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FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35525]

Patrick D. Broe and ST&E Holdings, Inc.— Acquisition of Control Exemption—Stockton Terminal & Eastern Railroad Company

Patrick D. Broe (Broe) and ST&E Holdings, Inc. (ST&E Holdings) (collectively, Applicants), both noncarriers, have filed a verified notice of exemption to acquire control of Stockton Terminal & Eastern Railroad Company (Stockton Terminal), a Class III rail carrier.

The transaction may be consummated on or after July 30, 2011 (the effective date of the exemption).

Broe directly controls ST&E Holdings and 2 other noncarrier holding companies: OmniTRAX, Inc. (OmniTRAX) and BNS Holding, Inc. (BNS). OmniTRAX currently controls the following 11 Class III railroads: (a) Chicago Rail Link, LLC, which operates in Illinois; (b) Georgia Woodlands Railroad, LLC, which operates in Georgia; (c) Great Western Railway of Colorado, LLC, which operates in Colorado; (d) Manufacturers' Junction Railway, LLC, which operates in Illinois; (e) Newburgh & South Shore Railroad Limited, which operates in Ohio; (f) Northern Ohio & Western Railway, LLC, which operates in Ohio; (g) Panhandle Northern Railroad, LLC, which operates in Texas; (h) Alliance Terminal Railroad, LLC, which operates in Texas; (i) Fulton County Railway, LLC, which operates in Georgia; (j) Alabama & Tennessee River Railway, LLC, which operates in Alabama; and (k) Kettle Falls International Railway, LLC, which operates in

Washington. BNS indirectly controls the following 3 Class III railroads: (a) Nebraska, Kansas and Colorado Railway, which operates in Nebraska, Kansas, and Colorado; (b) Illinois Railway, Inc., which operates in Illinois; and (c) Georgia & Florida Railway, Inc., which operates in Georgia and Florida.

Stockton Terminal Company (Terminal Company), a noncarrier, currently controls Stockton Terminal & Eastern Railroad of Nevada, a noncarrier, which in turn controls Stockton Terminal. Through the proposed transaction, ST&E Holdings will acquire all of Terminal Company's stock and, after the acquisition transaction is consummated, Terminal Company and Nevada Company will be merged into ST&E Holdings. As a result, Broe and ST&E Holdings will control Stockton Terminal.

Applicants represent that: (1) the rail lines to be acquired by ST&E Holdings do not connect with any other railroad in the corporate family;¹ (2) the transaction is not part of a series of anticipated transactions that would connect Stockton Terminal's rail lines with any other railroad in the OmniTRAX or BNS corporate family; 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).²

¹ Stockton Terminal's lines are located in California. None of the railroads controlled by OmniTRAX or BNS operates a rail line in California.

² A redacted Purchase Agreement was filed with the notice of exemption. The Applicants concurrently filed a motion for protective order pursuant to 49 C.F.R. § 1104.14(b) to allow the filing under seal of the unredacted Purchase Agreement. That motion will be addressed in a separate decision.

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.

If the verified 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 effectiveness of the exemption. Stay petitions must be filed no later than July 22, 2011 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35525, 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 Karl Morell, Ball Janik LLP, 655 Fifteenth Street, N.W., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our website at “WWW.STB.DOT.GOV.”

Decided: July 11, 2011.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.