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SERVICE DATE – APRIL 27, 2021

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36503

GRAND ELK RAILROAD, INC.—ACQUISITION EXEMPTION—LINES OF WISCONSIN
CENTRAL LTD. IN THE STATE OF MICHIGAN

Docket No. FD 36504

FOX VALLEY & LAKE SUPERIOR RAIL SYSTEM, L.L.C.—ACQUISITION AND
OPERATION EXEMPTION—LINES OF WISCONSIN CENTRAL LTD. IN THE STATE OF
WISCONSIN

Docket No. FD 36505

WATCO HOLDINGS, INC.—EXEMPTION FOR INTRA-CORPORATE FAMILY
TRANSACTION—FOX VALLEY & LAKE SUPERIOR RAIL SYSTEM, L.L.C. AND
WISCONSIN & SOUTHERN RAILROAD, L.L.C.

Docket No. FD 36506

WATCO HOLDINGS, INC.—CONTINUANCE IN CONTROL EXEMPTION—FOX
VALLEY & LAKE SUPERIOR RAIL SYSTEM, L.L.C.

Decided: April 26, 2021

On April 5, 2021, noncarrier holding company Watco Holdings, Inc. (Watco Holdings), its newly created subsidiary Fox Valley & Lake Superior Rail System, L.L.C., a noncarrier (Fox System), and Grand Elk Railroad, Inc. (Grand Elk), a Class III carrier and Watco Holdings subsidiary, filed for a series of exemptions in furtherance of the acquisitions of rail lines in Wisconsin and Michigan from Wisconsin Central Ltd. (WCL), which is controlled by Canadian National Railway Company (CN). Specifically, in Docket No. FD 36503, Grand Elk has filed a verified notice of exemption under 49 C.F.R. § 1150.41 to acquire 142.64 miles of rail lines owned by WCL in Michigan, consisting of 95.38 miles of active line and 47.26 miles of line over which discontinuance of service previously had been authorized. (Grand Elk Verified Notice 1.) In Docket No. FD 36504, Fox System has filed a verified notice of exemption under 49 C.F.R. § 1150.31 to acquire and operate approximately 328.52 miles of active rail lines and acquire 180.75 route miles of line over which discontinuance of service previously had been authorized. (Fox System Verified Notice 1,3.) As a result of the proposed transaction, Fox System would become a Class III carrier. Additionally, Watco Holdings has filed in Docket No. FD 36506 a petition for exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49

U.S.C. § 11323 to continue in control of Fox System upon Fox System becoming a Class III carrier. Finally, in Docket No. FD 36505, Watco Holdings has filed a verified notice of exemption pursuant to 49 C.F.R. § 1180.2(d)(3) for an intra-corporate transfer of three segments, totaling approximately 42 miles, of the Wisconsin lines at issue in Docket No. FD 36504 from Fox System to Wisconsin & Southern Railroad, L.L.C. (WSOR), a Class II subsidiary of Watco Holdings. (Watco Holdings Verified Notice 2-3.)¹

Watco Holdings seeks expedited consideration of its petition for exemption in Docket No. FD 36506, asking that an exemption decision be issued by June 7 with an effective date no later than June 30, 2021, to accommodate the parties' intention to consummate the transaction in the second quarter of the year without requiring the use of a voting trust.

Several submissions have been filed raising various issues concerning the proposed exemption transactions and the resulting acquisitions. U.S. Representative Tom Tiffany, Western Upper Peninsula Planning & Development Regional Commission, the Northwoods Rail Transit Commission, and the Timber Professionals Cooperative separately filed comments seeking revocation or stay of the exemptions sought in Docket Nos. FD 36503 and FD 36504. These comments point out that Watco Holdings already controls some 600 miles of rail lines in Wisconsin through WSOR and that, after the transaction, Watco Holdings will control more than 1,250 miles of rail line in Wisconsin and Michigan. The comments also express concern regarding whether shippers on the acquired lines will continue to have the benefit of conditions the Board imposed when approving the control by CN of WCL. See Canadian Nat'l Ry.—Control—Wis. Cent. Transp. Corp., FD 34000 (STB served Sept. 7, 2001). The commenters assert that the proposed transaction should be designated as “significant” under 49 C.F.R. part 1180.

The Wisconsin Department of Transportation (WisDOT) also commented on April 12, 2021. WisDOT notes that it has been concerned about rates and reliability of service for shippers on the affected lines and that it supports the sale because of its understanding that this transaction will address these issues. (WisDOT Comment 1, FD 36504.) WisDOT also asks the Board to consider the shippers' concerns, including whether the shippers will continue to benefit from the conditions imposed in Canadian National Railway, Docket No. FD 34000. (WisDOT Comment 1, FD 36504.)

