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SERVICE DATE – NOVEMBER 4, 2010

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35436]

Duncan Smith and Gerald Altizer–Continuance in Control Exemption–Eighteen Thirty Group, LLC and Georges Creek Railway, LLC

Duncan Smith and Gerald Altizer (collectively applicants), noncarrier individuals, have filed a verified notice of exemption to continue in control of Eighteen Thirty Group, LLC (Eighteen Thirty) and Georges Creek Railway, LLC (Georges Creek), upon Eighteen Thirty and Georges Creek becoming Class III rail carriers. Mr. Smith owns 80% of Eighteen Thirty and 75% of Georges Creek. Mr. Altizer owns a 20% interest in each company and will manage the operations of Georges Creek.¹ Applicants do not currently control any other rail carriers.

This transaction is related to two simultaneously filed notices of exemption: (1) Docket No. FD 35437, Georges Creek Railway, LLC–Operation Exemption–in Allegany County, Md., in which Georges Creek seeks an exemption under 49 C.F.R § 1150.31 to operate an 8.54-mile line of railroad between milepost BAI 27.0 near Morrison and milepost BAI 18.46 at the end of the track near Carlos, in Allegany County, Md., (the Line); and (2) Docket No. FD 35438, Eighteen Thirty Group, LLC–Acquisition

¹ The remaining 5% interest in Georges Creek is owned by Patrick Stakem.

Exemption-in Allegany County, Md., in which Eighteen Thirty seeks an exemption under 49 C.F.R. § 1150.31 to acquire the Line pursuant to its agreement with Mark J. Friedman, Chapter 7 Trustee of the Bankruptcy Estate of James Riffin.²

This transaction is also related a petition simultaneously filed by Eighteen Thirty in Docket No. AB 55 (Sub-No. 659X), CSX Transportation, Inc.-Abandonment Exemption-in Allegany County, Md., seeking an exemption under 49 U.S.C. § 10502 and from the OFA requirements of 49 U.S.C. § 10904(f)(4)(A). The latter provision forbids an entity that has acquired a rail line under the OFA process from transferring that line to any entity other than the abandoning rail carrier from which it was originally purchased prior to the end of the fifth year after consummation of the sale.³

The transaction is scheduled to be consummated no sooner than November 18, 2010, the effective date of the exemption (30 days after the exemption was filed).⁴

Applicants state that: (1) because Eighteen Thirty will be a non-operating carrier, the railroads will not connect with each other; (2) the continuance in control is not part of

² The Board authorized abandonment of the Line in CSX Transportation, Inc.-Abandonment Exemption-in Allegany County, Md., AB 55 (Sub-No. 659X) (STB served Aug. 25, 2005). By decision served December 14, 2005, WMS, LLC (WMS) was authorized to acquire the Line pursuant to the Board's offer of financial assistance (OFA) provisions at 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27, and by decision served August 18, 2006, James Riffin was substituted as the acquiring entity in lieu of WMS.

³ Eighteen Thirty has attached a letter from CSXT stating that it issued the deed for the sale of the Line on July 10, 2006, but that it will not exercise its statutory right to reacquire the Line and that it waives its rights under the statute.

a series of anticipated transactions that would connect these railroads with one another or any other railroad in their corporate family; and (3) the transaction does not involve a Class I rail 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 §§ 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 to stay must be filed no later than November 10, 2010 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to FD 35436, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on John D. Heffner, John D. Heffner, PLLC, 1750 K Street, N.W., Suite 200, Washington, DC 20006.

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⁴ Applicants state that consummation of this transaction is dependent upon bankruptcy court approval of the acquisition of the Line by Eighteen Thirty, a process

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Decided: November 1, 2010.

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

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likely to take up to 60 days.