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SERVICE DATE – JULY 25, 2014

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35837]

Patrick D. Broe, OmniTRAX, Inc., and OmniTRAX Holdings, LLC—Continuance in Control Exemption—Brownsville & Rio Grande International Railway, LLC

Patrick D. Broe (Mr. Broe), OmniTRAX, Inc. (OmniTRAX), and OmniTRAX Holdings, LLC (Omni Holdings) (collectively, Applicants), have filed a verified notice of exemption pursuant to 49 C.F.R. § 1180.2(d)(2) to continue in control of Brownsville & Rio Grande International Railway, LLC (BRGIR), a noncarrier, upon BRGIR's becoming a common carrier.<sup>1</sup>

This transaction is related to a concurrently filed verified notice of exemption in Brownsville & Rio Grande International Railway, LLC—Change In Operator Exemption Including Interchange Commitment—Brownsville & Rio Grande International Railroad, Docket No. FD 35836, in which BRGIR seeks an exemption under 49 C.F.R. § 1150.31 to change operators from Brownsville & Rio Grande International Railroad (BRG) to BRGIR over certain rail lines currently operated by BRG in and around the seaport

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<sup>1</sup> The verified notice of exemption indicates that Mr. Broe is a noncarrier who directly controls noncarrier OmniTRAX, which directly controls Omni Holdings, a holding company that controls 11 Class III carriers. Mr. Broe also controls five other Class III carriers indirectly through other entities.

facilities of the Brownsville Navigation District of Cameron County, Tex., (the District) at the Port of Brownsville, Tex.<sup>2</sup>

The earliest this transaction can be consummated is August 10, 2014, the effective date of the exemption (30 days after the verified notice was filed). Applicants indicate that they intend to consummate the proposed transaction on or about August 11, 2014.

Applicants represent that: (1) BRGIR will not connect with any of the other railroads controlled by Omni Holdings or Mr. Broe, (2) the continuance in control is not part of a series of anticipated transactions that would connect some or all of those railroads; and (3) the transaction does not involve a Class I rail carrier. Therefore, the 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 obligation 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.

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<sup>2</sup> Specifically, under the transaction contemplated in Docket No. FD 35836, (1) BRGIR will become the operator of 10.5 miles of rail line and 39.5 miles of ancillary track (collectively, the District Trackage) in and around the Port of Brownsville, including Palo Alto Yard; (2) BRG will assign to BRGIR its leasehold interests in a rail line owned by Union Pacific Railroad Company (UP) known as the “Port Lead” between milepost 2.20 near Arthur Street in Brownsville, Tex., and milepost 7.92 at a point of connection with the District Trackage at the western end of the Port of Brownsville; and (3) BRGIR will assume by assignment BRG’s overhead trackage rights over UP’s “New Port Lead” between milepost 7.49 and milepost 9.47, enabling BRGIR to access Palo Alto Yard.

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 would not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than August 1, 2014 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35837, 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: July 21, 2014

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.