

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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ENTERED

STB DOCKET NO. FD 35799

Office of Proceedings

April 18, 2014

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Public Record

RAPID CITY, PIERRE & EASTERN RAILROAD, INC.
– ACQUISITION AND OPERATION EXEMPTION
INCLUDING INTERCHANGE COMMITMENT –
DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION

STB DOCKET NO. FD 35800

GENESEE & WYOMING INC.
– CONTINUANCE IN CONTROL EXEMPTION –
RAPID CITY, PIERRE & EASTERN RAILROAD, INC.

**INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE
WORKERS DISTRICT LODGE 19
PETITION TO REVOKE EXEMPTIONS
[REDACTED VERSION]**

The International Association of Machinists and Aerospace Workers, AFL-CIO (“IAM”) District Lodge 19 hereby files its petition to revoke the Verified Notices of Exemption in Finance Docket Nos. 35799 and 35800. In Finance Docket No. 35799, Rapid City, Pierre & Eastern Railroad (“RCP&E”), a newly-formed wholly-owned subsidiary of Genesee & Wyoming Industries (“GWI”), invoked exemption from prior approval under 49 U.S.C. § 10901 for its acquisition of certain railroad lines and trackage rights from the Dakota, Minnesota & Eastern Railroad Corp. (“DM&E”) d/b/a/Canada Pacific Railway, a subsidiary of the Canadian Pacific Railway (“CP”). In Finance Docket 35800, GWI invoked exemption from prior approval under 49 U.S.C. § 11323 for its continued control of RCP&E when it becomes a Class II carrier upon its acquisition of

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the DM&E rail assets. In reality, these nominally separate proceedings initiated by related corporate entities must be viewed as a whole, and considered an acquisition of a rail carrier's lines by a group of carriers and a holding company that controls rail carriers. Accordingly, the transaction should be subject to approval or exemption *in toto* under Section 11323 and subject to the labor protective provisions of Section 11326.

In filing this petition to revoke, the IAM joins with and hereby incorporates by reference the petition to revoke filed this same date by the Brotherhood of Maintenance of Way Employees Division/IBT, Brotherhood of Railroad Signalman, and the International Association of Sheet Metal, Air, Rail and Transportation Workers/Mechanical Division. We write separately simply to emphasize a few additional points.

INTRODUCTION

IAM District Lodge 19 represents approximately 125 DM&E employees working in the craft or class of Car and Locomotive Mechanics and Working Foremen, including employees working on the DM&E Western Lines to be acquired by GWI through RCP&E. Although GWI's Chief Human Resources Officer has indicated to District Lodge 19 that the Company has or will extend offers of employment to some DM&E employees, GWI acknowledges that positions will not be available at RCP&E for all IAM-represented employees currently employed on the DM&E Western Lines and that several applicants have already been rejected. In fact, the Company has indicated in preliminary estimates that it will only need 25 car and mechanical employees for RCP&E. GWI/RCP&E have taken the position in the notice of exemption filed with the

Surface Transportation Board (“STB”) that labor protections will not apply to the acquisition because the acquisition application is filed separately by GWI’s newly formed corporate subsidiary RCP&E.

As we explain below, under the present circumstances, there is no sound justification for ignoring the real nature of the transaction before the Board, and treating the matter as if the acquisition of DM&E’s lines and GWI’s continuing control were not inextricably interrelated. The policy rationales advanced by the Agency in the past, aimed at preventing the abandonment of marginal lines and encouraging new entrants into the then financially ailing railroad industry, no longer apply under the circumstances. GWI has assembled a highly profitable regionalized system of subsidiary carriers that collectively are the size of a Class I carrier, and it now seeks through this transaction to add an additional railroad which will be a Class II carrier from its inception. Therefore, it is appropriate for the STB to treat GWI as it would any other Class I carrier seeking to accomplish the same transaction. As the federal courts have consistently held, no statutory provision requires the Agency to treat the various parts of a related transaction as separate proceedings. In fact, to do so here would only serve to thwart proper exercise of the STB’s regulatory authority.

ARGUMENT

I. THE AGENCY’S ORIGINAL POLICY RATIONALES FOR ALLOWING A NEWLY-FORMED WHOLLY-OWNED SUBSIDIARY OF A CARRIER OR HOLDING COMPANY TO ACQUIRE RAIL LINES WITHOUT LABOR PROTECTIONS ARE NOT SERVED UNDER THE CIRCUMSTANCES PRESENTED BY THIS CASE.

