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SERVICE DATE – DECEMBER 20, 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.

Digest:¹ Watco Holdings, Inc., and two of its subsidiaries have filed for a series of exemptions in furtherance of the acquisition of approximately 652 miles of rail line in Wisconsin and Michigan. This decision permits the exemptions to become effective.

Decided: December 17, 2021

Watco Holdings, Inc. (Watco Holdings), a noncarrier holding company, Grand Elk Railroad, Inc. (Grand Elk), a Class III carrier and Watco Holdings subsidiary, and Watco Holdings' newly created noncarrier subsidiary Fox Valley & Lake Superior Rail System, L.L.C. (Fox System) (collectively, Applicants), filed for a series of exemptions in furtherance of the acquisition of rail lines in Wisconsin and Michigan from Wisconsin Central Ltd. (WCL). In particular, Grand Elk filed a verified notice of exemption to acquire lines in Michigan, Fox

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).

System filed a verified notice of exemption to acquire and operate lines in Wisconsin, Watco Holdings filed both a verified notice of exemption for an intra-corporate family transaction to transfer some of the acquired assets between its subsidiaries and a petition for exemption to continue in control of Fox System once Fox System becomes a carrier.

The Board received numerous comments supporting the overall transaction and numerous comments opposing it, including requests for revocation or stay of the acquisition exemptions. To permit the Board time to consider the issues raised, the effectiveness of the notices of exemption was postponed pending further order of the of the Board. See Grand Elk R.R.—Acquis. Exemption—Lines of Wis. Cent. in the State of Mich. (April Order), FD 36503 et al. (STB served Apr. 27, 2021). That decision noted that the proposed acquisitions by Grand Elk and Fox System involve the transfer of some lines as to which the Board previously had authorized discontinuance of service and that Grand Elk and Fox System intended to keep those lines in their “discontinued state.” See id. at 3. The decision directed Applicants to file a supplement explaining how transfer of those lines would be an appropriate use of the acquisition exemption and responding to the requests for revocation or stay. See id. at 3-4. The Board received a joint reply from Applicants responding to the April Order and further comments from stakeholders.

As discussed below, the Board finds that the issues raised do not demonstrate regulation is necessary to carry out the rail transportation policy (RTP) and that it is appropriate to allow Applicants to proceed with the exemption process. The Board therefore will allow the exemptions sought by the verified notices to become effective and publish notice of these exemptions in the Federal Register. The Board will also grant the petition for exemption sought by Watco Holdings and publish notice of that exemption in the Federal Register.

BACKGROUND

On April 5, 2021, Applicants separately filed for their various exemptions in furtherance of the overall transaction to acquire lines from WCL, which is controlled by Canadian National Railway Company (CN). Specifically, in Docket No. FD 36503, Grand Elk filed a verified notice of exemption under 49 C.F.R. § 1150.41 to acquire approximately 142.64 miles of rail line 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 filed a verified notice of exemption under 49 C.F.R. § 1150.31 to acquire and operate approximately 509.27 miles of rail line in Wisconsin, including 328.52 miles of active rail line and 180.75 miles of line over which discontinuance of service previously had been authorized. (Fox System Verified Notice 1, 3-5.)² Under the proposed transaction, Fox System would become a Class III carrier. (Id. at 1.) Accordingly, Watco Holdings 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. §§ 11323-24 to continue in control of Fox System upon Fox System’s becoming a Class III carrier. (Watco Holdings Pet. 1.) Finally, in Docket

² Detailed descriptions of the lines that Grand Elk and Fox System seek to acquire are provided in the verified notices of exemption filed in Docket Nos. FD 36503 and FD 36504, respectively.

No. FD 36505, Watco Holdings filed a verified notice of exemption pursuant to 49 C.F.R. § 1180.2(d)(3) for an intra-corporate transfer of the Eden Spur, the West Bend Subdivision, and the Saukville Subdivision (collectively, the Southern Cluster), 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; id. at Ex. 1.)

Several submissions were filed raising various issues concerning the proposed exemptions and the resulting acquisitions. On April 8 and April 9, 2021, U.S. Representative Tom Tiffany, Western Upper Peninsula Planning & Development Regional Commission (Upper Peninsula Commission), the Northwoods Rail Transit Commission (Northwoods 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 each point out that Watco Holdings already controls some 600 miles of rail lines in Wisconsin through WSOR and that, after consummation of the proposed transaction, Watco Holdings would 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 would continue to have the benefit of the conditions the Board imposed when approving CN's acquisition of control of WCL. See Canadian Nat'l Ry.—Control—Wis. Cent. Transp. Corp. (CN/WCL), 5 S.T.B. 890 (2001). The commenters assert that the proposed transaction should be designated as “significant” under 49 C.F.R. part 1180 and question whether Applicants should be permitted to acquire the lines through the Board's exemption procedures, including the class exemptions at 49 C.F.R. §§ 1150.31 and 1150.41.

