

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36807

CARLOAD EXPRESS, INC.—CONTROL EXEMPTION—
THE MARYLAND AND DELAWARE RAILROAD COMPANY

Digest:¹ This decision authorizes Carload Express, Inc., a noncarrier, to acquire control of The Maryland and Delaware Railroad Company.

Decided: December 31, 2024

By petition filed on October 30, 2024, Carload Express, Inc. (Carload), a noncarrier, seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 11323 to acquire control of The Maryland and Delaware Railroad Company (MDDE), a Class III rail carrier, through the purchase of the outstanding equity shares in MDDE from Old Line Holdings, Inc. (Old Line). As discussed below, the Board will grant Carload's petition for exemption.

BACKGROUND

MDDE, a wholly owned subsidiary of Old Line, is a Class III rail carrier that operates three unconnected rail lines between Delaware and Maryland: (1) the Centreville/Chesterton Line extending from milepost 1.0 at Townsend, Del., to milepost 34.0 at Centreville, Md., and from milepost 0.0 (milepost 9.3 on the Centreville segment) at Massey, Md., to milepost 18.82 at Worton, Md.; (2) the Seaford Line extending from milepost 2.3 at Seaford, Del., to milepost 24.24 at Linkwood, Md.; and (3) the Snow Hill Line extending from milepost 39.0 at Frankford, Del., to milepost 65.7 at Snow Hill, Md., which MDDE also owns. (*Id.* at 3); see Md. & Del. R.R.—Acquis. Exemption—Snow Hill Shippers Ass'n, Inc., FD 33772 (STB served Feb. 24, 2000).

Carload is a noncarrier holding company that currently controls three Class III rail carriers: two operating in southwestern Pennsylvania,² and the Delmarva Central Railroad

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 Carload controls Allegheny Valley Railroad Company and Southwest Pennsylvania Railroad Company. See Carload Express, Inc.—Continuance in Control Exemption—Delmarva

Company (DCR), which leases or operates approximately 187 miles of rail line on the Delmarva Peninsula in Delaware, Maryland, and Virginia. (Pet. 1-2.) According to Carload, DCR operates a rail line that connects with each of the rail lines operated by MDDE,³ and therefore the proposed control transaction does not qualify for the class exemption under 49 CFR 1180.2(d)(2). (Pet. 1, 3.)

Concurrent with Carload's petition, Old Line filed a verified notice of exemption to acquire from MDDE and operate an approximately 23.7-mile portion of the Snow Hill Line (Snow Hill South Line). Verified Notice, Old Line Holding Co.—Acquis. & Operation Exemption—Line of the Md. & Del. R.R., FD 36806. Notice of the exemption was served and published in the Federal Register on November 15, 2024 (89 Fed. Reg. 90,343). According to the petition, Old Line's acquisition of the Snow Hill South Line from MDDE would occur immediately prior to Carload's acquisition of MDDE from Old Line, pursuant to a purchase agreement dated August 1, 2024. (Pet. 1, 4.) The purchase agreement also contemplates that DCR would acquire from MDDE the remaining three-mile portion of the Snow Hill Line (Snow Hill North Line).⁴ (Pet. 4.) In the petition, Carload explains that the structure of the transactions "accommodates certain tax treatment of the Snow Hill North Line acquisition" and would divide ownership of the Snow Hill Line between DCR and Old Line. (Id.) Carload states that, after it acquires control of MDDE, MDDE would continue operating the Centreville/Chesterton and Seaford Lines.⁵ (Pet. 4.)

According to Carload, upon consummation of the proposed transaction, the rail operations of MDDE and DCR would be closely coordinated and MDDE's operations would be supported by Carload and DCR. (Id. at 5.) Carload states that it does not anticipate service level changes on the Centreville/Chesterton and Seaford Lines. (Id.) Carload also states that the proposed transaction would not result in any shipper losing rail service or existing competitive options. (Id.) According to Carload, DCR serves as MDDE's sole physical link to the remainder of the national rail system and all traffic currently moving over MDDE also moves over DCR's rail line, which would continue after Carload acquires control of MDDE. (Id. at 3, 5.) Carload

Cent. R.R., FD 36072 (STB served Dec. 2, 2016); see also Katahdin Railcar Servs. LLC—Change in Operators Exemption—Ohio Terminal Ry., FD 36487 (STB served Mar. 30, 2021).

³ According to Carload, MDDE and DCR connect at Townsend, Seaford, and Frankford, Delaware. (Pet. 3.)

⁴ DCR filed a verified notice of exemption for the proposed acquisition, and notice of the exemption was served and published in the Federal Register on October 4, 2024 (89 Fed. Reg. 80,982). See Delmarva Cent. R.R.—Acquis. Exemption—Line of the Md. & Del. R.R., FD 36805, slip op. at 1 (STB served Oct. 4, 2024) (noting DCR stated that it would operate the Snow Hill North Line). According to the petition, following DCR's proposed acquisition of the Snow Hill North Line and Old Line's proposed acquisition of the Snow Hill South Line, "the current DCR-MDDE interchange at Frankford will be replaced by a DCR-Old Line interchange at Selbyville." (Pet. 4 n.10.)

