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SERVICE DATE - NOVEMBER 21, 2000

DO

FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33957]

Kern W. Schumacher and Morris H. Kulmer—Continuance in Control Exemption—Kern Valley Railroad Company

Kern W. Schumacher and Morris H. Kulmer, individuals (collectively applicants), have filed a verified notice of exemption to continue in control of the Kern Valley Railroad Company (KVR), upon KVR's becoming a Class III railroad.

The transaction is scheduled to be consummated on or after November 13, 2000.

This transaction is related to STB Finance Docket No. 33956, Kern Valley Railroad Company—Acquisition and Operation Exemption—Trinidad Railway, Inc., wherein KVR seeks to acquire an approximate 30.0-mile line of railroad (line) in Las Animas County, CO, from Trinidad Railway, Inc. (TRI) and has agreed to assume TRI's common carrier railroad obligations pending the line's abandonment.¹

Applicants currently indirectly control one existing Class III railroad: Tulare Valley Railroad Company, operating in the State of California.

¹ The line is the subject of a notice of exemption for its abandonment in Trinidad Railway, Inc.—Abandonment Exemption—in Las Animas County, CO, STB Docket No. AB-573X (STB served Sept. 21, 2000). By decision served October 20, 2000, the Board postponed the effective date of that exemption until November 30, 2000, pending completion of the offer of financial assistance (OFA) process or, if the OFA process terminated, a period to provide for interim trail use negotiations.

Applicants state that (i) the rail line of KVR will not connect with any other lines of a railroad under their control or within their corporate family, (ii) the transaction is not part of a series of transactions that would connect the railroads with each other or any railroad in applicants' corporate family, and (iii) the transaction does not involve a Class I 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. 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. 33957, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Fritz R. Kahn, Esq., 1920 N Street, N.W., 8th Floor, Washington, DC 20036-1601.

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Decided: November 13, 2000.

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

Vernon A. Williams

Secretary