The Wisconsin Department of Transportation (WisDOT) commented on April 12, 2021, noting 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 would address these issues. (WisDOT Comment 1, FD 36504.) WisDOT also asks the Board to consider the shippers' concerns, including whether the shippers would continue to benefit from the conditions imposed in CN/WCL. (Id.)

On April 14, 2021, Branch Line Railroad, LLC (Branch Line), filed a comment stating that Northwoods Distribution Services, Inc. (Northwoods Distribution), and Branch Line (collectively, N&B) object to the transfer of trackage in northern Wisconsin absent public hearings. (Branch Line Comment 1, Apr. 14, 2021, FD 36503.) N&B later filed a comment on April 21, 2021, requesting that the Board revoke or stay the exemptions sought in Docket Nos. FD 36503 and FD 36504. (N&B Comment 4, Apr. 21, 2021, FD 36503 & FD 36504.) On April 22, 2021, Northwoods Distribution and Dahlquist Trucking, Inc. (collectively, N&D), jointly filed a submission urging the Board to revoke or stay the exemptions.

Applicants jointly filed on April 15 and 21, 2021, various letters supporting Docket Nos. FD 36503, FD 36504, and FD 36506 and praising Watco-provided rail service. In Docket No. FD 36504, the Wisconsin Paper Council and the Wisconsin Office of the Commissioner of Railroads filed letters of support on April 16, 2021, and April 22, 2021, respectively. Wisconsin Central Group and Lake States Shippers Association have also indicated their support for the acquisitions. (Wis. Cent. Group & Lake States Shippers 1, Apr. 23, 2021, FD 36503 &

FD 36504.) And, on April 22, 2021, WCL submitted a letter it previously sent to WisDOT claiming that nothing in the proposed sale to Fox System would affect the conditions imposed in CN/WCL or change whether or how those conditions apply for shippers on the lines. (WCL Reply, Letter 1, Apr. 22, 2021, FD 36504.)

As noted above, the April Order postponed the effectiveness of the exemptions in Docket Nos. FD 36503, FD 36504, and FD 36505 and directed Applicants to submit a supplemental filing explaining how the transfer of lines as to which a discontinuance of service had been authorized would be an appropriate use of the acquisition exemption and responding to the commenters seeking revocation or stay.

Applicants filed their joint response to the April Order on May 7, 2021. At the outset, Applicants note that numerous shippers and other stakeholders, including WisDOT, support the overall transaction. (Applicants Reply 2, May 7, 2021, FD 36503, FD 36504, FD 36505, & FD 36506.)³ Applicants also note that among the supporters are several entities that had initially sought greater regulatory scrutiny. (Id. at 3.) Applicants assert that the remaining parties with objections have expressed only general concerns about the exemption process. (Id.) They further argue that those expressing concern provide no legitimate basis for departing from the established Board class exemption procedures applicable to these proposed rail line acquisitions and identify no lessening of competition or other competitive harm from the proposed transaction. (Id. at 4.) Applicants add that, although styled as petitions for stay and to revoke the exemptions, the objecting commenters make no effort to satisfy the Board's standards for stay or revocation. (Id.) As to the acquisition of lines over which discontinuance had been granted, Applicants assert that their intent and goal is to restore rail service on these lines in due course and that acquisition of the lines is consistent with Board precedent and sound policy. (Id.)

WCL also responded to the April Order on May 7, 2021. Among other things, it reiterates that nothing in the proposed sale of WCL rail lines to Applicants would affect the conditions imposed in CN/WCL or change whether or how those conditions apply for customers on the lines. (WCL Reply 4, May 7, 2021, FD 36503 & FD 36504.) It adds that, upon closing of the proposed line sales, Grand Elk and Fox System would serve as "handling carriers" for WCL, and WCL would continue to quote and invoice linehaul freight rates to customers on those lines, which rates would include the Grand Elk/Fox System transportation charge. (Id.) WCL states that customers would retain a direct commercial relationship with it and would have the same routing access to WCL gateways and rate-making interface with WCL that they do today. (Id.) WCL adds that its representation also applies to the lines in Michigan. (Id.) Finally, WCL asserts that permitting the sale of the lines where discontinuance would continue is appropriate. (Id. at 6-7.)