⁵ Carload states that these lines are owned by the Maryland Transit Administration and are operated by MDDE pursuant to a modified certificate of public convenience and necessity. (Pet. 3); see Md. & Del. R.R.—Modified Rail Certificate, FD 29830 (ICC served Feb. 9, 1982).

also states that the proposed transaction would not alter the arrangement that, as handling carriers for Norfolk Southern Railway Company (NSR), MDDE and DCR do not control pricing on interline traffic with NSR. (Id. at 4-5.)

Carload states that the proposed transaction would “bring to MDDE the strengths and resources of an established short-line operator” while preserving MDDE’s current service. (Id. at 7.) Carload further states that the proposed transaction would permit coordination between the rail carriers, thereby “enhancing effective rail management and the economic benefits of MDDE’s service.” (Id.) According to Carload, the proposed transaction would not adversely impact competition, as MDDE and DCR do not serve common industries where they connect. (Id. at 8.) Carload also states that the proposed transaction would not impact competitive options because all MDDE traffic would continue moving over DCR’s rail line. (Id. at 5, 8.) According to Carload, “MDDE will simply be incorporated into the Carload family of short-line carriers,” and shippers may benefit from greater efficiencies as a result. (Id. at 8.)

Carload seeks expedited consideration so that the proposed transaction—along with all related transactions involving Carload, DCR, MDDE, and Old Line—can be consummated no later than January 31, 2025. (Id. at 10.) According to Carload, an expedited decision would allow the parties to avoid multiple closings. (Id.)

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 11323(a)(5), prior approval by the Board is required for 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. Under 49 U.S.C. 10502(a), however, the Board shall, to the maximum extent consistent with U.S. Code Title 49, subtitle IV, part A, exempt a transaction from regulation if it finds that (1) regulation is not necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. 10101, 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 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 proposed transaction, 49 U.S.C. 10101(2); ensuring the continuation of a sound rail transportation system that would continue to meet the needs of the public, 49 U.S.C. 10101(4); fostering sound economic conditions in transportation, 49 U.S.C. 10101(5); reducing regulatory barriers to entry into and exit from the industry, 49 U.S.C. 10101(7); encouraging efficient management of railroads, 49 U.S.C. 10101(9); and providing for the expeditious resolution of this proceeding, 49 U.S.C. 10101(15). 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.⁶ MDDE and DCR do not serve common industries where they connect at Townsend, Seaford, and Frankford. (Pet. 8.) Further, the common control of MDDE and DCR would not reduce competitive options for shippers, as all MDDE traffic currently moves over DCR's line and would continue to do so following Carload's acquisition of MDDE. (*Id.* at 5, 8.) Indeed, because DCR is MDDE's "sole physical link" to the remainder of the interstate rail network, there is no risk that Carload may foreclose interchange between MDDE and other connecting carriers. (*Id.* at 3, 8 n.12; *see also id.*, Ex. A (showing MDDE interchanges).) Shippers may also benefit from improved coordination between MDDE and DCR. Moreover, no shipper (or any other entity) has objected to the proposed control transaction. Nevertheless, to ensure that the shippers are informed of our action, we will require Carload to serve a copy of this decision on all shippers on the Centreville/Chesterton, Seaford, and Snow Hill North Lines and certify to the Board that it has done so within five days of the service date of this decision.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a carrier of its statutory obligation to protect the interests of employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Therefore, because all the carriers involved in the proposed transaction are Class III carriers, the Board may not impose labor protective conditions.

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

As indicated above, Carload seeks to be able to consummate this transaction and other related transactions together by no later than January 31, 2025. The Board finds that Carload's request is reasonable. Accordingly, the effective date of the exemption will be January 31, 2025. *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."). Petitions for stay must be filed by January 16, 2025. Petitions to reopen will be due by January 27, 2025.

It is ordered:

1. Under 49 U.S.C. 10502, the Board exempts from the prior approval requirements of 49 U.S.C. 11323-25 Carload's acquisition of control of MDDE through the purchase of the outstanding equity shares in MDDE from Old Line.
2. Notice of the exemption will be published in the Federal Register.

⁶ Given this finding, the Board need not determine whether the transaction is limited in scope. *See* 49 U.S.C. 10502(a).

3. Carload shall serve a copy of the decision on all shippers on the Centreville/Chesterton, Seaford, and Snow Hill North Lines and certify to the Board that it has done so, by January 7, 2025.

4. The exemption will become effective on January 31, 2025. Petitions for stay must be filed by January 16, 2025. Petitions to reopen must be filed by January 27, 2025.

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