

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35957

MICHAEL WILLIAMS—CONTROL EXEMPTION—SDR HOLDING COMPANY

Decided: October 14, 2015

On September 15, 2015, Michael Williams (Williams), a noncarrier individual, filed a verified notice of exemption (September Notice) under 49 C.F.R. § 1180.2(d)(2), to continue in control of SDR Holding Company (SDR), upon its acquisition of control of Dakota Southern Railway Company (Dakota Southern), a Class III rail carrier. According to Williams, SDR has already acquired all the stock of Dakota Southern, but Williams inadvertently failed to seek and obtain Board authority for that continuance in control. Williams states that he and his wife, Tammy Williams, own SDR and that SDR does not own or control any other railroads or railroad lines. Williams states that, by this notice, he now seeks to become compliant with all applicable Board requirements.

In reviewing the September Notice as well as previous filings by Williams, there are several items that require further explanation. First, Williams does not explain his long delay in seeking authority. It appears that either Williams or his company, SDR, acquired the stock in Dakota Southern on September 30, 2009, six years prior to Williams filing this notice requesting Board authorization for continuance in control. (Williams September Notice 5.)¹ By April 2010, Williams appeared to be aware of the Board’s requirement for acquisition of control authority; the verified notice of exemption in Michael Williams—Control Exemption—St. Maries River Railroad, Docket No. FD 35365, indicates that Williams “expects shortly to file a notice of exemption to acquire the stock of” Dakota Southern. (Williams Verified Notice of Exemption 3, Apr. 12, 2010, Michael Williams—Control Exemption—St. Maries River R.R., FD 35365.) The April 2010 notice, however, does not reveal that the stock of Dakota Southern had already been acquired by SDR or Williams in 2009. Moreover, the above-quoted statement implies that Williams, rather than SDR, may have acquired Dakota Southern. Because Williams owns or controls other railroads, such a transaction would require authorization for acquisition of control pursuant to 49 U.S.C. § 11323(a)(5).

Second, when describing the other four railroads he owns or controls, Williams’ September Notice omits Boot Hill & Western Railway Holding Co., Inc., a holding company Williams recently acquired that controls Boot Hill & Western Railway Co., LC (BHWR), a

¹ A copy of the Stock Purchase Agreement was attached at Exhibit B.

Class III rail carrier.² BHWR operates in Kansas, a disclosure that was required under 49 C.F.R. § 1180.6(a)(5).

Given the extensive delay in filing a verified notice of exemption, Williams will be directed to explain to the Board why he postponed seeking Board authorization for his continuance in control of SDR following the acquisition of stock in Dakota Southern. Williams will also be directed to clarify whether Dakota Southern was acquired by SDR (as indicated in Williams' verified notice in this proceeding) or Williams (as indicated in Williams' verified notice in Docket No. FD 35365), and if Williams was the acquiror, why the transaction does not require authorization for the acquisition of control. Further, Williams must explain how SDR fits into the corporate hierarchy of railroads and holding companies he controls. Lastly, the Board will direct Williams to amend the notice to include BHWR and any other holding companies or railroads that may have been omitted. The Board will direct Williams to file supplemental information addressing these issues by November 3, 2015. In the meantime, this proceeding will be held in abeyance pending further Board order.

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

It is ordered:

1. This proceeding is held in abeyance pending further Board order.
2. Williams is directed to file the supplemental information identified in this decision by November 3, 2015.
3. This decision is effective on its service date.

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

² Michael Williams—Continuance in Control Exemption— Boot Hill & W. Ry. Holding Co., FD 35925 (STB served June 3, 2015). In his original notice filed on April 24, 2015, supplemented by letters filed May 15, 2015, and May 18, 2015, Williams indicated that he intended to consummate this transaction on the later of May 27, 2015, or the effective date of the exemption.