³ On May 3, 2021, Applicants submitted letters from two shippers supporting the acquisitions and the use of the class exemption for the transfers. The National Industrial Transportation League and Packaging Corporation of America submitted similar letters on May 6, 2021. Wisconsin Central Group and Lake States Shippers Association jointly filed supporting comments on May 10, 2021.

Also on May 7, 2021, Upper Peninsula Commission filed a comment withdrawing its April 9, 2021 request for revocation or stay of the exemption sought in Docket No. FD 36503. (Upper Peninsula Comm'n Comment 1, May 7, 2021, FD 36503.) It states that it has met with numerous stakeholders, including "Watco management and staff," to address its concerns and that, based on those meetings, it is optimistic about the future of the rail lines at issue. Upper Peninsula Commission also, however, notes WCL's representation to WisDOT that nothing in the proposed sale of the WCL lines to Fox System would affect the CN/WCL conditions or change whether or how those conditions apply for shippers on the line and asks the Board to hold WCL to a similar representation with respect to the Grand Elk lines in upper Michigan and any inactive rail lines that are brought back into service. (Id. at 2.)

Northwoods Commission similarly filed on May 7, 2021, withdrawing its request for revocation and stay filed on April 9, 2021, for similar reasons. (Northwoods Comm'n Amended Pet. 1, May 7, 2021, FD 36503 & FD 36504.) Northwoods Commission, however, encourages the Board to review the outcome of this transaction at its one- and two-year anniversaries. (Id.) Like Upper Peninsula Commission, Northwoods Commission also asks the Board to hold WCL to its representation to WisDOT and confirm that it applies to the Grand Elk lines in upper Michigan as well as any rail lines brought back into service. (Id.)

On May 11, 2021, the Great Lakes Timber Professionals Association (Timber Association) filed a comment also asking for review of the transaction at the one- and two-year anniversaries of the acquisitions by Grand Elk and Fox System. (Timber Ass'n Comment 1, FD 36503 & FD 36504.) The Lake States Lumber Association also filed on May 11, requesting that the Board delay the sales pending an agreement that the purchases include the right to connect to a Class I railroad. (Lake States Lumber Ass'n 1, FD 36503 & FD 36504.)

N&B also provided further comment on May 11, 2021. Primarily, N&B assert that, although the sales would benefit shippers in southern and central Wisconsin, the sales would not benefit shippers located further north in Wisconsin and Michigan in an area N&B term the Northwoods. (N&B Comment 2, 3-4, May 11, 2021, FD 36503 & FD 36504.) N&B claim that Northwoods shippers currently must use CN to access markets and the proposed sales provide no access to other Class I railroad connections. (Id. at 4.) They contend that CN does not reach as many U.S. markets as other carriers and complain of CN's alleged predatory practices, monopoly position, and continual disinvestment in the Northwoods region. (Id.) N&B ask the Board to bifurcate the sale and not approve the acquisition of track located along the "Route 8 Corridor" and associated feeder lines. (Id. at 5-6.) N&B instead ask the Board to order CN to sell track in the corridor on a stand-alone basis, preferably to a locally owned company with local management and local employees, whose sole interest, purpose, and commitment is to serve the Northwoods shippers. (Id. at 6-7.) Per N&B's proposal, CN would be required to sell branch lines and two segments that are not part of Fox System's proposed acquisition, which N&B claim would provide Northwood shippers with access to other carriers. (Id. at 4-5, 6-7.)

By decision served on July 1, 2021, a proceeding under 49 U.S.C. § 10502(b) was instituted in Docket No. FD 36506. N&B submitted a filing on August 3, 2021, essentially reiterating their earlier requests for relief for the Northwoods shippers. They also suggest that CN had "broken promises" concerning CN/WCL and ask that the Board appoint a hearing officer

to conduct discovery. (N&B Comment 1-2, 4, Aug. 3, 2021, FD 36506.) Additionally, N&B request the Board consider WCL's proposed sale under the current major merger rules adopted in Major Rail Consolidation Procedures, 5 S.T.B. 1 (2001). (N&B Comment 5, Aug. 3, 2021, FD 36506.)

