

37906

SERVICE DATE – APRIL 20, 2007

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35017]

Mark K. Smith—Continuance in Control Exemption—Rock River Railroad, Inc.

Mark K. Smith (applicant) has filed a verified notice of exemption to continue in control of Rock River Railroad, Inc. (RRR), upon RRR's becoming a Class III rail carrier.

The earliest this transaction may be consummated is the May 6, 2007 effective date of the exemption (30 days after the exemption was filed).

This transaction is related to the concurrently filed notice of exemption in STB Finance Docket No. 35016, Rock River Railroad, Inc.—Acquisition and Operation Exemption—Rail Lines of Renew Energy, LLC. In that proceeding, RRR seeks to acquire and operate approximately 2,100 feet of rail line, located within the plant site of Renew Energy, LLC (RE), in Jefferson, Jefferson County, WI (the line). RRR will provide common carrier rail operations over the line and interchange with Union Pacific Railroad Company.

Applicant is a noncarrier and currently controls Rail & Transload, Inc. (R&T), a Class III rail carrier.

Applicant states that: (1) the rail properties operated by R&T and those to be operated by RRR do not connect with each other or any railroads in their corporate

family; (2) the continuance in control is not part of a series of anticipated transactions that would connect the rail lines of R&T and RRR with each other or any railroads in their corporate family; and (3) the transaction does not involve a Class I railroad.

Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(2). The purpose of this transaction is to allow applicant to continue in control of RRR after RRR becomes a Class III rail carrier.

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 section 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the verified 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 April 27, 2007 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35017, 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 Thomas F. McFarland, 208 South LaSalle St., Suite 1890, Chicago, IL 60604-1112.

Board decisions and notices are available on our website at

“WWW.STB.DOT.GOV.”

Decided: April 13, 2007.

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

Vernon A. Williams

Secretary