

SERVICE DATE – DECEMBER 22, 2023

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36729

MACQUARIE INFRASTRUCTURE PARTNERS V GP, LLC—CONTROL
EXEMPTION—NORTHERN INDIANA RAILROAD COMPANY, LLC

Digest:¹ This decision authorizes Gulf & Atlantic Railways, LLC to acquire ownership and direct control over the Northern Indiana Railroad Company (NIRC). As a result, Macquarie Infrastructure Partners V GP, LLC; Macquarie Infrastructure Partners V fund vehicle; and MIP V Rail, LLC will acquire indirect control over NIRC.

Decided: December 21, 2023

By petition filed on September 28, 2023, Macquarie Infrastructure Partners V GP, LLC (MIP GP), on behalf of itself; Macquarie Infrastructure Partners V fund vehicle (MIP V); MIP V Rail, LLC (MIP Rail); and Gulf & Atlantic Railways, LLC (G&A) (collectively, Petitioners), seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 11323 to acquire and control the Northern Indiana Railroad Company (NIRC), a Class III carrier. As discussed below, the Board will grant the exemption.

BACKGROUND

G&A is a noncarrier that directly controls² the following rail common carriers: Camp Chase Rail, LLC; Chesapeake and Indiana Railroad LLC (CKIN); Vermilion Valley Railroad LLC; Grenada Railroad, LLC; and Florida, Gulf & Atlantic Railroad, LLC. See Macquarie Infrastructure Partners V GP, LLC—Control Exemption—Camp Chase Rail, LLC, FD 36685 (STB served Apr. 7, 2023). G&A has also been authorized to directly control (and MIP GP, MIP V, and MIP Rail authorized to indirectly control) the Pioneer Valley Railroad Company. See Macquarie Infrastructure Partners V GP, LLC—Control Exemption—Pioneer Valley R.R., FD 36720 (STB served Sept. 13, 2023).

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 G&A is wholly owned by MIP Rail, which is indirectly controlled by MIP GP. (Pet. 5-6.) MIP V is controlled by MIP GP and (indirectly) wholly owns MIP Rail. (Id. at 6.) Therefore, MIP GP, MIP V, and MIP Rail indirectly control the above rail common carriers. (Id. at 6.)

Pursuant to a purchase agreement dated March 17, 2023, G&A has agreed to acquire 100% of the equity interests in NIRC. Upon consummation of this transaction, G&A would directly control NIRC, while MIP GP, MIP V, and MIP Rail would indirectly control NIRC. (Pet. 5.) According to the petition, NIRC owns 32.97 miles of rail line in Indiana, but has never conducted freight rail operations over the line. (Id. at 4.) CKIN (which is controlled by G&A) has leased and operated the NIRC line since 2004. (Id.) Currently, CKIN leases and operates 27.52 miles of line from NIRC because CKIN discontinued service over the remaining 5.45-mile segment in 2017. (Id.) Petitioners state that the 5.45-mile segment remains part of the national rail network, but there have not been any freight operations over that segment since at least 2015.³

In support of the petition, Petitioners assert that the transaction will bring G&A's financial strength and management expertise to NIRC, unite ownership and operation of the line in the same corporate family, and enhance NIRC's access to capital, thereby "facilitating future strategic investment decisions with respect to the line." (Id. at 7.) Petitioners state that the transaction will not affect operations or service to customers because CKIN already serves those customers under its lease agreement with NIRC.⁴ (Id. at 11-12.)

DISCUSSION AND CONCLUSIONS

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 from the Board under 49 U.S.C. 11323(a)(5). Under 49 U.S.C. 10502(a), however, the Board shall, to the maximum extent possible, exempt a transaction or service from regulation upon finding that (1) the regulation is not necessary to carry out the rail transportation policy (RTP) under 49 U.S.C. 10101 and (2) either the transaction or service is of limited scope, or 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 sections 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 transaction, 49 U.S.C. 10101(2), and providing for the expeditious resolution of this proceeding, 49 U.S.C. 10101(15). Further, Petitioners assert that consolidated

³ Petitioners note that pursuant to an agreement with the Town of North Judson, the Hoosier Valley Railroad Museum operates excursion trains on the 5.45-mile segment over which freight rail service has been discontinued. (Id. at 4 n.10.) Petitioners further state that the Museum will continue to have the right to provide excursion passenger service on that segment. (Id. at 12 n.15.)

⁴ Petitioners explain that the proposed transaction does not qualify for the class exemption under 49 CFR 1180.2(d)(2) because the class exemption is unavailable when one or more railroads in an existing corporate family would connect with the railroad being acquired. (Id. at 4.) Here, because CKIN's leasehold interest does not overlap entirely with the line owned by NIRC, Petitioners have concluded that there is a point of connection. (Id. at 4-5.)

ownership and operation of the line within the same corporate family will improve operating economies and the financial viability of the line. (Pet. 7). Therefore, an exemption would promote the RTP by promoting a safe and efficient rail transportation system, 49 U.S.C. 10101(3); ensuring the development and continuation of a sound rail transportation system that would continue to meet the needs of the public, 49 U.S.C. 10101(4); and fostering sound economic conditions in transportation, 49 U.S.C. 10101(5). Other aspects of the RTP would not be adversely affected.

Regulation of the transaction is not needed to protect shippers from abuse of market power.⁵ The record indicates that NIRC does not conduct freight rail operations, and most of its line is currently operated by CKIN pursuant to a lease. (Pet. 4.) Petitioners state that “th[e]se leasehold operations will continue without change.” (*Id.* at 13.) Thus, the proposed transaction will not result in any material changes to the rates and services available to shippers along NIRC’s line. Moreover, no shipper or other entity has objected to the proposed transaction.

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. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III carriers. Therefore, because all of the carriers involved in the transaction are Class III carriers, the Board may not impose labor protective conditions.

Under 49 CFR 1105.6(c)(1), this action, which will not result in significant changes in carrier operations, is categorically excluded from environmental review. Similarly, under 49 CFR 1105.8(b)(1), no historic report is required because the subject transaction is for continued rail service; Petitioners have indicated no plans to alter railroad properties 50 years old or older; and any future abandonment of the Line would be subject to Board jurisdiction.

It is ordered:

1. Under 49 U.S.C. 10502, the Board exempts the above transaction from the prior approval requirements of 49 U.S.C. 11323-25.
2. Notice of this exemption will be published in the Federal Register.
3. This decision will be effective on January 21, 2024. Petitions for stay must be filed by January 2, 2024. Petitions to reopen must be filed by January 11, 2024.

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

⁵ Given this finding, the Board need not determine whether the transaction is limited in scope. See 49 U.S.C. 10502(a).