On September 7, 2021, U.S. Representative Tom Tiffany submitted an additional filing that, among other things, raises concerns that the current sale would not provide price competition and dependable service for shippers in the Northwoods. (U.S. Representative Tiffany Comment 1, Sept. 7, 2021, FD 36503 & FD 36504.) On September 17, 2021, Northwoods Distribution filed a comment expressing frustration with CN's service. (Northwoods Distrib. Comment 1, Sept. 17, 2021, FD 36503 & FD 36504.) WCL filed a response to Representative Tiffany's September 7, 2021 filing on September 27, 2021, and a response to Northwoods Distribution on October 7, 2021.

Representative Tiffany filed an additional comment on October 29, 2021, expressing his hope that the transaction would accomplish the goals outlined for it and offering additional suggestions, including ensuring access over two additional rail segments and providing a "look back provision" to ensure rate and service promises are kept. (U.S. Representative Tiffany Comment 1, Oct. 29, 2021, FD 36503 & FD 36504.) On November 2, 2021, Northwoods Distribution filed a further comment, claiming that the Northwoods would be disadvantaged by the transaction because Watco Holdings and its subsidiaries would not have the ability to lower rates that WCL currently has on the lines in the area. (Northwoods Distrib. Comment 3, Nov. 2, 2021, FD 36503, FD 36504, FD 36505, & FD 36506.)⁴

DISCUSSION AND CONCLUSIONS

As discussed below, the Board finds that those challenging the exemptions sought in Docket Nos. FD 36503, FD 36504, and FD 36505 have failed to meet their burden of demonstrating that regulation is necessary to carry out the RTP. The Board therefore will allow those exemptions to become effective and publish notice of them in the Federal Register. The Board also finds that the transfer of the lines over which discontinuance authority had been granted is an appropriate use of the acquisition exemption here. And, in Docket No. FD 36506, the Board will grant Watco Holdings' petition for exemption and publish notice of that exemption in the Federal Register.

Revocation Requests. A party seeking revocation or rejection of a notice of exemption has the burden of demonstrating that the notice contains false or misleading information, or that regulation is necessary to carry out the RTP of 49 U.S.C. § 10101. See Oakland Glob. Rail Enters.—Acquis. Exemption—Line in Alameda Cnty., Cal., FD 36301 et al., slip op. at 3 (STB served Oct. 28, 2019). Here, those seeking revocation in Docket Nos. FD 36503, FD 36504, and FD 36505 have failed to meet their burden.

⁴ Although a reply to a reply is not permitted under 49 C.F.R. § 1104.13(c), the Board will accept it and other filings in the interest of a complete record. See City of Alexandria, Va.—Pet. for Declaratory Ord., FD 35157, slip op. at 2 (STB served Nov. 6, 2008) (allowing a reply to a reply "[i]n the interest of compiling a full record").

The Board's predecessor, the Interstate Commerce Commission (ICC), adopted the class exemption at § 1150.31 for the acquisition and operation of rail lines by noncarriers because the consideration of individual petitions for exemption from 49 U.S.C. § 10901 had become a "burdensome and unnecessary expenditure of resources" on the agency and the individual petitioners. See SF&L Ry.—Acquis. & Operation Exemption—Toledo, Peoria & W. Ry. Between La Harpe & Peoria, Ill., 6 S.T.B. 408, 418 (2002) (citing Class Exemption for the Acquis. & Operation of Rail Lines Under 49 U.S.C. § 10901 (Section 10901 Class Exemption), 1 I.C.C.2d 810, 811 (1985)). The ICC noted that the transfer of a line to a new carrier that can operate the line more economically or more effectively than the existing carrier serves shipper and community interests by continuing rail service and allows the selling railroad to eliminate lines it cannot operate economically. Section 10901 Class Exemption, 1 I.C.C.2d at 813.

The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, created the Board and enacted a new provision, at 49 U.S.C. § 10902, for acquisition or operation of rail lines by Class II and Class III rail carriers. The Board adopted a new class exemption at 49 C.F.R. § 1150.41, similar to that for noncarriers at 49 C.F.R. § 1150.31, to apply to transactions in which Class III rail carriers seek to acquire additional rail properties. Class Exemption for Acquis. or Operation of Rail Lines by Class III Rail Carriers—Under 49 U.S.C. 10902 (Section 10902 Class Exemption), 1 S.T.B. 95 (1996). The Board noted that a class exemption from the requirements of § 10902 would facilitate the acquisition of rail lines by Class III rail carriers and ensure the continuation of rail service on lines that may otherwise be abandoned if not for the sale. See Section 10902 Class Exemption, 1 S.T.B. at 103.

