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SERVICE DATE – DECEMBER 4, 2009

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FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35320]

Koch Industries, Inc.—Continuance in Control Exemption—KM Railways, LLC

Koch Industries, Inc. (Koch), a noncarrier, has filed a verified notice of exemption under 49 CFR 1180.2(d)(2) to continue in control of KM Railways, LLC (KMR), upon KMR becoming a Class III rail carrier.¹

This transaction is related to the concurrently filed verified notices of exemption in: (1) STB Finance Docket No. 35321, KM Railways, LLC—Acquisition Exemption—Old Augusta Railroad, LLC, in which KMR seeks to acquire the assets of Old Augusta Railroad, LLC (OAR), including the track that constitutes the rail line owned by OAR between New Augusta (Station No. FSAC 10) and Augusta (Station No. FSAC 20), a distance of approximately 2.5 miles in Perry County, MS (the rail line)²; and (2) STB Finance Docket No. 35319, Old Augusta Railroad, LLC—Lease and Operation Exemption—KM Railways, LLC, in which OAR seeks to lease back, and to operate over, the rail line.

The transactions are scheduled to be consummated on or after December 18, 2009 (30 days after the notices of exemption were filed).

¹ Koch has also concurrently filed a motion for protective order pursuant to 49 CFR 1104.14(b) to allow Koch to file the unredacted Asset Purchase and Sale Agreement under seal. That motion will be addressed in a separate decision.

² There are no branch lines and mileposts on the rail line.

Koch is a noncarrier that currently controls directly or indirectly 3 Class III rail carriers in the states of Mississippi, Kansas, and Texas: OAR, Blue Rapids Railway Company, LLC, and Moscow Camden and San Augustine Railroad, LLC.

Koch states that: (1) the rail line whose assets are to be acquired does not connect with the lines of any other railroad controlled by Koch; (2) the continuance in control is not part of a series of anticipated transactions that would connect the rail line with any railroads controlled by Koch; and (3) the transaction does not involve a Class I railroad. 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. Accordingly, the Board may not impose labor protective conditions here because all of the carriers involved are Class III carriers.

If the verified 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 effectiveness of the exemption. Petitions for stay must be filed no later than December 11, 2009 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35320, must be filed with the Surface Transportation Board, 395 E Street, S.W.,

Washington, DC 20423-0001. In addition, a copy must be served on David H. Coburn, Steptoe & Johnson LLP, 1330 Connecticut Avenue, N.W., Washington, DC 20036.

Board decisions and notices are available on our website at
“WWW.STB.DOT.GOV.”

Decided: November 30, 2009.

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