

SERVICE DATE – NOVEMBER 3, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35293

PINSLY RAILROAD COMPANY–CONTROL EXEMPTION–  
WARREN & SALINE RIVER RAILROAD COMPANY

Decided: October 28, 2009

By petition filed on September 9, 2009, Pinsly Railroad Company (PRC) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 11323-25 to acquire control of Warren & Saline River Railroad Company (WSR) through the purchase of all WSR stock from Potlatch Land & Lumber, LLC (PLL). PRC seeks expedited action of this petition.<sup>1</sup> The Board will grant the exemption and the request for expedited action.

BACKGROUND

PRC is a noncarrier holding company that currently controls five Class III rail carriers.<sup>2</sup> WSR is a Class III rail carrier, and wholly-owned subsidiary of PLL, which owns and operates approximately 5 route miles of rail line extending south and west from Warren, AR. PLL is the only active shipper on the WSR line. PRC states that AKMD leases and operates a rail line that connects with WSR at Warren.

PRC states that it executed a Stock Purchase Agreement with PLL on September 4, 2009, to acquire all of WSR's stock and assume control of WSR.<sup>3</sup> Following consummation, PRC

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<sup>1</sup> PRC concurrently filed a verified notice of exemption in Pinsly Railroad Company–Control Exemption–The Prescott and Northwestern Railroad Company, STB Finance Docket No. 35292 (STB served Sept. 25, 2009), to obtain control of The Prescott and Northwestern Railroad Company (PNW), a Class III rail carrier, through the purchase of all PNW's stock from PLL. That exemption became effective on October 9, 2009.

<sup>2</sup> These carriers are: Pioneer Valley Railroad Company, Inc. (PVR), which operates in Massachusetts; Florida Central Railroad Company, Inc. (FCR), Florida Midland Railroad Company, Inc. (FMR), and Florida Northern Railroad Company, Inc. (FNR), each of which operates in Florida; and Arkansas Midland Railroad Company, Inc. (AKMD), which operates several disconnected line segments in Arkansas.

<sup>3</sup> PRC has concurrently filed a motion for protective order pursuant to 49 CFR 1104.14(b) in STB Finance Docket No. 35292 to allow PRC to file the unredacted Stock

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plans to coordinate the rail operations of WSR and AKMD, with service continuing 5 days per week as traffic warrants. PRC seeks expedited consideration of the petition so that it can concurrently finalize its acquisition of WSR and PNW no later than December 30, 2009.

In support of its petition, PRC states that no shipper will lose rail service or any existing competitive options as a result of the proposed transaction. PRC also states that all WSR traffic, which currently moves over AKMD's line out of Warren, will continue to do so after PRC assumes control of WSR. Finally, PRC states that it, along with AKMD, will provide administrative and other support for WSR's operations when WSR and AKMD become affiliated carriers.

### DISCUSSION AND CONCLUSIONS

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 requires prior approval by the Board under 49 U.S.C. 11323(a)(5). Under 49 U.S.C. 10502(a), however, the Board must exempt a transaction or service 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.

An exemption from the prior approval requirements of 49 U.S.C. 11323-25 is consistent with the standards of 49 U.S.C. 10502. Detailed scrutiny of the proposed transaction through an application for review and approval under 49 U.S.C. 11323-25 is not necessary to carry out the RTP. Rather, an exemption will promote that policy by minimizing the need for Federal regulatory control over the proposed transaction, promoting a safe and efficient rail transportation system, ensuring that a sound rail transportation system will continue to meet the needs of the shipping public, and reducing regulatory barriers to entry [49 U.S.C. 10101(2), (3), (4), and (7)]. Also, by allowing PRC to integrate WSR into its existing family of Class III carriers, with attendant experience, resources, capital, and administrative support, an exemption will foster sound economic conditions in transportation, ensure effective competition and coordination between rail carriers, and encourage efficient management [49 U.S.C. 10101(5) and (9)]. Other aspects of the RTP will not be adversely affected.

Regulation of this transaction is not needed to protect shippers from an abuse of market power. PRC has indicated that there will be no adverse impacts on rail transportation or lessening of rail competition. PRC will simply be incorporating WSR into its family of short line carriers without materially changing the operations of WSR. As a result, shippers

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Purchase Agreement under seal. The motion was addressed in a separate decision served on October 6, 2009.

potentially will benefit from greater efficiencies while receiving the same service. No shipper located on WSR's line is expected to lose rail service options as a result of the control transaction. The more likely result will be enhanced rail service, as shippers will benefit from the substantial experience and resources of PRC and from the connection between WSR and the other PRC-controlled carriers. Given our finding regarding the probable effect of the transaction on market power, we need not determine whether the transaction is limited in scope.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here because all the carriers involved are Class III rail carriers.

The acquisition of control is exempt from environmental reporting requirements under 49 CFR 1105.6(c)(2)(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 CFR 1105.8(b)(3) because it will not substantially change the level of maintenance of railroad properties.

In this proceeding, PRC has requested expedited handling of its petition to enable it to consummate the acquisition of control of WSR in conjunction with its acquisition of another Class III carrier, PNW, in a separate proceeding. PRC has requested that its acquisition of WSR become effective no later than December 30, 2009. PRC's authority to acquire PNW became effective on October 9, 2009. PRC's request is reasonable in light of the fact that the acquisition of the two Class III carriers was finalized under a single Stock Purchase Agreement. PRC's request for expedited action will be granted.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

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 PRC's acquisition of control of WSR.
2. PRC's request for expedited action is granted.
3. Notice will be published in the Federal Register on November 3, 2009.

4. This exemption will be effective on December 3, 2009. Petitions to stay must be filed by November 13, 2009. Petitions to reopen must be filed by November 23, 2009.

By the Board, Chairman Elliot, Vice Chairman Nottingham, and Commissioner Mulvey.

Anne K. Quinlan  
Acting Secretary