Here, the acquisitions proposed by Grand Elk and Fox System qualify for the class exemption under 49 C.F.R. § 1150.41 and 49 C.F.R. § 1150.31, respectively.⁵ Both sales involve the transfer of rail property for continued use. (Applicants Reply 7, May 7, 2021, FD 36503, FD 36504, FD 36505, & FD 36506.) The amount of track being transferred in the acquisitions does not preclude use of the class exemption process or warrant greater scrutiny in this case. As an initial matter, the class exemption regulations at 49 C.F.R. § 1150.41 and 49 C.F.R. § 1150.31 do not include a mileage limit for rail line acquisitions. As Applicants note, acquisitions involving similar or greater track mileage have proceeded through the class exemption process. See e.g., Rapid City, Pierre, & E. R.R.—Acquis. & Operation Exemption—Dakota, Minn., & E. R.R., FD 35799 et al. (STB served May 14, 2015) (utilizing class exemption for acquisition of approximately 670 miles of rail lines and approximately 219 miles of incidental trackage rights); Iowa, Chi. & E. R.R.—Acquis. & Operation Exemption—Lines of I&M Rail Link, LLC, FD 34177 (STB served July 22, 2002) (allowing class exemption for acquisition of 1,125 miles of rail line and 275 miles of incidental trackage rights). In fact, WCL previously acquired approximately 1,800 route miles, including lines involved here, through a class exemption. See Wis. Cent. Ltd.—Exemption Acquis. & Operation—Certain Lines of Soo Line R.R., FD 31102 (ICC served Sept. 16, 1987).

⁵ And, as discussed below, the acquisition of the lines where the Board had granted discontinuance of service is appropriate here. Both Grand Elk and Fox System represent that they intend to try to restore service on those lines and have detailed plans supporting their goals.

As noted above, some commenters argue that greater scrutiny is necessary based on competition concerns because, after the transaction, Watco Holdings will control more than 1,250 miles of rail line in Wisconsin and Michigan. The commenters assert that the proposed transaction should be designated as “significant” under 49 C.F.R. part 1180 due to that fact. (N&D Pet. 1, FD 36503 & FD 36504; Timber Pros. Coop. Comment 1, FD 36503 & FD 36504; U.S. Representative Tom Tiffany Comment 1, Apr. 8, 2021, FD 36503 & FD 36504.) N&B add that the transaction would make Watco Holdings and its investors the largest owner of track in Wisconsin by a significant margin. (N&B Comment 3, Apr. 21, 2021, FD 36503 & FD 36504.) Even though Watco Holdings would own substantial rail holdings in Wisconsin and Michigan, nothing on the record demonstrates any clear, anticompetitive effects. As WCL notes, the shippers on the lines at issue would have the same competitive options as they do now—customers would retain a direct commercial relationship with WCL and would have the same routing access to WCL gateways and rate-making interface with WCL as before the transaction. Moreover, numerous shippers, as well as WisDOT, have indicated their support for the proposed transaction and Watco-provided rail service. Both the Upper Peninsula Commission and the Northwoods Commission have withdrawn their requests for revocation and stay and have expressed optimism about future rail service.

Furthermore, requests that the sale of assets by WCL be classified as a “significant” transaction under 49 C.F.R. part 1180 or that the Board consider the sale under the current major merger rules are misplaced. Those requests are proper in certain merger proceedings filed under 49 U.S.C. § 11323. As discussed above, the acquisition of lines by Grand Elk and Fox System are properly filed as exemptions from 49 U.S.C. §§ 10902 and 10901, respectively, different sections of the Board’s governing statute.

And although Docket Nos. FD 36505 and FD 36506 deal with the intra-corporate component and the control component of the overall transaction and are governed by 49 U.S.C. § 11323, each component satisfies the criteria applicable for exemption and thus neither need be analyzed under the more stringent classifications found at 49 C.F.R. § 1180.2(a)-(c). The intra-corporate family transaction in Docket No. FD 36505, where the rail assets are being transferred from one Watco Holdings’ subsidiary, Fox System, to another, WSOR, qualifies for a class exemption because that transaction does not “result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.” 49 C.F.R. § 1180.2(d)(3); see, e.g., Fortress Inv. Grp. LLC—Exemption for Intra-Corp. Fam. Transaction—Ohio River Partners S’holder LLC, FD 36402, (STB served May 15, 2020). And, as discussed in detail below, the Board is granting the petition for exemption in Docket No. FD 36506 after considering the exemption criteria in § 10502.⁶

Requests for Ordered Sale and Conditioning. N&B argue that CN’s acquisition of WCL in 2001 made CN the only Class I carrier to serve the Northwoods and that it put CN in the position to exercise monopoly power. (N&B Comment 2, May 11, 2021, FD 36503 & FD 36504.) N&B claim that, because the current sales do not include a segment between

⁶ Some commenters, in their revocation requests, ask the Board to stay the transaction, but these commenters do not address or meet the stay criteria. See, e.g., Wash. Metro. Area Transit Comm’n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977).

