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SERVICE DATE – OCTOBER 9, 2015

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35958]

Westmoreland County Industrial Development Corporation—Acquisition of Control
Exemption—Turtle Creek Industrial Railroad, Inc.

Westmoreland County Industrial Development Corporation (WCIDC), a Class III rail carrier,¹ has filed a verified notice of exemption under 49 C.F.R. § 1180.2(d)(2) to acquire all of the stock of Turtle Creek Industrial Railroad, Inc. (TCIR), also a Class III rail carrier.

According to WCIDC, Dura-Bond Corporation (Dura-Bond), a noncarrier, currently controls TCIR. WCIDC and Dura-Bond have entered into a stock purchase agreement² dated September 26, 2013, by which WCIDC will acquire all of TCIR's stock from Dura-Bond. Once that transaction is consummated, WCIDC will control TCIR.

WCIDC intends to consummate this transaction on or shortly after October 25, 2015, the effective date of the exemption.

¹ WCIDC owns a common carrier line of railroad located between Scottdale and Greensburg, Pa. The lines are operated by Southwest Pennsylvania Railroad Company. See Westmoreland Cty. Indus. Dev. Corp.—Acquis. Exemption—Sw. Pa. R.R., FD 32767 (ICC served Nov. 3, 1995).

² A redacted version of the agreement was filed with the notice of exemption. An unredacted version was filed concurrently under seal, along with a motion for protective order pursuant to 49 C.F.R. § 1104.14(b). That motion will be addressed in a separate decision.

WCIDC states that: (i) the rail owned by WCIDC does not connect with the rail line owned by TCIR; (ii) the subject acquisition of control is not part of a series of anticipated transactions that would connect the rail line owned by TCIR with the rail line owned by WCIDC; and (iii) neither WCIDC nor TCIR are Class I carriers. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. § 11323. See 49 C.F.R. § 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. 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 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 October 16, 2015 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings referring to Docket No. FD 35958, 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 WCIDC's representative: John N. Ward, Ward & Christner, P.C., 15 N. Main Street, Greensburg, PA 15601.

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Decided: October 6, 2015.

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