

ENTERED  
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Public Record

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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DOCKET NO. FD 36326

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

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RESPONSE OF APPLICANTS TO NASCA COMMENTS

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In a decision issued on July 22, 2019, the Board<sup>1</sup> ordered that initial comments in this proceeding were due by August 21, 2019, and replies were due by September 5, 2019. On August 27, 2019, several days after opening comments were due, the Transportation Division of the International Association of the Sheet Metal, Air, Rail and Transportation Workers (“SMART/TD”) filed a Notice of Intent to Participate with no accompanying substantive comments. Then, on the last day of the reply period, Samuel J. Nasca, purportedly for and on behalf of SMART/TD, New York Legislative Board (“SMART/TD-NY”), filed comments styled “Reply Comments,” requesting that the Board reject the Verified Notice or revoke the exemption that applies to the Proposed Transaction (“Nasca Comments”).

The Board should not accept Mr. Nasca’s untimely request to reject the Verified Notice or revoke the exemption. The Board established an orderly process for addressing Applicants’ Verified Notice, and Mr. Nasca has no valid basis for disrupting that process by seeking revocation or rejection of the Notice for the first time on reply. Mr. Nasca could have made each of his allegations in any initial comments due on August 21, which would have permitted Applicants to reply, as contemplated by the Board’s schedule. Applicants urge the Board not to allow Mr. Nasca’s gamesmanship to further delay this proceeding.

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<sup>1</sup> The acronyms and defined terms used herein are the same as those used in Comments of Applicants filed in this proceeding on August 16, 2019 (“Applicants Comments”).

In any event, Mr. Nasca's allegations are completely without merit.<sup>2</sup> First, Mr. Nasca alleges without any supporting facts that GIC<sup>3</sup> must also obtain the Board's control authority. Nasca Comments at 4-5. Mr. Nasca is wrong. Unlike Brookfield, the Proposed Transaction will not cause GIC to "control" DJP, GWI, or the GWI Railroads within the meaning of 49 U.S.C. § 10102(3).<sup>4</sup>

Second, Mr. Nasca claims that the Verified Notice "does not satisfy the requirement of 49 CFR §1180.2(d)(2)," alleging that GWI has carriers in Canadian provinces, Australia and the United Kingdom. Mr. Nasca does not even attempt to explain why GWI's control of carriers outside the United States would have any impact on the availability of the Section 1180.2(d)(2) class exemption, which looks at whether there are connections between rail lines owned by the acquiring party and rail lines owned by the acquired party, each in the United States and subject to the jurisdiction of the Board. Applicants do not own or control any rail entities in the United States (or even in North America), so there is not even a possibility of connections between railroads that might be relevant under Section 1180.2(d)(2). The Verified Notice contains all information required by 49 C.F.R. § 1180.4(g), and contains no false or misleading information.

Finally, Mr. Nasca makes an incomprehensible allegation that Brookfield's rail-related investments in South America may affect competition between soybean producers in Brazil and the United States for sales to China. Nasca Comments at 2, 8-9. The Nasca Comments raise no valid competitive concerns that would support a rejection of the Verified Notice or revocation of the exemption.

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<sup>2</sup> Applicants acknowledge that the Board's rules do not permit a reply to a reply. 49 C.F.R. § 1104.13(b). But the Nasca Comments are not valid reply comments, since they should have been submitted on opening. To the extent the Board deems it necessary, Applicants nevertheless request leave to respond to the substance of Mr. Nasca's allegations.

<sup>3</sup> GIC Pte. Ltd. ("GIC") is a leading global investment firm that manages Singapore's foreign reserves.

<sup>4</sup> Persons seeking STB authority to control rail carriers need not prove a negative about other persons' lack of control of such rail carriers. Such a requirement would be unadministrable. In any event, James Rickert, President of DJP, hereby verifies that, at closing of the Proposed Transaction, GIC will have only an approximately 27 percent equity interest in DJP, and the same percentage vote on the DJP board of directors. GIC will not have the power to exercise control over DJP, GWI, or the GWI Railroads.

Mr. Nasca provides no basis for preventing Applicants from using the plainly applicable class exemption. Accordingly, Applicants once again urge the Board to allow the exemption to take effect no later than September 15, 2019.

Respectfully submitted,

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Dated: September 9, 2019

## VERIFICATION

I, James Rickert, President of DJP XX, LLC, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this response. Executed on September 9, 2019.

A handwritten signature in black ink, appearing to be 'JR' or 'James Rickert', written over a horizontal line.

James Rickert

## **CERTIFICATE OF SERVICE**

I certify that I have, on September 9, 2019, served copies of this Response of Applicants to Nasca Comments by first-class mail on all parties of record in this proceeding.

A handwritten signature in black ink, appearing to read 'Peter W. Denton', written over a horizontal line.

Peter W. Denton

*Attorney for Brookfield Asset Management, Inc. and DJP XX, LLC*