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ENTERED
Office of Proceedings
August 29, 2016
Part of
Public Record

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August 26, 2016

VIA FEDERAL EXPRESS

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024

Re: **Docket No. FD 36059**
Ozinga Bros., Inc. – Continuance in Control Exemption –
Chicago Port Railroad Company

Dear Ms. Brown:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of the **Verified Notice of Exemption of Ozinga Bros., Inc. Pursuant to 49 C.F.R. § 1180.2(d)(2)**, dated August 17, 2016. A check in the amount of \$1,400, representing the appropriate fee for this filing, is attached.

If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance on this matter.

Respectfully submitted,

Robert A. Wimbish
Attorney for Ozinga Bros. Inc.

RAW/ekf

Enclosures

cc: Barry N. Voorn
J.R. Wydra

FILED
August 29, 2016
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
August 29, 2016
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36059

OZINGA BROS., INC.
-- CONTINUANCE IN CONTROL EXEMPTION --
CHICAGO PORT RAILROAD COMPANY

**VERIFIED NOTICE OF EXEMPTION OF OZINGA BROS., INC.
PURSUANT TO 49 C.F.R. § 1180.2(d)(2)**

Robert A. Wimbish
Fletcher & Sippel LLC
29 North Wacker Drive
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J.R. Wydra
Ozinga Bros., Inc.
19001 Old LaGrange Road, Ste 300
Mokena, IL 60448
(708) 326-4225

ATTORNEYS FOR OZINGA BROS., INC.

Dated: August 26, 2016

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36059

OZINGA BROS., INC.
-- CONTINUANCE IN CONTROL EXEMPTION --
CHICAGO PORT RAILROAD COMPANY

**VERIFIED NOTICE OF EXEMPTION OF OZINGA BROS., INC.
PURSUANT TO 49 C.F.R. § 1180.2(d)(2)**

Ozinga Bros., Inc. (“Ozinga Bros.”), a non-carrier, hereby files this notice of exemption under 49 C.F.R. § 1180.2(d)(2) for authority to continue in control of Chicago Port Railroad Company (“CPRR”), a Class III common carrier.

As background, in late 2005, CPRR invoked the Board’s class exemption procedures at 49 C.F.R. § 1150.31, *et seq.*, to operate as a common carrier over trackage owned by corporate affiliate Ozinga Transportation (“Ozinga-T”).¹ In a supplemental letter to the STB in Docket No. FD 34808 filed on October 30, 2006, CPRR offered to clarify that “the owner of CPRR [is] Mokena Illinois Railroad.” Mokena Illinois Railroad (“MIRR”) was at the time, and is, a railroad common carrier that does not interconnect with CPRR.² Not disclosed at the time of the CPRR transaction in 2006 is that MIRR, in turn, is controlled by Ozinga Bros. As matters now stand, Ozinga Bros. exerts direct control of MIRR and indirectly controls CPRR through MIRR. There are no other railroads in the Ozinga Bros. “corporate family.” Neither MIRR nor

¹ Chicago Port Railroad Company – Operation Exemption – Ozinga Transportation, Docket No. FD 34808 (STB served Jan. 12, 2016). In filings submitted in connection with the FD 34808 proceeding, CPRR explained that Ozinga-T is a non-railroad entity owning the trackage over which CPRR sought to operate as a railroad common carrier.

² See Mokena Illinois Railroad Company – Construction Exemption – Will County, IL, Docket No. FD 31680 (ICC served Oct. 4, 1990 and December 3, 1990).

Ozinga Bros. previously sought Board authority to control CPRR, because neither was aware until recently that federal regulatory authority was required for Ozinga Bros. to control, directly or indirectly, multiple railroad carriers subject to the Board's jurisdiction. The subject notice of exemption serves to correct this inadvertent regulatory oversight recently brought to the attention of Ozinga Bros., so that Ozinga Bros. will possess the necessary regulatory authority to control the two railroad members of its corporate family.