The 1950s through the 1970s was a period of decline for the nation’s railways. With the rise of the interstate highway system, the trucking industry gained ground on the freight railroads, benefitting from the public investment in highway infrastructure and better able to adapt to the shift in population and industry from the northeast and the rust-belt to the southern and western United States. As Americans increasingly travelled by highway and air, the railroads lost huge amounts of money on their passenger operations. Railroad bankruptcies were commonplace during this time period. During the 1970s, bankrupt railroads accounted for more than 21% of the nation’s rail mileage.¹

In response to the rail industry’s woes, the federal government adopted a series of measures intended to reverse the slide. Amtrak was formed in 1971 to relieve the railroads of the obligation to provide unprofitable passenger service. In 1973 under the Regional Rail Reorganization Act, Congress created Conrail, a government corporation, by taking over potentially profitable lines in the Northeast from several bankrupt

¹ Association of American Railroads, *A Short History of U.S. Freight Railroads* (Apr. 2013), <https://www.aar.org/keyissues/Documents/Background-Papers/A-short-history-of-US-Freight.pdf>.

carriers.² A series of other legislative initiatives designed to help the ailing industry followed.³

Most significantly, in 1980, Congress passed the Staggers Act, which largely deregulated the railroad industry. The Act allowed railroads to charge market-based rates for the first time and enter into confidential contracts with shippers. The Act also permitted carriers for the first time to charge higher rates to shippers over which they have market dominance, so-called “captive shippers.” The Act accelerated the process of abandoning unprofitable lines by allowing carriers to freely enter and exit markets, and encouraged railroad mergers by streamlining the regulatory review process.

Against this backdrop of government action to aid an industry in financial distress, the Interstate Commerce Commission (“ICC”) determined that labor protections would not apply to most transactions involving the sale of rail lines to non-carriers. The Agency began to routinely deny labor protections in Section 10901 cases involving the acquisition of rail lines by non-carriers. *See, e.g., Knox & Kane R.R. Co.—Gettysburg R.R. Co.—Petition for Exemption Under 49 U.S.C. 10505 from 49 U.S.C. 10901, 11343, and 11301*, 366 I.C.C. 439, 443-44 (1982) (citing ICC’s “objective to foster sound economic conditions” and to encourage sales of “marginal rail facilities”). Then, in 1985, the ICC adopted rules exempting from regulation nearly all acquisitions and operations falling under Section 10901 as it then existed, including non-carrier acquisitions of active

² See Pub. L. No. 93-236, 87 Stat. 988 (1973).

³ See Railroad Revitalization and Regulatory Reform Act, Pub. L. 94-210, 90 Stat. 31 (1976); Northeast Rail Services Act, Pub. L. No. 97-35, 95 Stat. 643 (1981).

rail lines. The Commission's stated rationale was to "expedite and reduce the costs of entry, help maintain service, and eliminate any uncertainty in negotiations with potential purchasers, especially those unfamiliar with the regulatory process." *Class Exemption for the Acquisition and Operation of Rail Lines under 49 U.S.C. § 10901*, 1 I.C.C.2d 810, 811 (Dec. 19, 1985). In addition, the ICC reasoned that: "Transfer of a line to a new carrier that can operate the line more economically or more effectively than the existing carrier serves shipper and community interests by continuing rail service, and allows the selling railroad to eliminate lines it cannot operate economically. Transfer before a financial crisis (with attendant plans for abandonment) helps assure continued viable service." *Id.* at 813.

As part of this rulemaking, the Commission also made clear that employee protections would not apply to exempt acquisitions and operations under Section 10901, even though the ICC had statutory discretion to impose such conditions. The Agency explained the basis for its position:

We have consistently rejected these requests [for labor protection], reaffirming our longstanding, and judicially approved policy of not imposing labor protective conditions on acquisitions and operations under section 10901. We have stated that the policy of supporting continued operation of abandoned lines or abandonable rail lines is so strong that we will not impose labor protection even on established carriers acquiring or operating such lines. *See, e.g., Tennessee Central Ry. Co.—Abandonment*, 334 I.C.C. 235 (1969); and Finance Docket No. 29923, *Acq. of Line of Chicago, R.I. & P. Ry. Co.—Ft. Worth-Dallas, TX* (not printed), served June 3, 1982. It is our established policy that the imposition of labor protective conditions on acquisitions and operations under 10901 could seriously jeopardize the economics of continued rail operations and result in the abandonment of the property with the attendant loss of both service and jobs on the line.

