52286
EB

SERVICE DATE – NOVEMBER 21, 2024

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36795

STEFAN SOLOVIEV, EXECUTOR, ESTATE OF SHELDON H. SOLOW—CONTINUANCE IN CONTROL EXEMPTION—COLORADO PACIFIC SAN LUIS RAILROAD LLC

Digest:[1] This decision allows Stefan Soloviev, Executor, the Estate of Sheldon H. Solow, a noncarrier, to continue in control of Colorado Pacific San Luis Railroad LLC when it becomes a Class III rail carrier in a related transaction involving its acquisition of a rail line.

Decided: November 18, 2024

By petition filed on August 23, 2024, Stefan Soloviev, Executor, the Estate of Sheldon H. Solow (the Estate), seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 11323-24 to continue in control of Colorado Pacific San Luis Railroad LLC (CXSL), upon CXSL's becoming a carrier in a related transaction. As discussed below, the Board will grant the exemption.

BACKGROUND

According to the petition, the Estate is a noncarrier that currently controls two rail carriers. The Estate controls Colorado Pacific Railroad LLC (CXR), a Class III rail carrier, through the Estate's control of KCVN, LLC (KCVN), a noncarrier.[2] (Pet. 2, 5.) The Estate also controls Colorado Pacific Rio Grande Railroad LLC (CXRG), a Class III rail carrier.[3] (Pet. 3.)

---

[1] The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol'y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

[2] According to the petition, CXR is a wholly owned subsidiary of KCVN. (Pet. 2 n.1.) In a letter filed with the Board on September 16, 2024, the Estate clarified that the Estate and Stefan Soloviev each own 50% of KCVN. (Estate Letter 1.) Stefan Soloviev is the executor of the Estate. (Pet. 2-3.)

[3] See Colo. Pac. Rio Grande R.R.—Acquis. & Operation Exemption Containing Interchange Commitment—San Luis & Rio Grande R.R., FD 36656 (STB served Jan. 5, 2023) (granting CXRG authority to acquire and operate the assets of the San Luis Rio Grande Railroad (SLRG)); Soloviev ex rel. Solow—Continuance in Control Exemption—Colo. Pac. Rio Grande R.R., FD 36662 (STB served Feb. 2, 2023) (granting the Estate authority to continue in control

The rail carrier the Estate is seeking to control, CXSL, is a wholly owned subsidiary of Soloviev Investors LLC (Soloviev Investors), which is controlled by the Estate. (Id. at 2-3.) The exemption here would allow the Estate to control CXR, CXRG, and CXSL.[4] (Id. at 5.)

On August 22, 2024, CXSL filed a verified notice of exemption pursuant to 49 CFR 1150.31 to acquire and operate a 13-mile line of railroad owned by the San Luis Central Railroad Company (SLC). See Colo. Pac. San Luis R.R.—Acquis. & Operation Exemption—San Luis Cent. R.R., FD 36794 (STB served Sept. 6, 2024). Notice of the exemption was served and published in the Federal Register on September 6, 2024 (86 Fed. Reg. 72,920).[5] Upon CXSL's acquisition of SLC's assets, which the Estate indicates occurred on October 1, 2024, CXSL became a rail carrier.[6] As a result, the Estate needs authorization to continue in control of CXSL.

The Estate explains that because the SLC rail line acquired by CXSL connects to the CXRG mainline at Sugar Junction, Colo., the Estate cannot seek continuance in control authority pursuant to the class exemption at 49 CFR 1180.2(d)(2). (Pet. 4, 6); see 49 CFR 1180.2(d)(2) (requiring that the subject line not connect with any other rail lines in the corporate family). No additional rail carriers connect to the line that CXSL acquired from SLC. (See Pet., Ex. A.)

---

of CXRG). Subsequently, CXRG received authority to acquire and operate approximately 1.53 miles of additional SLRG track known as the Blanca Spur. See Colo. Pac. Rio Grande R.R.—Pet. for Exemption—Acquis. & Operation of a Line of R.R. in Costilla Cnty., Colo., FD 36694 (STB served Sept. 18, 2023).

[4] According to the Estate, it is intended that CXR, CXRG, and CXSL will all eventually be owned and controlled by the Soloviev Group, a noncarrier corporation headed by Stefan Soloviev. (Pet. 3 n.3.) The petition states that such transition will be accompanied by the appropriate regulatory filings to the Board. (Id.)

[5] The owners of SLC and Soloviev Investors executed an Asset Purchase Agreement on July 26, 2024, whereby the track assets and certain other assets of SLC were to be sold to Soloviev Investors or "its permitted assignee," and Soloviev Investors assigned all of its rights in the Asset Purchase Agreement to CXSL on July 31, 2024. See Colo. Pac. San Luis R.R.—Acquis. & Operation Exemption, FD 36794, slip op. at 1.

