

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36701

GMÉXICO TRANSPORTES, S.A.B. DE C.V.—ACQUISITION OF CONTROL
EXEMPTION—CG RAILWAY, LLC

Decided: April 2, 2024

Digest:¹ This decision rejects a petition for exemption as incomplete without prejudice to the parties’ ability to file anew a complete, correct petition or application. Regardless of whether a new petition or application is filed, the Board directs CG Railway, LLC (CGR) and its owners to respond to questions concerning, respectively, authorization for CGR’s current operations and for the transaction in which they acquired CGR.

BACKGROUND

On January 8, 2024, GMéxico Transportes, S.A.B. de C.V. (GMXT), a railroad holding company, filed a petition under 49 U.S.C. § 10502 for exemption from the prior approval requirements of 49 U.S.C. §§ 11323-24 for GMXT to acquire an indirect controlling ownership interest in CG Railway, LLC (CGR), a Class III carrier (the Transaction). According to the petition, CGR is wholly owned by Golfo de México Rail Ferry Holdings LLC, a 50/50 joint venture (JV) between Seacor Holdings, Inc. (through its wholly-owned subsidiary, Rail Ferry Investment Holdings Inc.) (Seacor) and Genesee & Wyoming, Inc. (through its wholly-owned subsidiary, G&W Agave Holdings Inc.) (GWI). (Pet. 2.) The petition states that CGR currently operates rail-ferry service between the Port of Mobile, Alabama, and the Port of Coatzacoalcos, Mexico, where the rail ferry operation connects to the Ferrosur Railway, a rail carrier subsidiary of GMXT located in Mexico. (*Id.*) As described in the petition, the Transaction “will give GMXT an indirect 60% interest in the JV, which includes the railroad equipment, ferries, and trackage rights over 0.583 miles of line of railroad in the Port of Mobile, Alabama known as tracks 14 and 15 [the Line].” (*Id.* at 3.) Specifically, GMXT would acquire 20% of GWI’s interest in CGR, and all of Seacor’s ownership interest in the JV, resulting in GMXT having 60% control of the JV and, consequently, of CGR. (*Id.*)

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).

DISCUSSION AND CONCLUSIONS

A petition for exemption under 49 U.S.C. § 10502 must include the information set forth in 49 C.F.R. part 1121. While petitioners include some required information, as discussed in this decision, the petition for exemption is missing information required by part 1121, as well as information about the corporate affiliations and holdings of the acquiring party foundational to the Board’s evaluation of this proceeding. It also raises significant questions about past transactions involving the parties that must be addressed regardless of whether the Transaction moves forward. Accordingly, the Board will reject the petition without prejudice to the parties’ ability to address these deficiencies and file anew a complete and correct petition for exemption or application. The deficiencies in the current petition and questions about past transactions are described below.

Deficiencies that must be corrected in any future petition or application.

Interchange Commitments. First, the petition omits the information pertaining to interchange commitments specified in 49 C.F.R. § 1121.3(d). A party seeking an exemption under 49 U.S.C. § 10502 is required to certify whether or not a proposed acquisition or operation of a rail line “involves a provision or agreement that may limit future interchange with a third-party connecting carrier, whether by outright prohibition, per-car penalty, adjustment in the purchase price or rental, positive economic inducement, or other means (“interchange commitment”).” 49 C.F.R. § 1121.3(d). If an interchange commitment exists, the information specified in § 1121.3(d)(i)-(viii) must also be provided, along with notice to shippers that currently use or have used the line in question within the last two years. See § 1121.3(d)(v). The petition fails to provide the required certification or any other information regarding interchange commitments or lack thereof.

Corporate Structure and Holdings. Second, the petition omits fundamental information about the ownership, intercorporate structure, and holdings of petitioner GMXT—some of which are rail carriers located in the United States. According to an amendment to the verified notice filed by GMXT in a 2017 exemption proceeding, GMXT is the non-carrier transportation subsidiary of Grupo México, S.A.B. de C.V. (Grupo México), a non-carrier holding company described in that filing as GMXT’s “Ultimate Parent.” Amendment to Verified Notice 1-2 & Ex. B, Apr. 28, 2017, Grupo México, S.A.B. de C.V.—Control Exemption—Fla. E. Coast Holdings Corp., FD 36109. That submission also stated that Grupo México controlled two U.S. rail carriers—one through GMXT and the other through a wholly-owned subsidiary named ASARCO LLC (Asarco). (*Id.*)² The exemption in Docket No. FD 36109—authorizing Grupo México and GMXT to acquire control of Florida East Coast Railway (FECR), a Class II carrier—became effective on May 28, 2017,³ and notice of consummation of that transaction was filed on June 30, 2017.

