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FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36059]

Ozinga Bros., Inc.—Continuance in Control Exemption—Chicago Port Railroad Company

Ozinga Bros., Inc. (Ozinga Bros.), a noncarrier, has filed a verified notice of exemption under 49 C.F.R. § 1180.2(d)(2) for authority to continue in control of Chicago Port Railroad Company (CPRR), a Class III rail carrier. According to Ozinga Bros., in 2006, CPRR obtained authority to operate as a common carrier.¹ At the time, CPRR was, and now is, owned by Mokena Illinois Railroad (MIRR), a Class III rail carrier.² MIRR, in turn, was, and is, controlled by Ozinga Bros. Ozinga Bros.' ownership interest in MIRR, and its indirect ownership interest in CPRR, was not disclosed at the time of the CPRR transaction. Ozinga Bros. asserts that neither it nor MIRR sought Board authority for Ozinga Bros. to control CPRR when CPRR obtained its common carrier authority in 2006, because neither was aware that federal regulatory authority was required for Ozinga Bros to control, directly or indirectly, multiple rail carriers. Ozinga Bros. states that the present notice of exemption serves to correct this inadvertent regulatory oversight

¹ See Chicago Port R.R.—Operation Exemption—Ozinga Transp., FD 34808 (STB served Jan. 12, 2006).

² See Mokena Ill. R.R.—Construction Exemption—Will Cty., Ill., FD 31680 (ICC served Oct. 4, 1990, and Dec. 3, 1990).

so that it will possess the necessary regulatory authority to control the two railroads in its corporate family (CPRR and MIRR).

The effective date of the exemption is September 28, 2016 (30 days after the verified notice of exemption was filed).

As clarified in a letter filed on September 8, 2016, the applicant represents that: (1) the rail lines of CPRR and MIRR do not connect with each other or any railroads in their corporate family; (2) the continuance of control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroads in their corporate family; and (3) the transaction does not involve a Class I carrier. Therefore, the proposed transaction is exempt from the prior approval requirements of 49 U.S.C. § 11323. See 49 C.F.R. § 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 obligations to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under §§ 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. Stay petitions must be filed no later than September 21, 2016 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36059, 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 Robert A. Wimbish, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606-2832.

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Decided: September 9, 2016.

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