

28535

SERVICE DATE - NOVEMBER 21, 1997

DO

FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33505]

John H. Marino—Continuance in Control Exemption—Delaware Transportation Group, Inc., Gettysburg Railway Company, Inc., and Evansville Terminal Company, Inc.

John H. Marino (Marino) has filed a notice of exemption to continue in control of the Delaware Transportation Group, Inc. (DTGI), the Gettysburg Railway Company, Inc. (GRCI), and the Evansville Terminal Company, Inc. (ETCI).

DTGI and GRCI will become Class III rail carriers upon conclusion of the transactions covered by two simultaneously filed notices of exemption in (1) STB Finance Docket No. 33503, Delaware Transportation Group—Acquisition Exemption—Delaware Valley Railway Company, Inc., wherein DTGI seeks to acquire certain rail lines from the Delaware Valley Railway Company, Inc., and (2) STB Finance Docket No. 33504, Gettysburg Railway Company, Inc.—Lease and Operation Exemption—Delaware Transportation Group, Inc., wherein GRCI will lease and operate the rail lines being acquired by DTGI in STB Finance Docket No. 33503. ETCI is an existing Class III rail carrier operating in the States of Indiana and Illinois.<sup>1</sup>

The transaction was expected to be consummated on or after October 31, 1997.

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<sup>1</sup> Marino states that he currently possesses an interest in ETCI.

Marino states that: (i) the rail lines to be controlled do not connect with each other or any other railroads in the corporate family; (ii) the transaction is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their 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. 33505, 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 Robert A. Wimbish, Esq., Rea, Cross & Auchincloss, 1920 N Street, N.W., Suite 420, Washington, DC 20036.

Decided: November 17, 1997.

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

Vernon A. Williams

Secretary

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