² The amendment to the verified notice identifies these two rail carriers, respectively, as Texas Pacifico Transportation, Ltd. (Pacífico), a Class III carrier located in Texas, and Copper Basin Railway, Inc. (Copper Basin), a Class III carrier located in Arizona. (*Id.*)

³ See Grupo México, S.A.B. de C.V.—Control Exemption—Fla. E. Coast Holdings Corp., FD 36109, slip op. at 2 (STB served May 9, 2017).

The petition in this proceeding contains no information on GMXT’s corporate affiliations beyond a statement that, “[a]t the Port of Coatzacoalcos, the rail ferry operation connects to the Ferrosur Railway, a rail carrier subsidiary of GMXT that is located entirely in Mexico and is not subject to the jurisdiction of the STB.” (Pet. 2-3.) Specifically, the petition does not disclose that GMXT appears to hold controlling interests in two U.S rail carriers, FECR and Pacifico. Nor does it disclose that GMXT itself appears to be controlled by another entity (Grupo México), which, according to information GMXT filed in Docket No. FD 36109, indirectly controls a third U.S. rail carrier—Copper Basin—through another subsidiary controlled by Grupo México, Asarco. Information relating to both issues—the entity in ultimate control of the entity seeking acquisition authority, and whether either of those entities holds controlling interests in other rail carriers subject to the Board’s jurisdiction—must be provided in any future filing seeking authorization to acquire control of CGR so that the Board may properly assess whether the Transaction meets the exemption standard at 49 U.S.C. § 10502(a).

Any such future filing should also clarify the status of Copper Basin. According to petitioner’s filing in Docket No. FD 36109, Copper Basin is a Class III carrier whose main line extends from Magma, Ariz., to Winkelman, Ariz., a distance of 54 miles, with a seven-mile branch line from Ray Junction, Ariz., to Ray, Ariz. (Amendment to Verified Notice 2 & Ex. A (map), Apr. 28, 2017, Grupo México, FD 36109.) The decision authorizing the exemption in Docket No. FD 36109 noted that it appeared Grupo México did not obtain Board authority to have common control of more than one rail carrier when it acquired Copper Basin, and stated that, if that was the case, and if such authority was required, the Board expected Grupo México to promptly submit an appropriate filing for authorization of that common control. Grupo México, FD 36109, slip op. at 1 n.2 (STB served May 9, 2017). Although Copper Basin is identified on Asarco’s website as a railway owned by Asarco, a Grupo México mining company, see www.asarco.com/copper-basin-railway, the Board finds no indication in its records that Grupo México requested authorization to acquire or operate it.

Competitive Effects. Finally, the petition omits any supporting information for petitioner’s statements that the Transaction “will not result in an abuse of market power,” and that “there would be no anti-competitive effects and no shippers would be adversely affected.”⁴ (Pet. 4.) Moreover, the agreement between GMXT and Seacor contains a broad “non-compete” provision that prohibits Seller Restricted Parties, without Buyer’s prior consent, from acquiring, supporting, owning an interest in, managing, or providing services, directly or indirectly, to “a Competing Business within the Territory.” (Pet. Ex. B, Purchase and Sale Agreement between Seacor and GMXT, Sec. 6.5(b).) “Territory,” in turn, is defined to mean “(a) the continental United States east of the Mississippi River, including the city of New Orleans and (b) the east coast of the United Mexican States.” (Id., page 16.)⁵ Any future filing seeking authorization for

⁴ GXMT also contends that the Transaction is limited in scope because the Line is only “slightly more than a half of a mile in length.” (Pet. 6.) But that ignores the fact that the Line is only a component of the broader railroad car ferry service.

⁵ “Competing Business” is defined to mean “the movement of rail cars by marine transportation between ports located in the Territory” and related activities, including (among

the Transaction must justify any statements about the potential for adverse effects (or lack thereof) on shippers or competition, taking into account the non-compete provision and any other relevant issues, and be accompanied by a sworn verification of an appropriate person in compliance with 49 C.F.R. § 1104.5(b).

Inquiries that must be answered regardless of whether a new petition or application is filed.

Board authorization for CGR to operate its rail car ferry service. GMXT is seeking authority to acquire a controlling interest in CGR, which, according to the petition, “currently operates a rail-ferry service between the Port of Mobile, Alabama and the Port of Coatzacoalcos, Mexico.” (Pet. 2.) However, it does not appear that CGR ever sought and received authorization to operate a railroad car ferry service—with a portion of the movement by rail within the U.S. and a portion over U.S. waters—and seems only to have obtained more limited authority to operate rail lines within the Port of Mobile.⁶ Broader authority to operate a combined rail and water ferry service appears to be necessary. See 49 U.S.C. § 10102(6) (defining “railroad” for purposes of 49 U.S.C. subtitle IV, part A to include “(A) a bridge, car float, lighter, ferry, and intermodal equipment used by or in connection with a railroad”); § 10501(a)(1)(B) (the Board has jurisdiction over transportation by rail carrier that is “by railroad and water, when the transportation is under common control, management, or arrangement for a continuous carriage or shipment”). The Board’s jurisdiction under § 10501(a)(1) “applies only to transportation in the United States,” as specified in § 10501(a)(2). However, that jurisdiction encompasses transportation that takes place in, under, or over U.S. waters, and is encompassed within the Board’s licensing authority. See, e.g., CSX Transp. Inc.—Aban. Exemption—in St. Clair Cnty., Mich., AB 55 (Sub-No. 510X), slip op. at 1 n.1 (ICC served July 14, 1995) (authorizing through exemption the abandonment of a rail car float operation between St. Clair County, Mich., and the United States-Canada boundary line, while noting that the full scope of the rail car float operation extended to Ontario, Canada); Canadian Nat’l Ry.—Trackage Rights Exemption—Detroit River Tunnel Co., FD 34001 (STB served Mar. 16, 2001) (authorizing grant of trackage

others) the leasing of railcars or railcar related equipment; owning and developing rail ferry terminals in the Territory; owning and developing railcar repair and transloading facilities in the Territory; and owning, leasing, retrofitting, and refurbishing any rail ferry vessel in the Territory. (Id., page 5.)

⁶ In a prior proceeding involving a proposed acquisition of CGR’s assets, the Board made this same observation and requested that the filer indicate whether CGR ever received the Board’s authority to operate its rail car ferry service. Cent. Gulf Acquis. Co.—Acquis. & Operation Exemption—CG Ry., FD 36007, slip op. at 2 (STB served May 3, 2016). However, the filer responded only by providing information showing that CGR had obtained authority to lease and operate tracks 14 and 15 within the Port of Mobile. (See Ltr. 1, Cent. Gulf Acquis., FD 36007, May 9, 2016 (citing CG Ry.—Lease & Operation Exemption—Terminal Ry. Ala. State Docks, FD 35009 (STB served Apr. 12, 2007)).) The filer then modified its notice to seek authority to acquire and operate 2,850 feet of rail track in the Port of Mobile, “but no authority for transportation over water.” Cent. Gulf Acquis., FD 36007, slip op. at 1 (STB served Mar. 23, 2018). The notice of exemption in that proceeding was ultimately withdrawn, and the proceeding was closed. Cent. Gulf Acquis., FD 36007, slip op. at 2 (STB served Apr. 3, 2018).

rights to and through the Detroit River Tunnel between the point of access to the tunnel and the U.S.-Canada boundary).

As noted above, the petition here does not indicate that CGR ever received such authority or reflect a recognition that the authority may be needed. (See Pet. 3, 6 (addressing only the proposed acquisition of ownership rights in connection with 0.583 miles of rail line in the Port of Mobile, Alabama (i.e., tracks 14 and 15), with no reference to the water portion of the car ferry service).) Accordingly, CGR is directed to indicate whether it ever received the Board's authority to operate its rail car ferry service and, if so, provide the details of that authorization, by May 9, 2024. If CGR has not received authority to operate its rail car ferry service, it must seek after-the-fact authority from the Board or explain why it believes authorization is not needed. No authority to acquire CGR will be granted until this matter is resolved and the Board is assured that CGR is not engaged (or is no longer engaged) in the unauthorized operation of a rail car ferry service subject to the Board's licensing authority.

Board authorization for the JV's acquisition of CGR. Second, and relatedly, Seacor and GWI will be directed to address the need for authorization for the acquisition of CGR by the JV. The petition does not state how or when CGR's current owner—Golfo de México Rail Ferry Holdings LLC, described in the petition as a "50/50 joint venture" between Seacor and GWI—acquired CGR. One of the JV partners, GWI, is a non-carrier holding company that directly or indirectly controls over 100 railroads across the United States. See Genesee & Wyo. Inc.—Corp. Fam. Transaction Exemption, FD 36655, slip op. at 1 (STB served Jan. 6, 2023.). But it does not appear that acquisition authority was sought in connection with the transaction in which the JV acquired CGR. Seacor and GWI are directed to inform the Board, by May 9, 2024, whether acquisition authority was sought (and provide related details) and, if authority was not sought, explain why it was not (or, alternatively, state that they will promptly seek after-the-fact acquisition authority).

GMXT will be directed to effect service of this decision on CGR, Seacor, and GWI by April 9, 2024, and to certify by that date that it has done so.

It is ordered:

1. The petition for exemption is rejected without prejudice to the parties' ability to file anew a petition for exemption or application that addresses the matters discussed above and is otherwise complete and in accordance with the applicable regulations.
2. GMXT is directed to serve a copy of this decision on CGR, and on Seacor and GWI, by April 9, 2024, and to certify by that date that it has done so.
3. CGR is directed to respond to the questions specified above concerning whether it has sought or received authorization to operate its rail car ferry service by May 9, 2024.
4. Seacor and GWI are directed to respond to the questions specified above concerning their acquisition of CGR by May 9, 2024.

5. This decision is effective on its service date.

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