

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35253

ARTHUR W. SINGLE II, DALE R. PAPE, DAWN M. OSMENT, I. HOWARD SMITH,  
FERROVIA-LLC, AND ADRIAN & BLISSFIELD RAIL ROAD COMPANY—  
CONTINUANCE IN CONTROL EXEMPTION—CHARLOTTE SOUTHERN RAILROAD  
COMPANY, DETROIT CONNECTING RAILROAD COMPANY, LAPEER INDUSTRIAL  
RAILROAD COMPANY, AND JACKSON & LANSING RAILROAD COMPANY

Decided: March 3, 2011

On February 15, 2011, a verified notice of exemption was filed, purportedly on behalf of Arthur W. Single II, Dale R. Pape, Dawn M. Osment, I. Howard Smith, Ferrovia-LLC, and Adrian & Blissfield Rail Road Company (ADBF) (collectively, petitioners). That notice sought exemption under 49 U.S.C. § 10502 and 49 C.F.R. § 1180.2(d)(2) from the otherwise applicable requirements of 49 U.S.C. § 11323 for continuance in control of the Charlotte Southern Railroad Company, Detroit Connecting Railroad Company, and Lapeer Industrial Railroad Company.<sup>1</sup>

The notice states that a class exemption is sought here for the previously consummated transactions that resulted in ADBF's control, through stock ownership and management, of the 3 class III short line railroads at issue. The notice further claims that petitioners are seeking 'after-the-fact' authority because prior counsel for petitioners failed to obtain Board approval when ADBF gained actual control of the Class III short lines.<sup>2</sup>

In 2009, in a separate notice of exemption involving ADBF, the Board noted that it appeared that ADBF's owners were not authorized to have common control of more than one rail carrier, and that the Board expected the owners to promptly submit an appropriate filing for authorization for common control of the issue short lines. Adrian & Blissfield Rail Rd.—

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<sup>1</sup> The notice states that, although Jackson and Lansing Railroad Company is included in the title of this proceeding, petitioners do not seek authorization for its control because that transaction was authorized in a separate Board proceeding, Adrian & Blissfield Rail Road—Continuance in Control Exemption—Jackson & Lansing Railroad, FD 35410 (Jackson & Lansing Control).

<sup>2</sup> The 3 underlying transactions were authorized in 2000. See Charlotte S. R.R.—Acquis. & Operation Exemption—Adrian & Blissfield Rail Rd., FD 33937 (STB served Oct. 4, 2000); Detroit Connecting R.R.—Acquis. & Operation Exemption—Adrian & Blissfield Rail Rd., FD 33935 (STB served Oct. 4, 2000); Lapeer Indus. R.R.—Acquis. & Operation Exemption—Adrian & Blissfield Rail Rd., FD 33936 (STB served Oct. 4, 2000).

Acquis. & Operation Exemption—Tecumseh Branch Connecting R.R., FD 35035 (STB served Oct. 23, 2009). ADBF failed to file anything in response to this Board direction until nearly 16 months later, when the notice at issue here was filed.

On February 18, 2011, Dale R. Pape, one of the named petitioners, filed a letter with the Board stating that he had been misrepresented as a petitioner in the notice, that he did not consent to the notice, and that he was not aware of its filing until it was published on the Board's web site. Mr. Pape further claims that Dawn M. Osment, another named petitioner, did not consent to the notice and was also unaware of it until Mr. Pape notified her. Mr. Pape also states that other aspects of the notice are false and misleading, including, among other things, the stated reasons for the delay in filing it.

The notice of exemption will be rejected because the circumstances here are not appropriate for consideration under the abbreviated class exemption procedures of 49 C.F.R. § 1180.4(g). A notice that purports to be filed on behalf of a party who did not authorize, and indeed was not even aware of, its filing is materially false and misleading. That one of the named petitioners claims not to support the notice and that the notice misrepresents his opinion are sufficient reasons to reject it.

Additionally, as we have explained in prior cases, class exemptions are intended for routine transactions that have not attracted substantial controversy. Riverview Trenton R.R.—Acquis. & Operation Exemption—Crown Enterprises, Inc., FD 33980, slip op. at 6-10 (STB served Feb. 15, 2002). The issues presented in the pleadings to date demonstrate that petitioners' continuance in control is controversial and raises issues that make more scrutiny and the development of a more complete record necessary. As noted above, in 2009 ADBF was directed to promptly submit an appropriate filing for authorization for common control, a direction that was not satisfied given the amount of time that elapsed before the notice was filed. At a minimum, the filings raise questions about who, precisely, is required to obtain continuance in control authority<sup>3</sup> and the reasons for the delay in seeking authority since 2009.

Because of the questions raised and the Board's concerns about parties' adherence to its procedures, ADBF and any other necessary parties shall submit either an application or a petition for exemption for continuance in control by April 18, 2011.

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<sup>3</sup> For example, it is unclear why parties other than ADBF were named as petitioners in this proceeding but not in the recent Jackson & Lansing Control proceeding.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Petitioners' notice is rejected.
2. ADBF and any other necessary parties shall submit either an application or a petition for exemption for continuance in control by April 18, 2011.
3. This decision is effective on the date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.