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SERVICE DATE - AUGUST 14, 1997

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33439]

Kauri, Inc. and StatesRail LLC—Continuance in Control—Alabama & Gulf Coast Railway
LLC

Kauri, Inc. (Kauri) and StatesRail LLC (StatesRail) filed a notice of exemption under 49 CFR 1180.2(d)(2) and 1180.4(g) to continue in control of Alabama & Gulf Coast Railway LLC (ALA) upon ALA's becoming a Class III rail carrier. The transaction is expected to be consummated on or after September 1, 1997.

ALA, a noncarrier, has concurrently filed a notice of exemption in *Alabama & Gulf Coast Railway LLC—Acquisition and Operation Exemption—The Burlington Northern and Santa Fe Railway Company*, STB Finance Docket No. 33438, to acquire from The Burlington Northern and Santa Fe Railway Company (BNSF) and operate a 140.58-mile rail line between milepost 776.10 near Kimbrough, AL, and milepost 916.68 in Pensacola, FL. ALA will also acquire incidental trackage rights over 13.6 miles of BNSF's line between milepost 776.10 near Kimbrough, AL, and milepost 762.5 near Magnolia, AL. ALA will also be temporarily assigned trackage rights over a 43.1-mile line of CSX Transportation, Inc., between milepost L621.7 near Atmore, AL, and milepost L635.4 near Catonment, FL, pending completion of repairs to the line to be acquired from BNSF.

Kauri, a noncarrier, through its noncarrier subsidiary, StatesRail, controls: (1) Kiamichi Railroad Company, L.L.C. (Kiamichi), which operates lines in Arkansas, Oklahoma, and Texas; and (2) through its noncarrier subsidiary, StatesRail, Inc. and its

noncarrier subsidiary, Kyle Railways, Inc., controls: (a) Arizona Eastern Railway Company, which operates lines in Arizona; (b) Eastern Alabama Railway Company, which operates lines in Alabama; (c) Kyle Railroad Company, which operates lines in Colorado, Kansas, and Nebraska; (d) San Joaquin Valley Railroad Company, which operates lines in California; and (e) SWKR Operating Co., which operates lines in Arizona.¹

As noted, StatesRail controls Kiamichi and would be in control of ALA upon its becoming a carrier.

Kauri states that: (1) the rail lines to be acquired by ALA will not connect with other rail lines under Kauri's or StatesRail's control or with any railroads within their corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in the corporate family; and (3) the transaction does not involve a Class I railroad. The transaction therefore 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 railroad 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 verified notice contains false or misleading information, the exemption is void

¹ *See StatesRail, Inc.—Acquisition of Control Exemption—Kyle Railways, Inc.*, STB Finance Docket No. 33340 (STB served Apr. 17, 1997).

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. 33439, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on Fritz Kahn, Suite 750 West, 1100 New York Avenue, N.W., Washington, DC 20005-3934.

Decided: August 5, 1997.

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

Vernon A. Williams

Secretary