[6] The Estate's continuance in control petition in this docket noted that CXSL's acquisition and operating authority granted in Docket No. FD 36794 could become effective and that transaction could close before the Board's decision on the Estate's continuance in control authority becomes effective. For that reason, the Estate indicated that it would enter into a voting trust agreement pursuant to 49 CFR part 1013 to permit CXSL to begin operations immediately upon receiving acquisition and operating authority, while ensuring that the Estate does not control CXSL until the continuance in control authority becomes effective. (Pet. 4.) The acquisition and operating authority granted in Docket No. FD 36794 became effective on September 22, 2024. On October 7, 2024, the Estate filed a copy of its voting trust agreement with the Board, as required by 49 CFR 1013.3(b). The voting trust agreement, which was executed on October 1, 2024, indicates that CXSL exercised its acquisition and operating authority on the same date. (Voting Trust Agreement 1.)

In support of its petition, the Estate asserts that its proposed control of CXSL is part of an overall transaction that is intended to continue and enhance the rail service provided to shippers along the former SLC rail line. (Pet. 7.) In particular, the Estate states that its control would allow farmers along the rail line to increase their railroad shipments, as some of those shippers are currently shipping by truck due in part to the inability of SLC to meet their needs. (Id.) The Estate asserts that its control of CXSL would enable the infusion of resources and other support necessary to achieve these objectives. (Id.) Given these circumstances, the Estate argues that exempting it from the requirements of 49 U.S.C. 11323-24 is consistent with the rail transportation policy of 49 U.S.C. 10101 (RTP). (Id.)

The Estate also asserts that the transaction is limited in scope, as it is confined to a 13-mile, stub-ended rail line, and that CXSL intends to continue rail service and try to expand it. (Id. at 8.) The Estate also claims that its control of CXSL would not result in an abuse of market power; instead, it asserts that no shipper along the CXSL line will lose rail service options because of the transaction and that efficiencies and improvements through CXSL's connection to CXRG should enhance existing service and incentivize use of the line by new shippers. (Id. at 8-9.)

The Estate seeks expedited consideration of its petition. As noted, supra note 6, the Estate has placed its membership interest in CXSL into a voting trust until the control authority sought in this docket becomes effective. The Estate requests expedition to minimize the length of time the membership interest must remain in the voting trust. (Id. at 10.)

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 11323(a)(5), prior approval by the Board is required for the acquisition of control over a rail carrier by a person that is not a rail carrier but that controls any number of rail carriers. Under 49 U.S.C. 10502(a), the Board, to the maximum extent consistent with 49 U.S.C. subtitle IV, part A, must exempt a transaction or service from regulation if it finds that: (1) regulation is not necessary to carry out the RTP; 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.

In this case, 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. An exemption would promote the RTP by minimizing the need for federal regulatory control over the proposed transaction, 49 U.S.C. 10101(2), by reducing regulatory barriers to entry, 49 U.S.C. 10101(7), and by facilitating the honest and efficient management of railroads, 49 U.S.C. 10101(9). Granting the Estate an exemption to control CXSL would also allow it to make investments in the rail line and support a more efficient connection between it and the CXRG mainline; this would facilitate the development and continuation of a sound rail transportation system with effective competition to meet the needs of the public, 49 U.S.C. 10101(4), and foster sound economic conditions in transportation, 49 U.S.C. 10101(5). The exemption would also promote energy conservation by incentivizing the diversion to rail of traffic currently moving by truck, 49 U.S.C. 10101(14). Other aspects of the RTP would not be adversely affected.

Regulation of the transaction is not needed to protect shippers from an abuse of market power.[7] Because the line that CXSL has acquired connects only to CXRG, there is no risk that CXSL may foreclose interchange with other connecting carriers or that shippers will otherwise lose access to alternative rail service as a result of the transaction. And, as noted above, the transaction would enable improvements that could make the line a more attractive option for rail users. Moreover, no shipper (or any other entity) has objected to this continuance in control transaction or CXSL's line acquisition authorized in Docket No. FD 36794. Nevertheless, to ensure that the shippers are informed of our action, we will require the Estate to serve a copy of this decision on all shippers on the line that was acquired and is now operated by CXSL within five days of the service date of this decision and certify to the Board that it has done so.

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. However, 49 U.S.C. 11326(c) does not provide for labor protection for transactions under 49 U.S.C. 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here because all carriers involved are Class III carriers.

The control transaction is exempt from environmental reporting requirements under 49 CFR 1105.6(c)(1)(i) because it would 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 would not substantially change the level of maintenance of railroad properties.

The Board also finds the Estate's request for expedited action on its petition for exemption to be reasonable under the circumstances and, therefore, the effective date of the exemption will be December 6, 2024. See 49 CFR 1121.4(e) ("Unless otherwise specified in the decision, an exemption generally will be effective 30 days from the service date of the decision granting the exemption."). Petitions for stay must be filed by November 29, 2024. Petitions to reopen will be due by December 11, 2024.

It is ordered:

1. Under 49 U.S.C. 10502, the Board exempts the transaction described above from the prior approval requirements of 49 U.S.C. 11323-25.

2. Notice of this control exemption will be published in the Federal Register.

3. The Estate shall serve a copy of the decision on all shippers on the CXSL line and certify to the Board that it has done so, by November 26, 2024.

---

[7] Given this finding, the Board need not determine whether the transaction is limited in scope. See 49 U.S.C. 10502(a).

4. The control exemption will become effective on December 6, 2024. Petitions to stay must be filed by November 29, 2024. Petitions to reopen must be filed by December 11, 2024.

By the Board, Board Members Fuchs, Hedlund, Primus, and Schultz.