

21592 SERVICE DATE - FEBRUARY 28, 1997

DO

FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33354]

David L. Durbano--Continuance in Control Exemption--

Clarkdale Arizona Central Railroad, L.C.

David L. Durbano (Applicant) has filed a verified notice of exemption to continue in control of Clarkdale Arizona Central Railroad, L.C. (CACR), upon CACR's becoming a Class III rail carrier.

The notice stated that Applicant expected the transaction to be consummated on or after February 7, 1997. Because this notice of exemption for continuance in control was filed on February 3, 1997, however, the 7-day effective date of this notice was February 10, 1997, which was thus the earliest date consummation could lawfully occur.

This transaction is related to STB Finance Docket No. 33353, Clarkdale Arizona Central Railroad, L.C.--Acquisition and Operation Exemption--Arizona Central Railroad, Inc., wherein CACR seeks to acquire 38.74 miles of rail line owned by Arizona Central Railroad, Inc. (AZCR).

Applicant controls five existing Class III rail common carriers. In addition to controlling AZCR, operating in

Arizona, applicant controls: Wyoming and Colorado Railroad Company, Inc. (WYCO), operating in Wyoming; Oregon Eastern Railroad Company, Inc. (OER), operating in Oregon; Southwestern Railroad Company, Inc. (SWR), operating in New Mexico, Oklahoma, and Texas; and Cimarron Valley Railroad, L.C. (CVR), operating in Kansas, Oklahoma, and Colorado.

Applicant states that: (i) CACR will not connect with WYCO, OER, SWR, or CVR; (ii) the continuance in control is not part of a series of anticipated transactions that would connect CACR with WYCO, OER, SWR, or CVR; and (iii) the transaction does not involve any Class I carriers.

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. 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 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 transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33354, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423.¹ In addition, a copy of each pleading must be served on: Walter T. Merrill, Durbano & Merrill, 3340 Harrison Boulevard, Suite 200, Ogden, UT 84403.

Decided: February 19, 1997.

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

Vernon A. Williams

¹ Due to the Board's scheduled relocation on March 16, 1997, any filings made after March 16, 1997, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1925 K Street, N.W., Washington, D.C. 20423-0001.

STB Finance Docket No. 33354

Secretary