



FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35877]

Genesee & Wyoming Inc.—Acquisition of Control Exemption (Including Existing Interchange Commitment)—Arkansas Midland Railroad Company, Inc., The Prescott and Northwestern Railroad Company, and Warren & Saline River Railroad Company

Genesee & Wyoming Inc. (GWI),¹ a publicly traded non-carrier holding company, has filed a verified notice of exemption pursuant to 49 CFR 1180.2(d)(2), to acquire control of the following Class III rail carriers: Arkansas Midland Railroad Company, Inc. (AKMD), The Prescott and Northwestern Railroad Company (PNW), and Warren & Saline Railroad Company (WSR) (collectively, the Acquired Railroads).² The Acquired Railroads are currently owned and

¹ Most recently, GWI was authorized to control Rapid City, Pierre & Eastern Railroad, Inc. (RCP&E), in common control with other carriers in GWI's corporate family, upon RCP&E's becoming a Class II carrier. See Genesee & Wyo. Inc.—Continuance in Control Exemption—Rapid City, Pierre & E. R.R., FD 35800 (STB served Mar. 27, 2014). GWI provides with its verified notice of exemption a map showing the locations of the GWI-controlled railroads.

² AKMD connects with WSR at Warren, Ark. See Pinsly R.R.—Control Exemption—Warren & Saline River R.R., FD 35293 (STB served Nov. 3, 2009). The Board has previously issued notices of exemption under 49 C.F.R. § 1180.2(d)(2) where some of the railroads to be acquired connect with each other. See, e.g., SteelRiver Infrastructure Partners—Control Exemption—Patriot Rail (SteelRiver), FD 35622 (STB served May 23, 2012); Patriot Woods R.R.—Acquis. & Operation Exemption—Weyerhaeuser NR Co., Weyerhaeuser Woods R.R. Operating Div., FD 35431 (STB served Nov. 5, 2010) (authorizing two of the railroads later involved in SteelRiver to connect with each other).

under the common control of Pinsly Railroad Company (Pinsly).³ GWI has submitted to the Board a redacted, public version of its Stock Purchase Agreement with Pinsly.⁴

GWI states that: (1) the Acquired Railroads do not connect with any of GWI's subsidiary railroads;⁵ (2) the proposed transaction is not part of a series of anticipated transactions to connect the Acquired Railroads and any of GWI's subsidiary railroads; and (3) the proposed transaction does not involve a Class I rail carrier. The proposed transaction is therefore exempt from the prior approval requirements of 49 U.S.C. 11323 pursuant to 49 CFR 1180.2(d)(2).

Through its verified notice of exemption, GWI seeks to acquire all of the issued and outstanding stock of the Acquired Railroads from Pinsly. GWI states that the proposed transaction would allow the Acquired Railroads to take advantage of the administrative, financial, marketing, and operational support that GWI could provide, which would, in turn, promote the ability of the Acquired Railroads to provide safe and efficient service to their shippers. GWI claims that, although the Acquired Railroads do not connect with any of the railroads already controlled by GWI, the newly acquired railroads will expand the presence of GWI's affiliates in Arkansas.

³ The Acquired Railroads own and operate rail lines solely within the State of Arkansas.

⁴ With its verified notice of exemption, GWI filed under seal an unredacted version of its Stock Purchase Agreement and a motion for protective order to allow limited access to that agreement and other materials GWI has filed under seal. That motion is being addressed separately.

⁵ According to GWI, AKMD and one of GWI's existing subsidiaries, Little Rock & Western Railway, L.P. (LRWN) both interchange with Union Pacific Railroad Company (UP) in the same yard in Little Rock, Ark. GWI states, however, that neither AKMD nor LRWN have the right to use any UP facilities to connect with each other.

GWI states that no interchange commitment is being imposed as part of this transaction but that one of the Acquired Railroads, AKMD, has an existing lease agreement with UP that includes an interchange commitment.⁶ GWI notes that this existing commitment is part of AKMD's lease of several lines from UP⁷ and was negotiated as part of the overall economic package in the original lease transactions. Because GWI is acquiring control of AKMD through a stock purchase, GWI states that there will be no effect on AKMD's operating rights under the UP Lease.

The earliest the transaction could be consummated is December 20, 2014, the effective date of the exemption (30 days after the exemption was filed). The parties expect to consummate the transaction shortly after the exemption becomes effective, assuming all other conditions to closing have been satisfied by that time.

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. Because the transaction involves the control of one or more Class III rail carriers and two Class II rail

⁶ GWI states that it does not believe that the Board's interchange commitment disclosure requirements are intended to apply to equity control transactions in which no new interchange commitment is being imposed as part of the transaction. Without waiving that argument, GWI provides, in its verified notice and a confidential appendix, information about the interchange commitment that GWI notes "would be required" under 49 C.F.R. § 1180.4(g)(4)(i).

⁷ Under this lease, as supplemented (UP Lease), AKMD operates the North Little Rock Branch in North Little Rock, the Warren Branch between Dermott and Warren, and the Cypress Bend Branch between McGehee and Cypress Bend. See also Ark. Midland R.R.—Lease & Operation Exemption—Union Pac. R.R., FD 33908 (STB served Aug. 23, 2000); Ark. Midland R.R.—Change in Operators Exemption—Line of Union Pac. R.R., FD 34567 (STB served Nov. 17, 2004); and Ark. Midland R.R.—Lease & Operation Exemption—Union Pac. R.R., FD 34714 (STB served Aug. 30, 2005).

carriers, the transaction is subject to the labor protective requirements of 49 U.S.C. 11326(a) and New York Dock Railway—Control—Brooklyn Eastern District Terminal, 360 I.C.C. 60 (1979).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed by December 12, 2014 (at least seven days before the exemption becomes effective).

An original and ten copies of all pleadings, referring to Docket No. FD 35877, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on: Eric M. Hocky, Clark Hill PLC, One Commerce Square, 2005 Market Street, Suite 1000, Philadelphia, PA 19103.

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Decided: December 2, 2014.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Raina S. White

Clearance Clerk

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