Additionally, the Agency also found that “[e]mployee protection is also inconsistent with our goals in granting this class exemption and would discourage acquisitions and operations that should be encouraged.” *Id.* at 814. With respect to the particular case which triggered the rulemaking, the ICC noted that “[t]he record supports a conclusion that the acquirer would not be able to complete the transaction if those conditions were imposed.” *Id.*

The ICC also emphasized: “To date most exemptions have involved abandoned lines, and employee protective conditions had already been imposed on the abandoning-selling carrier in the abandonment proceeding.” *Id.* at 814-15. The Agency further explained that, even in those instances not involving abandoned lines, “[f]aced with the need to encourage continuation of rail service, the Commission adopted the present policy of not imposing conditions on the buyer or the seller”:

We reasoned that there are costs associated with labor protection, and these costs would result in an increased selling price. Thus, the acquirer would indirectly bear these costs. In addition, in transactions under section 10901, operations are continuing and jobs for rail employees will continue to be available. Thus, railroads seeking to rid themselves of marginal lines should be encouraged to sell to shippers, shortlines, communities, and other mainline carriers who seek to continue operations over these lines. If labor protective conditions are imposed, the economic justification for transfer of a line is diminished if not negated.

Id. at 815.

In furtherance of these policy goals, the ICC also issued a series of determinations allowing rail line sales to be structured as a two-step process. *See The Bay Line R.R., L.L.C.*, Finance Docket No. 32435, 1995 WL 137187, at *6 (ICC Mar. 17, 1995) (explaining that ICC’s treatment of line sales as two-step process was intended to avoid

burdening new operators with additional cost); *Buffalo & Pittsburgh R.R., Inc.*, 1989 WL 238919, at *7 (ICC June 20, 1989) (same). As the first step, a newly formed subsidiary acquires rail lines as a non-carrier under Section 10901. As a second (albeit simultaneous) step, the parent carrier or holding company seeks authorization under Section 11343 (now Section 11323) to continue in control of the new subsidiary when the subsidiary becomes a carrier upon the rail line acquisition. As a result of the two-step process, no labor protections apply to the seller or purchaser in connection with the rail line sale.⁴ Instead, labor protections only apply to the continuation in control. Because “[t]he seller is not a party to the control transaction . . . its employees are not directly affected by it, unless, of course, they have become employees of the new carrier,” and therefore the seller’s employees are not afforded labor protections. *Id.* at *8.

Current conditions in the railroad industry generally and the specific circumstances of this case could not be more different than those upon which the ICC

⁴ In past decisions, the ICC indicated that it would disregard the nominal separateness of related acquisition and control applications filed by entities in the same corporate family if the corporate subsidiary were the alter ego of its parent corporation or if the subsidiary were created for the sole purpose of evading labor protections. *See, e.g., Chesapeake & Albemarle R.R. Co.*, 1991 WL 182123, at *7 (ICC Sept. 10, 1991); *Buffalo & Pittsburgh R.R., Inc.*, 1989 WL 238919, at *8. Although recognizing these exceptions in theory, we are unaware of a single case in which the ICC found that a parent and its subsidiary were alter egos due to a lack of sufficient indicia of independence. As the dissenting Commissioner indicated in *Chesapeake & Albemarle R.R. Co.*: “I am concerned that the Commission is nearing the point of no return when it examines the independence of a subsidiary. It appears that whatever showing of dependence a petitioner may make, the Commission sees such dependence simply as natural indicia of the parent’s control relationship. Thus, evidence of significant involvement by the parent of the subsidiary is almost always justified as normal behavior within a corporate family. At some near point, ‘the independence test’ will become meaningless.” 1991 WL 182123, at *13.

based its original policy decision to permit rail line acquisitions to proceed through a two-step process, thereby largely avoiding labor protections. Since the early 2000s, the railroad industry generally has enjoyed a period of unprecedented profitability. GWI in particular is highly profitable company with net annual income of \$242 million in 2013, \$129 in 2012, \$105 million in 2011.⁵ In the last ten years, GWI's share prices have risen dramatically from under \$20 per share to a current level of \$95 per share.⁶ The Agency principally justified permitting rail line acquisitions to proceed as a two-step process in order to avoid imposing the costs of labor protections on financially struggling carriers. But plainly that rationale no longer applies as the railroad industry is now thriving financially.

