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SERVICE DATE - AUGUST 22, 1997

DO

FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33435]

K. Earl Durden, Rail Management & Consulting Corporation, and Rail Partners, L.P.--  
Acquisition of Control Exemption--Pennington Railroad, Inc.

K. Earl Durden (Durden), Rail Management & Consulting Corporation (RMCC), and Rail Partners, L.P. (Partners)<sup>1</sup> (collectively, applicants), have filed a notice of exemption<sup>2</sup> to acquire control of Pennington Railroad, Inc. (Pennington), a noncarrier. According to applicants, before the closing of the transaction, Pennington's parent company, James River Paper Company, Inc. (JRP) will merge Pennington into the Meridian & Bigbee Railroad Company (Meridian), a Class III rail carrier that is also owned and controlled by JRP. Upon consummation of the transaction, Pennington will remain as the surviving corporation and Pennington will therefore become a Class III rail carrier. Pennington will then merge into M&B Railroad, L.L.C. (MBRR), a noncarrier entity wholly owned and controlled by

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<sup>1</sup> Durden, RMCC, and Partners control 12 Class III rail carriers located in Alabama, Arizona, Arkansas, Florida, Georgia, Kentucky, North Carolina, Tennessee, Texas, and Wisconsin. They are: Atlantic & Western Railway, L.P.; The Bay Line Railroad, L.L.C.; Copper Basin Railway; East Tennessee Railway, L.P.; Galveston Railroad, L.P.; Georgia Central Railway, L.P.; KWT Railway, Inc.; Little Rock & Western Railway, L.P.; Tomahawk Railway, L.P.; Valdosta Railway, L.P.; Western Kentucky Railway, L.L.C.; and Wilmington Terminal Railroad, L.P. These rail carriers are referred to as the RMCC Rail Group.

<sup>2</sup> Concurrent with the filing of the notice of exemption, applicants filed, pursuant to 49 CFR 1117.1, a petition to file under seal the Agreement of Merger in this proceeding. By decision served August 18, 1997, the Board granted applicants' request.

applicants,<sup>3</sup> and applicants will thereby assume control of Pennington. Applicants state that the transaction was expected to be consummated on or about July 31, 1997.

Applicants state that: (1) the merged MBRR will not connect with any other railroad in the RMCC Rail Group; (2) MBRR's merger with Pennington is not part of a series of anticipated transactions that would connect the railroads of the RMCC Rail Group with each other; and (3) the transaction does not involve a Class I carrier. The transaction therefore is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 1180.2 (d) (2). The purpose of the transaction is to transfer ownership of, and responsibility for, Pennington from JRP to applicants, thereby enabling JRP to concentrate on its core business operations, without distractions related to its single railroad operation, while allowing applicants to expand their railroad operations into a new part of the country. MBRR will continue to handle freight for customers Meridian previously served, without material changes in the level or quality of transportation service provided.

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 11324-25 that involve only Class III rail carriers. Because this transaction involves Class

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<sup>3</sup> According to applicants, the corporate merger of Meridian into Pennington, followed by the corporate merger of Pennington into MBRR, will result in MBRR's complete assumption of Meridian's railroad operations and corporate obligations. Applicants also state that MBRR, as the corporate successor of Meridian, will conduct Meridian's railroad operations without material change.

III rail carriers only, the Board, under statute, may not impose labor protective conditions for this transaction.<sup>4</sup>

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502 (d) may be filed at any time. The filing of a petition to reopen will not stay the transaction. An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33435, 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: Donald G. Avery, Slover & Loftus, 1224 Seventeenth Street, N.W., Washington, DC 20036.

Decided: August 18, 1997.

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

Vernon A. Williams

Secretary

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<sup>4</sup> Applicants note, however, that MBRR is inheriting, and affirmatively assuming, all of Meridian's collective bargaining agreements with the labor organizations that represent its employees, and MBRR will continue the employment of all of Meridian's employees covered by such collective bargaining agreements.