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SERVICE DATE – JULY 11, 2013

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FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35744]

Charles Barenfanger, Jr.—Acquisition of Control Exemption—Vandalia Railroad Company<sup>1</sup>

Charles Barenfanger, Jr., a noncarrier, has filed a verified notice of exemption under 49 C.F.R. § 1180.2(d)(2) to acquire control of Vandalia Railroad Company (Vandalia), a Class III rail carrier.

Under the proposed transaction, Barenfanger would acquire 51 percent of Vandalia.<sup>2</sup> According to Barenfanger, he currently controls Effingham Railroad Company (EFR), a Class III rail carrier in Illinois, and Illinois Western Railroad Company (IWR).<sup>3</sup>

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<sup>1</sup> In the verified notice of exemption initially filed on June 20, 2013, this proceeding was captioned as a “continuance in control” exemption, with Charles Barenfanger, Jr. and Agracel, Inc. (Agracel) as co-applicants. On June 25, 2013, however, Barenfanger filed a letter supplementing and clarifying the verified notice of exemption. As clarified, Barenfanger is the only party to whom the exemption will apply, and the described transaction involves an acquisition of control rather than continuance in control. See Class Exemption for Acquis. or Operation of Rail Lines by Class III Rail Carriers Under 49 U.S.C. 10902, EP 529, slip op. at 2 (STB served Nov. 29, 1996); Nev. 5, Inc.—Control Exemption—GTR Leasing LLC, FD 35635, slip op. at 1 n.1 (STB served June 15, 2012). The proceeding has been re-captioned accordingly.

<sup>2</sup> Agracel, a company in which Barenfanger has no ownership interest, would acquire 49 percent of Vandalia.

<sup>3</sup> See Ill. W. R.R.—Change in Operator Exemption—City of Greenville, Ill., FD 32853 (STB served Jan. 30, 1996). But see Effingham R.R.—Pet. for Declaratory

(continued . . . )

Barenfanger states that the proposed transaction is scheduled to be consummated no sooner than the effective date of the notice of exemption, but no later than 30 days after the filing of the verified notice of exemption. The earliest this transaction can be consummated is July 25, 2013, the effective date of the exemption (30 days after the verified notice of exemption was filed).<sup>4</sup>

Barenfanger represents that: (1) the properties to be operated by Vandalia and the properties operated by EFR and IWR do not connect with each other;<sup>5</sup> (2) the proposed transaction is not part of a series of anticipated transactions that would connect the carriers with each other or any railroad in their corporate family; and (3) the transaction does not involve a Class I rail carrier. The proposed transaction is therefore exempt from the prior approval requirements of 49 U.S.C. § 11323 pursuant to 49 C.F.R. § 1180.2(d)(2). Barenfanger states that the purpose of the transaction is the achievement of operating efficiency and improved rail service in Vandalia, Ill.

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.

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( . . . continued)

Order—Constr. at Effingham, Ill., 2 S.T.B. 606 (1997), reconsideration denied (STB served Sept. 18, 1998), aff'd sub nom. United Transp. Union v. STB, 183 F.3d 606 (7th Cir. 1999). Barenfanger indicates that he owns 51 percent of EFR and IWR and that Agracel owns 49 percent of these companies.

<sup>4</sup> Barenfanger's verified notice of exemption is deemed to have been filed on June 25, 2013, the date Barenfanger filed his supplemental information.

<sup>5</sup> In his June 25 letter, Barenfanger states that Vandalia operates in Vandalia, Ill.; EFR operates in Effingham, Ill.; and IWR operates in Greenville, Ill.

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 for stay must be filed no later than July 18, 2013 (at least seven days before the exemption becomes effective).

An original and ten copies of all pleadings, referring to Docket No. FD 35744, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on John M. Robinson, Vinson & Elkins LLP, 2200 Pennsylvania Avenue, N.W., Suite 500 West, Washington, DC 20037-1701.

Board decisions and notices are available on our website at “[WWW.STB.DOT.GOV](http://WWW.STB.DOT.GOV).”

Decided: July 5, 2013.

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