The ICC's policy was also motivated by the desire to encourage and protect new entrants into the rail industry, but GWI is far from a new entrant. GWI's history of carrier acquisitions dates back to 1985. GWI now owns 109 railroads operating in North America, including 41 carriers acquired through GWI's merger with RailAmerica in 2012. GWI's operations are now so vast that the company has organized itself into 11 different geographical regions, operating approximately 15,000 miles of owned or leased

⁵ Press Release, *Genesee & Wyoming Reports Results for the Fourth Quarter of 2013* (Feb. 11, 2014) available at <http://phx.corporate-ir.net/phoenix.zhtml?c=64426&p=irol-newsArticle&ID=1898792&highlight=>; Press Release, *Genesee & Wyoming Reports Results for the Fourth Quarter of 2012* (Feb. 12, 2013) available at <http://phx.corporate-ir.net/phoenix.zhtml?c=64426&p=irol-newsArticle&ID=1784384&highlight=>.

⁶ Information available through GWI's website at <http://phx.corporate-ir.net/phoenix.zhtml?c=64426&p=irol-stockChart>.

This matter also does not involve the acquisition of a marginal line, which might otherwise be abandoned. To the contrary, DM&E is selling 672 route miles of rail, consisting of eight different rail lines. The acquired lines span the entire State of South Dakota from East to West, and extend into Minnesota as well. Significantly, the newly-formed subsidiary RCP&E will be a Class II carrier upon the commencement of its operations. In addition, RC&P intends to continue service at current levels initially, and hopes to add additional train starts in the future to service increased demand. DM&E itself will retain an easement over the DM&E West Lines in order to provide coal service, and trackage rights between Tracy, Minnesota and Wolsey, South Dakota, in order to continue handling overhead grains trains in conjunction with BNSF. The transaction also involves an interchange commitment related to the Colony Line acquired by DM&E from Union Pacific in 1996. In short, the involved lines represent a substantial and essential rail artery, which is not in danger of abandonment.

Given the circumstances here, it makes no sense for the STB to permit GWI to accomplish in two steps, and thereby avoid full labor protections, what a carrier of comparable size and means would be prohibited from doing without providing labor protections. In so doing, the STB is simply providing a regulatory “leg up” to an entity otherwise fully capable of operating on the same terms as a carrier acquiring rail lines.

II. THE STB CAN IMPOSE LABOR PROTECTIONS IN THIS MATTER CONSISTENT WITH ICCTA AND ITS STATUTORY INTERPRETATION WOULD BE ENTITLED TO SUBSTANTIAL DEFERENCE.

Section 10901 as currently codified specifies that labor protective conditions are not included in authorizations issued under that statutory provision. Thus, ICCTA now

mandates by statute the exemption rules originally promulgated by the ICC in 1985. The statute, however, does not require that the STB treat related acquisition and control applications as separate transactions or narrowly construe who are employees affected by the control application. In fact, the control application is rightly viewed as the *sine qua non* of the type of transaction proposed by GWI here. ICCTA does not require the STB to ignore the reality of the transaction before it. Instead, the Agency is fully able to interpret its governing statute in a manner that does not elevate form over substance.

Although the courts have uniformly upheld the ICC's decision to treat related acquisition and control applications as separate transactions, they have also made clear that the Agency could reasonably have interpreted its governing statute otherwise. As the Seventh Circuit found, "a plausible characterization of the transaction" is to treat it as a single control proceeding. *Bhd. of R.R. Signalmen v. ICC*, 63 F.3d 638, 641 (7th Cir. 1995). "The Commission has sufficient interpretative latitude to penetrate form to substance where that is necessary to prevent a railroad from defeating regulation through the facile expedient of doing in two steps what could as easily have been done in one." *Id.* at 641-42; *see also RLEA v. ICC*, 819 F.2d 1172, 1173 (D.C. Cir. 1987) (ICC has discretion to treat related corporate entities separately or not).

In fact, in *Fox Valley & Western Ltd. v. ICC*, the Seventh Circuit upheld the ICC's statutory interpretation that an ostensible rail line acquisition under Section 10901 was in fact a control transaction under Section 11343 (now Section 11323) subject to labor protections. The Court wrote: "We do not think that the Commission is precluded from interpreting the transaction that did occur as functionally, practically, and therefore (by a

small further step) legally the same” as a transaction requiring labor protections. 15 F.3d 641, 644 (7th Cir. 1994). The Court emphasized that “unless the Commission is permitted enough interpretative latitude to close obvious loopholes opened by manipulation of corporate forms, the statute will be quickly nullified by clever lawyers.” *Id.* at 645.

