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SERVICE DATE - APRIL 23, 1998

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FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33575]

State of North Carolina—Intracorporate Family Exemption—Merger of Beaufort and Morehead Railroad Company into North Carolina Railroad Company

The State of North Carolina (the State), Beaufort and Morehead Railroad Company (B&M), and North Carolina Railroad Company (NCRR) have filed a verified notice of exemption to merge B&M, a Class III rail carrier wholly owned by the State (a noncarrier),¹ into NCRR, a Class III rail carrier controlled by the State.²

The proposed merger is an element of a financial restructuring, not subject to Board jurisdiction, related to the proposed buyout by the State of the private shareholders of NCRR.³ See North Carolina Railroad Company—Petition to Set Trackage Compensation and Other Terms and Conditions—Norfolk Southern Railway Company, Norfolk & Western Railway Company, and Atlantic and East Carolina Railway Company, STB

¹ An agency of the State, the North Carolina Department of Transportation, owns 100% of the outstanding common stock of B&M.

² The State owns approximately 75% of the outstanding common stock of NCRR.

³ The merger will allow NCRR to issue new preferred stock in exchange for B&M preferred stock. The preferred stock issuance will evidently preserve NCRR's Federal tax status as a real estate investment trust after the State acquires all of its common stock.

Finance Docket No. 33134 (STB served May 29, 1997).⁴ The parties expected to consummate the merger on or after March 31, 1998.

This transaction is one within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties state that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

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 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 automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33575, 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

⁴ There, a trackage compensation proceeding was held in abeyance to allow the State to negotiate a buyout of the private shareholders of NCRR whose dissension had precipitated the compensation dispute.

of each pleading must be served on: Betty Jo Christian, Steptoe & Johnson, 1330 Connecticut Avenue, N.W., Washington, DC 20036; and Farhana Y. Khera, Hogan & Hartson L.L.P, 555 Thirteenth Street, N.W., Washington, DC 20004-1109.

Decided: April 15, 1998

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

Vernon A. Williams

Secretary