) Didelius further states that because WRL is currently the exclusive operator of the railroad lines in and around McKenna, the transaction would not result in any shipper losing access to alternative railroad service. (*Id.* at 3-4.) According to Didelius, if continuance in control is authorized, Rainier Rail would benefit from Didelius’s “strengths and resources [as] an established short-line operator.”

³ Didelius states that YCR is an inactive rail carrier whose leasehold rights have been terminated, but YCR has not yet filed notice of termination of its modified certificate operations pursuant to 49 C.F.R. § 1150.24. (Pet. 4 n.1.) Didelius further states that YCR intends to file a notice of termination soon. (*Id.*)

(Id. at 7.) Didelius further states that his continued control of Rainier Rail would allow coordination, efficient utilization of resources, and expanded economies of scope and scale among the rail carriers that he controls, and that shippers may benefit from greater service efficiencies as a result. (Id. at 7, 10.)

Didelius seeks expedited consideration so that the transaction can be consummated without delay. (Id. at 1-13.) Didelius represents that the parties to the transaction want Rainier Rail to be permitted to begin operating the Lines as soon as possible because they believe that Rainier Rail would “bring entrepreneurial short line operating experience to the Line[s] that is likely to attract new railroad traffic, promote economic development in the region, and encourage a shift of freight transportation from motor carriers to rail.” (Id. at 13.)

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 11323(a)(5), prior approval by the Board is required for 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. Under 49 U.S.C. § 10502(a), however, the Board must exempt a transaction from regulation if 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 limited in 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 49 U.S.C. §§ 11323-25 is consistent with the standards of § 10502. Detailed scrutiny of the proposed transaction through an application for review and approval under §§ 11323-25 is not necessary to carry out the RTP. An exemption would promote the RTP by minimizing the need for federal regulatory control over the proposed transaction, § 10101(2); ensuring the continuation of a sound rail transportation system that would continue to meet the needs of the public, § 10101(4); fostering sound economic conditions in transportation, § 10101(5); reducing regulatory barriers to entry into and exit from the industry, § 10101(7); encouraging efficient management of railroads, § 10101(9); and providing for the expeditious resolution of this proceeding, § 10101(15). Other aspects of the RTP would not be adversely affected.

Regulation of the control transaction is not needed to protect shippers from an abuse of market power.⁴ As discussed above, Rainier Rail would operate the Lines that were previously operated by WRL and Tacoma Rail. The point at which Rainier Rail would connect to WRL is currently served exclusively by WRL, and there is no jointly served shipper or facility at the current dividing line between WRL and Tacoma Rail operations. (Pet. 10.) Accordingly, the record reflects that no shipper would lose access to alternative railroad service. Moreover, no shipper (or any other entity) has objected to the proposed control transaction or to Rainier Rail’s proposed acquisition of and change of operators on the Lines in Docket No. FD 36658.

⁴ Given this finding, the Board need not determine whether the transaction is limited in scope. See 49 U.S.C. § 10502(a).

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 employees. Section 11326(c), however, does not provide for labor protection for transactions under §§ 11324 and 11325 that involve only Class III rail carriers. Therefore, because all of the carriers involved in the continuance in control transaction are Class III carriers, the Board may not impose labor protective conditions.

The control transaction is exempt from environmental reporting requirements under 49 C.F.R. § 1105.6(c)(1)(i) because it will not result in any significant change in carrier operations. Similarly, the transaction is exempt from the historic reporting requirements under 49 C.F.R. § 1105.8(b)(3) because it will not substantially change the level of maintenance of railroad properties.

As indicated above, Didelius has requested expedited consideration of his petition for exemption. The Board finds that Didelius's request is reasonable. Accordingly, this decision is being issued on an expedited basis, and the effective date of the exemption will be May 16, 2023. See 49 C.F.R. § 1121.4(e) ("Unless otherwise specified in the decision, an exemption generally will be effective 30 days from the service date of the decision."). Petitions for stay must be filed by May 9, 2023. Petitions to reopen will be due by May 22, 2023.

In addition, the notices of exemption in Docket Nos. FD 36658 and FD 36692 will be effective on May 16, 2023. Petitions for stay in Docket Nos. FD 36658 and FD 36692 must be filed by May 9, 2023 (at least seven days before the exemption becomes effective).

It is ordered:

1. Under 49 U.S.C. § 10502, the Board exempts from the prior approval requirements of 49 U.S.C. §§ 11323-25 Didelius's continuance in control of Rainier Rail when Rainier Rail becomes a Class III rail carrier.
2. Notice of the exemption will be published in the Federal Register.
3. The control exemption in Docket No. FD 36659 will become effective on May 16, 2023. Petitions for stay must be filed by May 9, 2023. Petitions to reopen must be filed by May 22, 2023.
4. The notice of exemption in Docket No. FD 36658 will be effective on May 16, 2023. Petitions for stay must be filed by May 9, 2023.
5. The notice of exemption in Docket No. FD 36692 will be effective on May 16, 2023. Petitions for stay must be filed by May 9, 2023.

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