The STB’s interpretation of the statute it administers is entitled to substantial deference under the principles set forth in *Chevron USA Inc. v. Natural Res. Def. Council, Inc.*, 476 U.S. 837 (1984). See *Bhd. of R.R. Signalmen v. STB*, 638 F.3d 807, 811 (D.C. Cir. 2011); *Holrail, LLC v. STB*, 515 F.3d 1313, 1316 (D.C. Cir. 2008). Thus, if ICCTA is “silent or ambiguous with respect to the specific issue,” the STB may adopt any “permissible construction of the statute.” *Bhd. of R.R. Signalmen*, 638 F.3d at 811. Here, the statute is silent regarding how the Agency should treat related acquisition and control proceedings filed by related corporate entities, and accordingly the STB is free to adopt any reasonable interpretation as it deems appropriate to further the goals embodied in the statute.

In interpreting ICCTA, the Agency may also revise past policies and rulings, particularly in light of changed or novel circumstances. *Riffin v. STB*, 733 F.3d 340, 345 (D.C. Cir. 2013). As the Supreme Court has held, the Agency “faced with new developments or in light of reconsideration of the relevant facts and its mandate, may alter its past interpretation and overturn past administrative rulings and practice.” *Am. Trucking Ass’n v. Atchison, Topeka & Santa Fe Ry. Co.*, 387 U.S. 397, 416 (1967).

. . . [T]his kind of flexibility and adaptability to changing needs and patterns of transportation is an essential part of the office of a regulatory agency. Regulatory agencies do not establish rules of conduct to last forever; they are supposed, within the limits of the law and of fair and prudent administration, to adapt their rules and practices to the Nation's needs in a volatile, changing economy. They are neither required nor supposed to regulate the present and the future within the inflexible limits of yesterday.

Id. “And of course the agency must show that there are good reasons for the new policy. But it need not demonstrate to a court’s satisfaction that the reasons for the new policy are *better* than the reasons for the old one; it suffices that the new policy is permissible under the statute, that there are good reasons for it, and that the agency *believes* it to be better, which the conscious change of course adequately indicates.” *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (emphasis in original). Here, as discussed above, the current circumstances are far different from those in which the Agency has addressed the issue of related acquisition and control proceedings before, which warrants fresh consideration of the STB’s approach.

Moreover, the approach of treating related applications as a single transaction is not entirely new. For many years, the ICC applied the “inseparable plan” or “inseparable arrangement” doctrine in order to extend LPPs to an entire transaction, even where authority for certain aspects of the transaction standing alone might not otherwise be entitled to the same level of employee protections. *See Seaboard Air Line R.R. Co. Trackage Rights*, 312 I.C.C. 797, 801 (1962); *Louisiana & Arkansas Ry. Co. Abandonment*, 290 I.C.C. 434, 442 (1954); *Gulf, Mobile & Ohio R.R. Co. Abandonment*, 282 I.C.C. 311, 337 (1952); *Oklahoma Ry. Co. Trustees Abandonment*, 257 I.C.C. 177,

194 (1944). In these cases, the ICC reasoned that where a “dismissal of employees . . . arises out of an inseparable plan of operation, which in part can be made effective only upon our authorization” pursuant to a statutory provision providing for certain labor protections, then the same level of protection must apply to all aspects of the integrated plan. *Texas & Pacific Ry. Co. et al. Operation*, 247 I.C.C. 285, 293 (1941); *cf. Delaware & Hudson Ry. Co.*, 4 I.C.C.2d 322, 327 (1988) (holding that series of lease transactions must be “viewed collectively” to insure appropriate level of labor protections).

The STB should apply the inseparable plan doctrine to the related filings at issue here since the reality of the matter is that there would be no rail line sale if GWI were not able to continue in control of RCP&E following the line acquisition. To pretend that this matter involves two separate transactions, the acquisition application and the control application, is simply to ignore the reality of situation.