On April 14, 2021, Northwoods Distribution Services and Branch Line Railroad jointly filed a comment objecting to the transfer of trackage in northern Wisconsin absent public hearings. (Branch Line Joint Comment 1, Apr. 14, 2021, FD 36503 & FD 36504.) They then filed on April 21, 2021, a comment requesting that the Board revoke or stay the exemptions sought in Docket Nos. FD 36503 and FD 36504. (Branch Line Joint Comment 4, Apr. 21, 2021,

¹ In addition to WSOR and Grand Elk, Watco Holdings currently controls 38 other Class III rail carriers. (Pet. for Exemption 3-4.)

FD 36503 & FD 36504.) On April 22, 2021, Northwood Distribution Services and Dahlquist Trucking, Inc., filed a submission urging the Board to revoke or stay the exemptions.

Fox System, Grand Elk, and Watco Holdings jointly filed on April 15, 2021, and April 20, 2021, various letters in support of the transaction in Docket Nos. FD 36503, FD 36504, and FD 36506. The Wisconsin Paper Council filed a letter of support on April 16, 2021, and the Wisconsin Office of the Commissioner of Railroads filed a letter of support on April 22, 2021. Wisconsin Central Group and Lake States Shippers Association have also indicated their support for the acquisitions.²

In light of the submissions in Docket Nos. FD 36503 and FD 36504, Fox System and Grand Elk have jointly filed a motion with a proposed schedule for resolution of the issues raised in these dockets. They argue that a housekeeping order is unnecessary and ask that the Board proceed with publication of the notices of exemption in the Federal Register, with stay petitions due by April 28, 2021, and responses due by May 5, 2021. They reiterate their desire to consummate the transactions by June 30, 2021. WCL filed a comment on the same date supporting the proposed schedule. (WCL Reply 1, Apr. 12, 2021, FD 36503 & FD 36504). And, on April 22, 2021, WCL submitted a letter it earlier sent to WisDOT claiming that nothing in the proposed sale to Fox System will affect the 2001 conditions or change whether or how those conditions apply for shippers on the lines. (WCL Reply, Letter 1, Apr. 22, 2021, FD 36504.)

Many of the submissions in Docket Nos. FD 36503 and FD 36504 have raised issues concerning the verified notices and the overall transaction. Grand Elk, Fox System, and Watco Holdings will be directed to respond to those filings and the concerns raised therein by May 11, 2021.

Moreover, Fox System and Grand Elk each seek an acquisition exemption to acquire active rail lines and lines where the Board has permitted a discontinuance of service. (Fox System Verified Notice 1; Grand Elk Verified Notice 1.) Both Fox System and Grand Elk state that they will acquire the latter lines in their “discontinued state” and that the acquisitions are for continued rail service only on the lines that are currently active. (Fox System Verified Notice 3, 6; Grand Elk Verified Notice 3, 5.) Neither Fox System nor Grand Elk cite any authority for the proposition that, upon consummation of their acquisition transaction, authority previously granted for WCL to discontinue service would apply to the new owner as well. The class exemption allowing noncarriers (such as Fox System) to acquire or operate a rail line was adopted to serve shippers and community interests by facilitating continued rail service. Class Exemption for the Acquis. & Operation of Rail Lines Under 49 U.S.C. 10901, 1 I.C.C.2d 810, 811-13, 817 (1985), aff’d sub nom. Ill. Commerce Comm’n v. ICC, 817 F.2d 145 (D.C.

² Wisconsin Central Group and Lake States Shippers Association initially filed a joint petition for revocation or stay in Docket Nos. FD 36503 and FD 36504 on April 12, 2021, but withdrew their opposition on April 23, 2021.

Cir. 1987). In other contexts, the Board has stated that an acquisition exemption is meant to support the continued operation of rail lines. See Jackson Cnty.—Acquis & Operation Exemption—Union Pac. Ry., FD 35982, slip op. at 7 (STB served July 31, 2019). Fox System, Grand Elk, and Watco Holdings will be directed to file a supplement by May 11, 2021 addressing this issue.

Where a notice of exemption raises issues of concern, publication of the notice and the effectiveness of the exemption may be held in abeyance to allow the applicant(s) to provide an explanation through the filing of supplemental information. See E. Ky. Ry.—Lease & Operation Exemption—Ky. Steam Heritage Corp. in Estill Cnty., Ky., FD 36201, slip op. at 2 (STB served July 18, 2018); Transport Handling Specialists, Inc.—Continuance in Control Exemption—RSL R.R., FD 35726, slip op. at 1 (STB served May 15, 2013). Here, in light of the concerns raised by various interested persons and the question discussed above concerning acquisition of lines over which discontinuance of service had been authorized, it is appropriate for the exemptions in Docket Nos. FD 36503, FD 36504, and FD 36505 to not become effective until further order of the Board.

It is ordered:

1. The exemptions in Docket Nos. FD 36503, FD 36504, and FD 36505 will not become effective until further order of the Board.
2. Fox System, Grand Elk, and Watco Holdings are directed to file the supplement and response discussed above by May 11, 2021.
3. This decision is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.