

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36326

BROOKFIELD ASSET MANAGEMENT, INC. AND DJP XX, LLC—
CONTROL EXEMPTION—GENESEE & WYOMING, INC., ET AL.

Decided: July 22, 2019

On July 9, 2019, Brookfield Asset Management, Inc. (Brookfield), and DJP XX, LLC (DJP), filed a verified notice of exemption under 49 C.F.R. § 1180.2(d)(2) to allow DJP and Brookfield to control Genesee & Wyoming Inc. (GWI) and the 106 rail carriers that are subject to the jurisdiction of the Board and that GWI controls (GWI Railroads). According to the verified notice, Brookfield is an alternative asset manager, and DJP¹ is a limited liability company specially formed to acquire GWI, which is a publicly-traded non-carrier holding company that controls, through direct or indirect equity ownership, the GWI Railroads. As a result of the proposed transaction, GWI would become a privately-held company and a wholly-owned subsidiary of DJP.

Brookfield and DJP state, among other things, that the proposed transaction falls within the class exemption set forth at 49 C.F.R. § 1180.2(d)(2), because (i) the GWI Railroads do not connect with any rail line owned or controlled by DJP or Brookfield;² (ii) the proposed transaction is not part of a series of anticipated transactions that would connect any railroad owned or controlled by DJP or Brookfield with any GWI Railroad, or that would connect any of the GWI Railroads with each other; and (iii) the proposed transaction does not involve a Class I carrier. (Verified Notice 2-3.)

The Board is considering the issues presented here, including whether the class exemption is appropriate for this transaction. See 49 U.S.C. § 10502(d). To provide sufficient time for the Board to fully consider the issues presented, the exemption that is the subject of this proceeding will not become effective until further order of the Board. See, e.g., SJRE-R.R. Series—Exemption Under 49 C.F.R. § 1150.31—Rail Line in Harris Cty., Tex., FD 36279 (STB served Apr. 5, 2019) (to obtain more information, directing that exemption would not become effective until further order of the Board). To the extent this transaction is subject to review by the Committee on Foreign Investment in the United States, Brookfield and DJP will be directed

¹ Brookfield controls DJP within the meaning of 49 U.S.C. § 10102(3).

² Brookfield and DJP state that neither Brookfield nor DJP owns or controls any railroads or rail lines.

to provide updates regarding the status and outcome of such review. Brookfield and DJP will be directed to provide these updates periodically as appropriate and to provide an update within seven days after they are notified of the outcome of such review. If Brookfield and DJP wish to file these updates confidentially, they may request a protective order.

The Board welcomes comments from the public, as well as from Brookfield and DJP, regarding these and any other relevant issues. Comments are due by August 21, 2019, and replies are due by September 5, 2019.

It is ordered:

1. The exemption that is the subject of this proceeding will not become effective until further order of the Board.
2. To the extent this transaction is subject to review by the Committee on Foreign Investment in the United States, Brookfield and DJP are directed to provide updates regarding the status and outcome of such review. Brookfield and DJP are directed to provide these updates periodically as appropriate and to provide an update within seven days after they are notified of the outcome of such review.
3. Comments are due by August 21, 2019, and replies are due by September 5, 2019.
4. Notice of this decision will be published in the Federal Register.
5. This decision is effective on its service date.

By the Board, Allison C. Davis, Director, Office of Proceedings.