Alternatively, the STB should adopt an interpretation of Section 11326 which recognizes employees of both the seller and the buyer as “affected employees” entitled to labor protections under that provision in connection with GWI’s control application. In several past cases examining the statutory precursors to the current Section 11326, courts have concluded that labor protections should not be limited to the employees of the applicant carrier. *See Soo Line R.R. Co. v. U.S.*, 280 F. Supp. 907, 921-24 (D. Minn. 1968); *United Transp. Union v. Burlington Northern, Inc.*, 319 F. Supp. 451, 454 (D. Minn. 1970).⁸ In particular, “affected employees” should include employees of a carrier

⁸ *But see Lamoille Valley R.R. Co. v. ICC*, 711 F.2d 295, 323-24 (D.C. Cir. 1983) (upholding ICC decision declining to extend labor protections to employees of

that is “in actuality deeply and unavoidably involved” even though not technically a party to the application. *Railway Labor Executives’ Ass’n v. U.S.*, 216 F. Supp. 101, 102 (E.D. Va. 1963). This is the proper construction of the statute because “[t]he Act is concerned with the personal welfare of the employees and deals with the realities of the transaction.” *Id.* at 102-03.

III. THIS CASE IS DISTINGUISHABLE FROM PAST CASES IN WHICH THE AGENCY HAS FOUND THAT LABOR PROTECTIONS ARE NOT APPLICABLE.

In addition to the sale of rail assets and property, the transaction at issue here involves the performance of substantial mutual obligations going forward. Under the parties’ agreement, [REDACTED]

[REDACTED]

[REDACTED] This feature of the parties’ arrangement distinguishes this case from those in the past where the Agency has treated acquisition and control applications as separate transactions.

The parties’ Transaction Agreement identifies [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

non-applicant carrier); *Missouri-Kansas-Texas R.R. v. U.S.*, 632 F.2d 391, 411-12 (5th Cir. 1980) (same); *Florida East Coast Ry. v. U.S.*, 259 F. Supp. 993, 1019 (M.D. Fla. 1966) (same).

[REDACTED]⁹ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁹ None of the Appendix materials to the parties' Transaction Agreement were included in the publically filed version of the document. Accordingly, a complete copy of Appendix A.2 is attached to the unredacted version of this filing.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Under the Transaction Agreement, there are numerous obligations running between the parties, including arrangements requiring performance far into the future. Perhaps chief among these obligations are the easement and trackage rights to be executed in favor of DM&E in conjunction with the asset sale. As explained in its Verified Notice of Exemption, DM&E is reserving an easement over the DM&E West Lines for the sole purpose of providing coal service and is retaining the common carrier obligation with respect to handling coal shipments over the line until December 31, 2030.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] In addition, RCP&E will grant DM&E trackage rights between Tracy, Minnesota and Wolsey, South Dakota in order for DM&E to continue operating certain overhead grain trains, and to handle non-revenue ballast trains, including the right to interchange such trains with BNSF at Wolsey.

[REDACTED]

[REDACTED]

[REDACTED] These contractual arrangements include the Colony Line Agreement, executed when DM&E acquired the Colony Line from Union Pacific in 1996, which sets forth a complex array of interchange commitments. Verified Notice of Exemption, FD 35799, at 6-7. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] In fact, in past cases the ICC found the absence of such “financial guarantees” a significant indicator that related corporate entities were sufficiently independent to justify treating them as separate. *Chesapeake & Albemarle R.R. Co.*, 1991 WL 182123, at *8 (“There is no record of any financial guarantee or commitments by [the parent] to back up [the subsidiary’s] obligations, and it appears that creditors must look solely to [the subsidiary] for satisfaction.”); *see also Akron Barberton Cluster Ry. Co.*, 1995 WL 785320, at *4 (ICC Jan. 12, 1996) (finding probative that subsidiary’s “debts are not guaranteed by its parent”); *Buffalo & Pittsburgh R.R., Inc.*, 1989 WL 238919, at *7 (finding probative that “[t]his acquisition has not been financially guaranteed” by parent corporation). We submit that GWI’s level of on-going financial

commitment in this matter sets this transaction apart, and warrants treatment of this case as a single transaction under Section 11323.

CONCLUSION

For all the foregoing reasons, IAM District Lodge 19 respectfully requests that the STB grant its petition to revoke.

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Dated: April 18, 2014

Counsel for IAM District Lodge 19

CERTIFICATE OF SERVICE

I hereby certify that I have served one true and correct copy of the unredacted Petition to Revoke Exemption by First-Class Mail, this 18th day of April 2014, to the office of the following:

Eric M. Hocky
Clark Hill PLC
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2005 Market Street, Suite 1000
Philadelphia, PA 19103

I hereby certify that I have served one true and correct copy of the redacted Petition to Revoke Exemption by First-Class Mail, this 18th day of April 2014, to the offices of the following:

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