Pembine, Wis., and Goodman, Wis., which they allege would permit access to the Escanaba & Lake Superior Railroad (E&LS), and a segment between Tony, Wis., and Ladysmith, Wis., which they allege would permit access to Union Pacific Railroad Company (UP), Northwoods shippers would continue not to have access to other carriers. (*Id.* at 4-5.) To rectify the situation, N&B ask that the Board order the sale of those segments as well as the rest of what it terms the Route 8 Corridor (Wausau north from milepost 91) and branch lines from the corridor. (*Id.* at 5-6.)⁷ N&B argue that their proposal would create an economic unit that would serve Northwoods shippers and provide interchange. (*Id.* at 6; see also U.S. Representative Tiffany Comment 1, Oct. 29, 2021, FD 36503 & FD 36504.)

In addition, both Timber Association and Northwoods Commission ask that the Board review the transaction proposed by Watco Holdings and its subsidiaries at its one- and two-year anniversaries. (Timber Ass’n Comment 1, FD 36503 & FD 36504; Northwoods Comm’n Amended Pet. 1, May 7, 2021, FD 36503 & FD 36504.) If conditions on these lines in the Northwoods have not improved, Northwoods Commission asks the Board to consider reopening CN/WCL and take action to ease pricing impacts, and Timber Association asks the Board to reopen the terms of the current sales. (Northwoods Comm’n Amended Pet. 1, May 7, 2021, FD 36503 & FD 36504; Timber Ass’n Comment 1, FD 36503 & FD 36504.) Northwoods Commission, as well as Upper Peninsula Commission, also ask that the Board hold WCL to its representation to WisDOT that nothing would change concerning the CN/WCL conditions due to the sales to Grand Elk and Fox System. (Northwoods Comm’n Amended Pet. 1, May 7, 2021, FD 36503 & FD 36504; Upper Peninsula Comm’n Comment 1-2, May 7, 2021, FD 36503.)

The Board will not impose the conditions related to the Northwoods area. As discussed above, the record does not demonstrate that the proposed transaction would result in any clear, anticompetitive effects. Indeed, these concerns seem to stem from CN’s acquiring control over WCL in 2001, and not from the presently proposed acquisitions by Grand Elk and Fox System. Board approval of the transaction at issue would have no effect on the conditions imposed in CN/WCL, including the conditions requiring WCL to adhere to its “open gateways pledge” and its “bottleneck-waiver pledge,” which remain in effect. Thus, there is no need for the Board to again hold WCL to its representation to WisDOT regarding the CN/WCL conditions.

N&B’s request to order a sale of the corridor and related track to a local entity is also misplaced. There is no basis here to condition approval of the transaction on a requirement that assets be divested given the absence, discussed above, of transaction-related competitive concerns. Regardless, the requested relief would not provide shippers in the Northwoods area with increased access to a Class I carrier other than CN. In response to N&B’s concerns about how the sale was structured, WCL notes that, while the segment between Pembine and Goodman

⁷ Specifically, the segments include: (1) 148.6 miles of rail line extending between (a) Pembine and Goodman, (b) Prentice, Wis., and Rhinelander, Wis., (c) Prentice and Park Falls, Wis., (d) Bradley, Wis., and Wausau, Wis., (e) and Tony and Ladysmith; (2) and 224 miles of line over which the Board had permitted discontinuance of service, between (a) Ashland, Wis., and Park Falls, (b) Goodman and Rhinelander, (c) Prentice and Tony, and (d) Marengo Junction, Wis., and White Pine, Mich. (N&B Comment 6, May 11, 2021, FD 36503 & FD 36504.)

does lead to E&LS, E&LS only has connections with WCL. (WCL Reply 2, Sept. 27, 2021, FD 36503 & FD 36504.) Similarly, as to the segment between Tony and Ladysmith, WCL notes that UP cannot access customers or interchange traffic at Ladysmith. (*Id.*) UP only conducts train operations through Ladysmith on WCL's north-south mainline pursuant to overhead trackage rights obtained by a predecessor in a series of related transactions from the early 1990s. See Chi. & N. W. Transp. Co.—Joint Relocation Project Exemption, FD 32043 (ICC served May 27, 1992); Chi. & N. W. Transp. Co.—Trackage Rts. Exemption—over Wis. Cent. Ltd., FD 31882 (ICC served June 6, 1991).

