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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35092]

Progressive Rail Inc.–Continuance in Control Exemption–Montgomery Short Line LLC

Progressive Rail Inc. (PRI) has filed a verified notice of exemption to continue in control of Montgomery Short Line LLC (MSL), upon MSL's becoming a Class III rail carrier.¹

This transaction is related to a concurrently filed verified notice of exemption in STB Finance Docket No. 35093, Montgomery Short Line LLC–Lease and Operation Exemption–Union Pacific Railroad Company. In that proceeding, MSL seeks to lease and operate approximately 23.5 miles of rail line owned by the Union Pacific Railroad Company from Merriam to the end of the track near Montgomery, in Scott and Le Sueur Counties, MN.

PRI intends to consummate the transaction on or after November 24, 2007, the effective date of the exemption (30 days after the exemption was filed).

¹ MSL is a wholly owned subsidiary of PRI.

PRI is a common carrier by rail that owns and operates lines in the States of Minnesota and Wisconsin. PRI also currently controls Central Midland Railway Company, a Class III rail carrier, that owns and operates rail property interests in Missouri.

PRI represents that: (1) the rail lines to be leased by MSL do not connect with it or any other railroad in their corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other 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 sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all the carriers involved are Class III rail carriers.

If the 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 November 16, 2007 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35092, 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 Michael J. Barron, Jr., Fletcher & Sippel, 29 North Wacker Drive, Suite 920, Chicago, IL 60606-2832.

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Decided: November 1, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary