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SERVICE DATE – MAY 18, 2011

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35498

ADRIAN & BLISSFIELD RAIL ROAD COMPANY
—CONTINUANCE IN CONTROL—
CHARLOTTE SOUTHERN RAILROAD COMPANY, DETROIT CONNECTING
RAILROAD COMPANY, AND LAPEER INDUSTRIAL RAILROAD COMPANY

AGENCY: Surface Transportation Board.

ACTION: Notice of Acceptance of Application; Issuance of Procedural Schedule.

SUMMARY: The Surface Transportation Board (Board) is accepting for consideration the application filed by Adrian & Blissfield Rail Road Company (ADBF) seeking Board authority under 49 U.S.C. §§ 11321-26 for continuance in control of Charlotte Southern Railroad Company (CHS), Detroit Connecting Railroad Company (DCON), and Lapeer Industrial Railroad Company (LIRR). ADBF seeks authorization for its previously consummated control, through stock ownership and management, of those 3 entities when they became Class III short line railroads.

The Board finds that this transaction is a “minor transaction” under 49 C.F.R. § 1180.2(c) and adopts a procedural schedule for consideration of the application, providing for the Board’s final decision to be issued on August 19, 2011, and to become effective on September 18, 2011.

DATES: The effective date of this decision is **May 18, 2011**. Any person who wishes to participate in this proceeding as a party of record (POR) must file a notice of intent to participate no later than **June 2, 2011**. All comments, protests, requests for conditions, and any other evidence and argument in opposition to the application, including filings by the U.S. Department of Justice (DOJ) and the U.S. Department of Transportation (DOT), must be filed by **June 17, 2011**. Any responses to such filings and rebuttal in support of the application must be filed by **July 5, 2011**. If a public hearing or oral argument is held, it will be on a date to be determined by the Board. The Board expects to issue a final decision on **August 19, 2011**. For further information respecting dates, see the Appendix (Procedural Schedule).

ADDRESSES: Any filing submitted in this proceeding must be submitted either via the Board’s e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions found on the Board’s website at “www.stb.dot.gov” at the “E-FILING” link. Any person submitting a filing in the traditional paper format should send an original and 10 paper copies of the filing (and also an electronic version) to: Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001.

In addition, one copy of each filing in this proceeding must be sent (and may be sent by e-mail only if service by e-mail is acceptable to the recipient) to each of the following: (1) Secretary of Transportation, 1200 New Jersey Avenue, S.E., Washington, DC 20590; (2) Attorney General of the United States, c/o Assistant Attorney General, Antitrust Division, Room 3109, Department of Justice, Washington, DC 20530; (3) John D. Heffner (representing ADBF), John D. Heffner, PLLC, 1750 K Street, N.W., Suite 200, Washington, DC 20006; and (4) any other person designated as a POR on the service-list notice (to be issued as soon after **June 2, 2011**, as practicable).

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 245-0359. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: ADBF is a Class III rail carrier operating approximately 20 miles of freight lines between Adrian and Blissfield, Mich., as well as several short branches connecting with its mainline. Through a series of transactions between 1998 and 1999, ADBF purchased a 2.27-mile rail line in Detroit, Mich., a 3.22-mile rail line in Charlotte, Mich., and a 1.34-mile rail line in Lapeer, Mich., from the Grand Trunk Western Railroad (now, part of Canadian National Railway Company).¹ According to ADBF, in October 2000, it spun off these 3 acquired lines to 3 new ADBF subsidiaries (DCON, CHS, and LIRR, respectively), in order to insulate it from any liabilities created by these subsidiaries.² ADBF states that it intended to continue in control of these newly formed entities, and in fact assumed control over the entities through stock ownership and management, but due to oversight of its then-general counsel, it failed to seek Board authority for continuance in control at that time.

In a separate proceeding where ADBF belatedly sought Board authority to acquire and operate the Tecumseh Branch Connecting Railroad Company, the Board noted that ADBF did not appear to have authority to have common control of its subsidiaries and that it expected ADBF to promptly seek appropriate authorization for that common control.³ On February 15,

¹ See Adrian & Blissfield Rail Rd.—Acquis. Exemption—Grand Trunk W. R.R., FD 33692 (STB served Dec. 28, 1998); Adrian & Blissfield Rail Rd.—Acquis. Exemption—Grand Trunk W. R.R., FD 33718 (STB served Mar. 3, 1999); Adrian & Blissfield Rail Rd.—Acquis. Exemption—Grand Trunk W. R.R., FD 33747 (STB served June 3, 1999).

² See Charlotte S. R.R.—Acquis. & Operation Exemption—Adrian & Blissfield Rail Rd., FD 33937 (STB served Oct. 4, 2000); Detroit Connecting R.R.—Acquis. & Operation Exemption—Adrian & Blissfield Rail Rd., FD 33935 (STB served Oct. 4, 2000); Lapeer Indus. R.R.—Acquis. & Operation Exemption—Adrian & Blissfield Rail Rd., FD 33936 (STB served Oct. 4, 2000).

³ Adrian & Blissfield Rail Rd.—Acquis. & Operation Exemption—Tecumseh Branch Connecting R.R., FD 35035 (STB served Oct. 23, 2009).

2011, ADBF filed a notice of exemption, seeking authority for continuance in control of the 3 carriers at issue here.⁴ The notice was rejected because the notice, which listed several shareholders as petitioners, purported to be filed on behalf of a party who did not authorize and was not aware of its filing. The transaction also appeared to be controversial and raised issues that made more scrutiny and the development of a more complete record necessary. Because of the questions raised as to the proper identity of the petitioners seeking authority, as well as the significant delay in seeking authority since 2009, ADBF was directed to submit either an application or petition for exemption for continuance in control.⁵

ADBF states that it now seeks common control of the 3 Class III carriers that it has in fact controlled since 2000. According to ADBF, the purpose of the transaction was, and would continue to be, to facilitate efficient and economical operation of its short line railroad subsidiaries through centralized management, purchasing, operations, marketing, accounting, and similar functions.

Passenger Service Impacts. ADBF states that no lines handling passenger service have been or will be downgraded, eliminated, or operated on a consolidated basis. Although it provides passenger excursion service on certain lines, ADBF does not provide common carrier passenger, Amtrak, or commuter passenger service.

Discontinuances/Abandonments. ADBF states that there have been no discontinuances or abandonments of rail lines in the past and does not anticipate discontinuing service or abandoning any portion in the future.

Financial Arrangements. According to ADBF, no new securities were originally issued or need to be issued now, and no other financing was or will be required.

Time Schedule for Consummation. As stated above, ADBF assumed control of the 3 carriers in 2000 after spinning off the relevant lines to its 3 subsidiaries (which became carriers). ADBF states that it failed to realize at that time that Board authorization was required and now seeks belated approval.

Public Interest Considerations. According to ADBF, the transaction has not resulted and will not result in the lessening of competition, creation of a monopoly, or restraint of trade. The transaction's impact, ADBF states, is neutral, as it involves no changes in railroad operations.

⁴ The notice of exemption included Jackson & Lansing Railroad Company in the title of the proceeding, but ADBF has sought authorization for its control in a separate proceeding. See Adrian & Blissfield Rail Rd.—Continuance in Control Exemption—Jackson & Lansing R.R., FD 35410.

⁵ Arthur W. Single II—Continuance in Control Exemption—Charlotte S. R.R., FD 35253 (STB served Mar. 4, 2011).

ADBF further stresses that the transaction involves a limited number of shippers, carloads, and revenues, as well as small carriers that do not compete with one another. Nor will the transaction, according to ADBF, result in a reduction in service or rail competitive options. Rather, since 2003, ADBF notes that it has experienced substantial growth with increased revenues, as well as an increase in the number of shippers served and carloads handled. ADBF also notes that it has made significant investments in track maintenance and signal upgrades.

Environmental Impacts. ADBF states that no environmental documentation is required because there will be no operational changes that would exceed the thresholds established in 49 C.F.R. §§ 1105.7(e)(4) or (5) for requiring environmental review, and there will be no action that would normally require environmental documentation. ADBF further indicates that an historic report is not required because the transaction does not involve any changes in operations or plans to discontinue or abandon any service. It states that there are no plans to dispose of or alter properties subject to Board jurisdiction that are 50 or more years old.

Labor Impacts. ADBF states that, because the transaction involves only Class III carriers, no labor protection would apply under 49 U.S.C. § 11326(c). ADBF further notes that the transaction has not impacted and will not impact any of its employees, as the transaction does not involve any change in operations.

APPLICATION ACCEPTED. The Board finds that the transaction would be a “minor transaction” under 49 C.F.R. § 1180.2(c), and the Board accepts the application for consideration because it is in substantial compliance with the applicable regulations governing minor transactions. See 49 C.F.R. part 1180; 49 U.S.C. §§ 11321-26. The Board reserves the right to require the filing of further information as necessary to complete the record.

The statute and Board regulations treat a transaction that does not involve 2 or more Class I railroads differently depending upon whether the transaction would have “regional or national transportation significance.” 49 U.S.C. § 11325. Under our regulations, at 49 C.F.R. § 1180.2, a transaction that does not involve two or more Class I railroads is to be classified as “minor”—and thus not having regional or national transportation significance—if a determination can be made based on the application either: (1) that the transaction clearly will not have any anticompetitive effects; or (2) that any anticompetitive effects will clearly be outweighed by the transaction’s anticipated contribution to the public interest in meeting significant transportation needs. A transaction not involving the control or merger of two or more Class I railroads is “significant” if neither of these determinations can clearly be made.

The Board finds the transaction to be a “minor transaction” because it appears on the face of the application that there would not be any anticompetitive effects from the transaction. The Board’s findings regarding the anticompetitive impact are preliminary. The Board will give careful consideration to any claims that the transaction has had or will have anticompetitive effects that are not apparent from the application itself.

ENVIRONMENTAL MATTERS. The National Environmental Policy Act (NEPA) requires that the Board take environmental considerations into account in its decision making.⁶ Under both the Council on Environmental Quality's regulations implementing NEPA and the Board's own environmental rules, actions are separated into three classes that prescribe the level of documentation required in the NEPA process. Actions that may significantly affect the environment generally require the Board to prepare an Environmental Impact Statement (EIS).⁷ Actions that may or may not have a significant environmental impact ordinarily require the Board to prepare a more limited Environmental Assessment (EA).⁸ Finally, actions, the environmental effects of which are ordinarily insignificant, may be excluded from NEPA review across the board, without a case-by-case review.

As pertinent here, an acquisition transaction normally requires the preparation of an EA or EIS where certain thresholds would be exceeded.⁹ Applicants indicate that the thresholds for environmental review would not be exceeded here because the transaction did not and will not involve any operational changes that exceed the thresholds under 49 C.F.R. §§ 1105.7(e)(4) and (5) and that there will be no action that would normally require environmental documentation. Based on this information, it appears that environmental documentation and review are not required in this proceeding.

Historic Review. In accordance with Section 106 of the National Historic Preservation Act (NHPA), the Board is required to determine the effects of its licensing actions on cultural resources.¹⁰ The Board's environmental rules establish exceptions to the need for historic review in certain cases, including the sale of a rail line for the purpose of continued rail operations, where further Board approval is required to abandon any service and there are no plans to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older.¹¹ Applicants state that the proposed transaction fits within this exception. They assert that they have no plans to alter or dispose of properties 50 or more years old. Based on this information, it appears that historic review under the NHPA is not required in this case.

⁶ The Board has the authority under 49 U.S.C. § 11324(c) to attach environmental conditions to its approval of § 11323 transactions, including transactions subject to approval under § 11324(d). Village of Barrington v. STB, No. 09-1002, 2011 WL 869904 (D.C. Cir. March 15, 2011).

⁷ See 49 C.F.R. §§ 1105.4(f), 1105.10(a).

⁸ See 49 C.F.R. §§ 1105.4(d), 1105.10(b).

⁹ See 49 C.F.R. §§ 1105.6(b)(4), 1105.7(e)(4) and (5).

¹⁰ See 49 C.F.R. § 1105.8.

¹¹ See 49 C.F.R. § 1105.8(b)(1).

PROCEDURAL SCHEDULE. The Board has considered ADBF's proposed procedural schedule, under which the Board would issue its final decision on August 2, 2011, 105 days after the application has been filed. ADBF did not provide any explanation for requesting such an expedited schedule, particularly given its delay in seeking approval. Accordingly, we will adopt a procedural schedule modified to conform more closely to the statutory provisions of 49 U.S.C. § 11325(d) (allowing 30 days for comments on the application to be filed and 45 days for the Board to issue a final decision after the evidentiary proceedings end). The Board also notes that its decision will be effective on September 18, 2011, 30 days after its final decision is served. For further information regarding dates, see the Appendix (Procedural Schedule).

NOTICE OF INTENT TO PARTICIPATE. Any person who wishes to participate in this proceeding as a POR must file with the Board, no later than **June 2, 2011**, a notice of intent to participate, accompanied by a certificate of service indicating that the notice has been properly served on the Secretary of Transportation, the Attorney General of the United States, and Mr. Heffner (representing ADBF).

If a request is made in the notice of intent to participate to have more than 1 name added to the service list as a POR representing a particular entity, the extra name will be added to the service list as a "Non-Party." The list will reflect the Board's policy of allowing only 1 official representative per party to be placed on the service list, as specified in Press Release No. 97-68 dated August 18, 1997, announcing the implementation of the Board's "One Party-One Representative" policy for service lists. Any person designated as a Non-Party will receive copies of Board decisions, orders, and notices, but not copies of official filings. Persons seeking to change their status must accompany that request with a written certification that he or she has complied with the service requirements set forth at 49 C.F.R. § 1180.4 and any other requirements set forth in this decision.

SERVICE LIST NOTICE. The Board will serve, as soon after **June 2, 2011**, as practicable, a notice containing the official service list (the service list notice). Each POR will be required to serve upon all other PORs, within 10 days of the service date of the service list notice, copies of all filings previously submitted by that party (to the extent such filings have not previously been served upon such other parties). Each POR also will be required to file with the Board, within 10 days of the service date of the service list notice, a certificate of service indicating that the service required by the preceding sentence has been accomplished. Every filing made by a POR must have its own certificate of service indicating that all PORs on the service list have been served with a copy of the filing. Members of the United States Congress (MOCs) and Governors (GOVs) are not parties of record and need not be served with copies of filings, unless any MOC or GOV has requested to be, and is designated as, a POR.

SERVICE OF DECISIONS, ORDERS, AND NOTICES. The Board will serve copies of its decisions, orders, and notices only on those persons who are designated on the official service list as either POR, MOC, GOV, or Non-Party. All other interested persons are

encouraged to secure copies of decisions, orders, and notices via the Board's website at "www.stb.dot.gov" under "E-LIBRARY/Decisions & Notices."

ACCESS TO FILINGS. Under the Board's rules, any document filed with the Board (including applications, pleadings, etc.) shall be promptly furnished by the filer to interested persons on request, unless subject to a protective order. 49 C.F.R. § 1180.4(a)(3). Such documents are available for inspection in the Docket File Reading Room (Room 131) at the offices of the Surface Transportation Board, 395 E Street, S.W., in Washington, DC. The application and other filings in this proceeding will also be available on the Board's website at "www.stb.dot.gov" under "E-LIBRARY/Filings."

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The application in FD 35498 is accepted for consideration.
2. The parties to this proceeding must comply with the procedural schedule adopted by the Board in this proceeding as shown in the Appendix.
3. The parties to this proceeding must comply with the procedural requirements described in this decision.
4. This decision is effective on May 18, 2011.

Decided: May 12, 2011.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.

APPENDIX: PROCEDURAL SCHEDULE

April 18, 2011	Application and Proposed Procedural Schedule filed.
May 18, 2011	Board notice of acceptance of application published in the <u>Federal Register</u> .
June 2, 2011	Notices of intent to participate in this proceeding due.
June 17, 2011	All comments, protests, requests for conditions, and any other evidence and argument in opposition to the application, including filings of DOJ and DOT, due.
July 5, 2011	Responses to comments, protests, requests for conditions, and other opposition due. ADBF's rebuttal in support of the application due.
TBD	A public hearing or oral argument may be held.
August 19, 2011	Final decision to be served.
September 18, 2011	Final decision to become effective.