Although the Board will not grant the relief described above, it takes seriously concerns raised about service in the Northwoods and emphasizes WCL's, Grand Elk's, and Fox System's responsibility to provide rail service consistent with their common carrier obligations.

Transfer of Lines Over Which Discontinuance of Service Had Been Granted. As discussed above, Grand Elk and Fox System seek to acquire certain lines over which the Board had granted authority for discontinuance of service, and the intended purchasers did not indicate an intent to operate those lines. See Apr. Ord., FD 36503 et al., slip op. at 3-4. Applicants and WCL filed replies addressing the issue. Upon review, the Board will allow the transfer of those lines through the exemptions sought in Docket Nos. FD 36503 and FD 36504.

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, and the Board has stated that an acquisition exemption is meant to support the continued operation of rail lines. See Apr. Ord., FD 36503 et al., slip op. at 3 (citations omitted).

Here, Grand Elk and Fox System explain in their reply to the April Order that they are each acquiring the rail lines where discontinuance authority had been granted with the goal and intent of restoring rail service on those lines. (Applicants Reply 16, May 7, 2021, FD 36503, FD 36504, FD 36505, & FD 36506.) They note, however, that the lines have been out of service for several years and that Watco Holdings has not yet fully assessed the condition of the tracks, bridges, and other facilities and the costs of restoring the lines to safe operating condition. (*Id.*) In addition, potential rail shippers located on the lines would need to be persuaded to use rail and new business would need to be developed. (*Id.*) Accordingly, restoring rail service would require both an investment in the physical infrastructure and rail customers to warrant the investment. (*Id.*) Grand Elk and Fox System assert that they are already engaged in efforts to develop rail customers and hope to work with state economic development officials and other interested stakeholders to develop rail business and to identify funding opportunities, as Watco Holdings companies previously have done in Wisconsin, Michigan, and elsewhere. (*Id.*) Watco Holdings adds that it intends to pursue re-investment in these lines using the various options available to short line railroads, such as federal and state grant programs coupled with private capital to restore service, if market conditions allow, and notes these efforts would take time. (*Id.*) Other stakeholders have filed in support of reactivating service. (See, e.g., Northwoods Comm'n Amended Pet. 2, May 7, 2021, FD 36503 & FD 36504.)

Based on this record, the Board concludes that the transfer of the lines in question would be consistent with the rationale underpinning the Board's class exemption procedures and that it

is appropriate to allow the transfers to proceed. See also Ventura Cnty. Transp. Comm'n—Acquis. Exemption—S. Pac. Transp. Co., FD 32794 (ICC served Dec. 29, 1995); Golden Gate Bridge, Highway & Transp. Dist.—Acquis. Exemption—N.W. Pac. R.R., FD 31689 (July 3, 1990).⁸

Petition for Exemption. In Docket No. FD 36506, Watco Holdings filed a petition for exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. §§ 11323-24 to continue in control of Fox System once Fox System becomes a rail carrier. (Pet. for Exemption 1.) Watco Holdings notes that granting its petition would also permit the consummation in Docket No. FD 36505, in which Fox System would transfer the Southern Cluster to WSOR for WSOR to operate as part of its system. (Id. at 5.)

Watco Holdings asserts it is unlikely that its continued control of Fox System would result in any anticompetitive effects. (Id. at 8.) With the exceptions of the West Bend and Saukville Subdivisions, none of Fox System's rail lines connect to those of any other rail carrier owned or controlled by Watco Holdings or its affiliates. (Id.)

With respect to the West Bend Subdivision and the Saukville Subdivision, Watco Holdings asserts that no loss of competition is likely. (Id.) Although those lines are branch lines currently solely served by WCL, they are "islands" disconnected from the rest of the WCL system. (Id. at 8-9.) To serve those lines, WSOR currently handles WCL traffic to and from each line in haulage service for WCL over WSOR's own lines. (Id. at 9.) After consummation of the overall transaction, traffic on the West Bend Subdivision and the Saukville Subdivision would continue to be handled by WSOR in WCL's account to and from interchange with WCL pursuant to a contractual handling carrier agreement between the parties. (Id.) In addition, shippers on the two segments would also be able to ship via WSOR and its interline connections. (Id.) Watco Holdings adds that there are no dually served shippers at the points where the West Bend and Saukville Subdivisions connect with WSOR's rail lines, and no shipper would go from two-railroad access to one. (Id.)

The acquisition of control of a rail carrier by a person that is not a rail carrier but that controls any number of rail carriers requires prior approval by the Board under 49 U.S.C. § 11323(a)(5). Under 49 U.S.C. § 10502(a), however, the Board must exempt a transaction from regulation if it finds that: (1) regulation is not necessary to carry out the RTP of 49 U.S.C. § 10101; and (2) either (a) the transaction is limited in scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

Detailed scrutiny of a full application concerning the proposed continuance in control is not required here to carry out the transportation policy of § 10101. The grant of an exemption will minimize the need for federal regulatory control over the rail transportation system.

⁸ The Board notes that none of the line sales at issue in Docket Nos. FD 36503 and FD 36504 are subject to interchange commitments limiting future interchange with a third-party connecting carrier. (Grand Elk Verified Notice 4; Fox Sys. Verified Notice 5.) If interchange commitments are imposed at a later date, however, the Board expects to be notified about such a development.

49 U.S.C. § 10101(2). An exemption also will enable Watco Holdings, a company experienced in the development of short line railroads, to bring its experience, knowledge, and resources to bear in helping Fox System maintain, operate, and develop the lines it is acquiring from WCL. Thus, the grant of an exemption will promote a safe and efficient rail transportation system (49 U.S.C. § 10101(3)), ensure the development of a sound rail transportation system (49 U.S.C. § 10101(4)), foster sound economic conditions in transportation (49 U.S.C. § 10101(5)), and encourage efficient management of railroads (49 U.S.C. § 10101(9)). Granting an exemption will reduce the regulatory barriers to entry into and exit from the industry (49 U.S.C. § 10101(7)) and provide for expeditious handling and resolution of all proceedings (49 U.S.C. § 10101(15)). Moreover, the grant of the exemption would not adversely affect any of the other aspects of the RTP.

Additionally, regulation is not needed to protect shippers from the abuse of market power. As noted above, it is unlikely that Watco Holdings' continued control of Fox System would result in any anticompetitive effects. (Pet. for Exemption 8.) After the transaction, with the exception of two short branch lines, none of the Fox System lines will connect to any other railroad owned or controlled by Watco Holdings. (*Id.* at 10.) Most of Fox System's lines are branch lines that connect to the WCL system and, with the exception of certain lines located in northern Wisconsin, do not connect to each other. (*Id.*)

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 one Class II and one or more Class III rail carriers, the exemption will be made subject to the labor protection requirements of 49 U.S.C. § 11326(b) and Wisconsin Central Ltd.—Acquisition Exemption—Lines of Union Pacific Railroad, 2 S.T.B. 218 (1997).

The continuance in control portion of the transaction is exempt from environmental reporting requirements under 49 C.F.R. § 1105.6(c)(1)(i) because it would not result in any significant change in carrier operations. Similarly, the continuance in control component of the transaction is exempt from the historic reporting requirements under 49 C.F.R. § 1105.8(b)(3) because it would not substantially change the level of maintenance of railroad properties.

The continuance in control exemption in Docket No. FD 36506 will be effective on December 31, 2021, and petitions to stay will be due by December 27, 2021. Petitions to reopen also will be due by December 27, 2021.

Conclusions. For the reasons discussed above, the Board will allow the exemptions to become effective and the sales to Grand Elk and Fox System to proceed.

It is ordered:

1. All filings to date are accepted into the record.
2. The requests for revocation or stay in Docket Nos. FD 36503 and FD 36504 are denied.

3. Under 49 U.S.C. § 10502, the Board exempts from the prior approval requirements of 49 U.S.C. §§ 11323-25 the continued control of Fox System by Watco Holdings once Fox System becomes a rail carrier. The exemption is subject to the employee protective conditions in Wisconsin Central Ltd.—Acquisition Exemption—Lines of Union Pacific Railroad, 2 S.T.B. 218 (1997).

4. Notice of the exemptions in Docket Nos. FD 36503, FD 36504, FD 36505, and FD 36506 will be published in the Federal Register.

5. The exemptions in Docket Nos. FD 36503, FD 36504, FD 36505, and FD 36506 will become effective on December 31, 2021. Petitions for stay must be filed by December 27, 2021. Petitions to reopen also must be filed by December 27, 2021.

6. This decision is effective on its service date.

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