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SERVICE DATE - NOVEMBER 4, 1997

FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 331611

David Monte Verde, Michael Thomas, Charles Riedmiller,

Jeffrey Baxter and John Herbrand, and Genesee Valley

Transportation Co. Inc.--Continuance in Control Exemption--

Falls Road Railroad Co., Inc.

David Monte Verde, Michael Thomas, Charles Riedmiller, Jeffrey Baxter and John Herbrand (Individual Applicants), and Genesee Valley Transportation Co. Inc. (GVT), a noncarrier holding company,¹ have filed a notice of exemption to continue in control of the Falls Road Railroad Co., Inc. (FRRR), upon FRRR's becoming a Class III railroad.²

The transaction was expected to be consummated upon FRRR's commencement of operations on or after October 24 1996.

This transaction is related to STB Finance Docket No. 33160, Falls Road Railroad Co., Inc.--Acquisition and Operation Exemption--Consolidated Rail Corporation, wherein FRRR seeks to acquire and operate certain rail lines from Consolidated Rail Corporation.

GVT controls 5 existing Class III railroad subsidiaries: Depew, Lancaster & Western Railroad Co., Inc., operating between Lancaster and Depew, NY; Lowville Beaver River Railroad Co., operating between Lowville and Croghan, NY; Mohawk Adirondack & Northern Railroad Corp., operating (a) between Carthage and Lowville, (b) between Carthage and Newton Falls, and (c) between Utica and Lyons Falls, NY; Genesee & Mohawk Valley Railroad Co., operating (a) a portion of the Utica Yard, (b) a portion of the Rome Industrial trackage in Oneida County, NY, and (c) a portion of the Batavia-Lehigh and Lower Town Industrial trackage in Genesee County, NY; and Delaware-Lackawanna Railroad Co., Inc., operating (a) between Fell Township and Moosic (Scranton), (b) tracks within Scranton, and (c) between Scranton and Mt. Pocono, PA.³

¹ The Individual Applicants collectively own 100% of the outstanding shares of GVT that in turn controls a number of Class III carriers.

² At commencement of operations by FRRR, the entire outstanding capital stock of FRRR will be owned by GVT. Individual Applicants will continue in indirect control of FRRR.

³ GVT owns a controlling interest of the stock of Lowville & Beaver River Railroad and 100% of the stock of the other carriers under its control.

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GVT states that: (i) the rail lines to be operated by FRRR do not connect with any railroad in the corporate family; (ii) the transaction is not part of a series of anticipated transactions that would connect FRRR with any railroads in the corporate family; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(2).

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 rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33161, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on Eric M. Hocky, Esq., Gollatz, Griffin & Ewing, P.C., 213 West Miner Street, P.O. Box 796, West Chester, PA 19381-0796

Decided: October 25, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary

