



FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36326]

Brookfield Asset Management, Inc. and DJP XX, LLC—Control Exemption— Genesee & Wyoming Inc., et al.

Brookfield Asset Management, Inc. (Brookfield) and DJP XX, LLC (DJP) (collectively, Applicants), filed a verified notice of exemption under 49 CFR 1180.2(d)(2) to allow Applicants to control Genesee & Wyoming Inc. (GWI) and the 106 rail carriers subject to the jurisdiction of the Board that GWI controls (GWI Railroads).¹

According to the verified notice, GWI is currently a publicly traded noncarrier holding company that controls, through direct or indirect equity ownership, the GWI Railroads; Brookfield is an alternative asset manager; DJP is a limited liability company specially formed to acquire GWI; and Brookfield controls DJP within the meaning of 49 U.S.C. 10102(3). Applicants state that, at consummation of the proposed transaction, DJP's wholly owned subsidiary, MKM XXII Corp., will be merged with and into GWI,

¹ According to Applicants, two of the GWI Railroads are Class II carriers, and the remainder are Class III carriers. The GWI Railroads are located in the following states: Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin, and Wyoming.

which will be the surviving corporation. As a result of the proposed transaction,² GWI would become a privately held company and a wholly owned subsidiary of DJP. Therefore, the proposed transaction would cause DJP to indirectly control the GWI Railroads through DJP's direct control of GWI. The proposed transaction would also cause Brookfield to indirectly control the GWI Railroads through Brookfield's control of DJP and DJP's control of GWI. Applicants state that Brookfield and DJP are not rail carriers and do not own or control any rail carriers in the United States. Applicants further certify that the proposed acquisition does not involve an interchange commitment.³

The verified notice states that the proposed transaction is expected to close by the end of 2019 or early 2020, subject to customary closing conditions. This exemption is now effective, consistent with the Board's decision served October 29, 2019 in this proceeding.

The verified notice states that: (i) the GWI Railroads do not connect with any rail line owned or controlled by DJP or Brookfield; (ii) the proposed transaction is not part of a series of anticipated transactions that would connect any railroad owned or controlled by Applicants with any GWI Railroad or connect any of the GWI Railroads with each

² A copy of the Agreement and Plan of Merger was filed with the verified notice as Exhibit 2.

³ By decision served on July 22, 2019, and published in the Federal Register on July 26, 2019 (84 Fed. Reg. 36,157), the effectiveness of the exemption was postponed until further order of the Board to allow sufficient time to consider the issues presented. The decision also directed Brookfield and DJP to provide updates regarding review by the Committee on Foreign Investment in the United States (CFIUS) and the outcome of such review, and it invited comments from the Applicants and the public.

other; and (iii) the proposed transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. § 11323. See 49 CFR 1180.2(d)(2).

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

All pleadings, referring to Docket No. FD 36326, must be filed with the Surface Transportation Board either via e-filing or in writing addressed to 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Applicants' representatives, Anthony J. LaRocca and Peter W. Denton, Steptoe & Johnson LLP, 1330 Connecticut Avenue, N.W., Washington, DC 20036.

According to Applicants, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b)(1).

Board decisions and notices are available at www.stb.gov.

Decided: October 28, 2019.

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

Kenyatta Clay,

Clearance Clerk.

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