In accordance with the requirements of 49 C.F.R. § 1180.4(g), Ozinga Bros. respectfully submits the following information:

Description of Proposed Transaction: 49 C.F.R. § 1180.6(a)(1)(i)

Ozinga Bros. is a non-carrier holding company that controls directly MIRR. In turn, MIRR controls directly CPRR. Accordingly, Ozinga Bros. controls both MIRR and CPRR, the latter indirectly through its controlling ownership interest in MIRR. Both MIRR and CPRR are Class III "short line" railroads.

The rail lines of MIRR and CPRR do not connect.

The full name and address of the Applicant herein is:

Ozinga Bros., Inc.
19001 Old LaGrange Road, Ste 300
Mokena, IL 60448

Any questions concerning this notice should be sent to the representative of Ozinga Bros. at the following address:

Robert A. Wimbish
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

Proposed Schedule for Consummation: 49 C.F.R. § 1180.6(a)(1)(ii)

Ozinga Bros. seeks after-the-fact authority to continue in control of CPRR, the second railroad in its “corporate family,” added in 2006. As such, Ozinga Bros. seeks to accomplish, or “consummate,” federally-authorized control of CPRR as of the effective date of the subject exemption – September 25, 2016, 30 days hence. See 49 C.F.R. § 1180.4(g)(1).

Purpose Sought to Be Accomplished: 49 C.F.R. § 1180.6(a)(1)(iii)

The exemption sought herein will extend to Ozinga Bros. after-the-fact authority to control CPRR alongside MIRR, thereby correcting the inadvertent oversight of Ozinga Bros. that was recently discovered. The Board has customarily allowed entities like Ozinga Bros. in similar such situations to invoke the applicable exemption proceedings to remedy an inadvertent past omission.³ The exemption process invoked herein will therefore accomplish Ozinga Bros’ compliance with 49 U.S.C. § 11323(a)(4).

States in Which Property of Applicants is Located: 49 C.F.R. § 1180.6(a)(5)

Ozinga Bros. is a non-carrier holding company. CPRR and MIRR are both located entirely within the State of Illinois; these two railroad carriers do not connect with one another.

Map - Exhibit 1: 49 C.F.R. § 1180.6(a)(6)

A map depicting the locations of CPRR and MIRR is attached as Exhibit A.

Agreement - Exhibit 2: 49 C.F.R. § 1180.6(a)(7)(ii)

No agreement is contemplated or necessary for Ozinga Bros. to continue in control of CPRR and MIRR.

³ See. e.g., OmniTRAX Holdings Combined, Inc. – Acquisition of Control Exemption – Alabama & Tennessee River Railway, L.L.C., et al., Docket No. FD 36032 (STB served Jul. 14, 2016).

Labor Protective Conditions: 49 C.F.R. § 1180.4(g)(1)(i)

Pursuant to 49 U.S.C. § 11326(c), no employee protective conditions may be imposed on this transaction. CPRR and MIRR are Class III rail carriers.

Environmental and Historic Preservation Matters: 49 C.F.R. § 1180.4(g)(3)

Under 49 C.F.R. § 1105.6(c)(2)(i) and (ii), the proposed control transaction is exempt from environmental reporting requirements. Continuance in control of CPRR by Ozinga Bros. will not result in significant changes in carrier operations, i.e., changes that exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5).

Under 49 C.F.R. § 1105.8(b)(3), the proposed continuance in control also is exempt from historic preservation reporting requirements. The subject control transaction will not substantially change the level of maintenance of any railroad property.

Interchange Commitments: 49 C.F.R. § 1180.4(g)(4)

The continuance in control transaction that is the subject of this proceeding does not itself involve the acquisition or operation of a rail line, and thus the provisions of 49 C.F.R. § 1180.4(g)(4) are not applicable. However, neither CPRR nor MIRR is subject to any agreements containing an interchange commitment limiting either carrier's ability to interchange traffic with any third-party connecting carrier.

Respectfully submitted,

By: 

Robert A. Wimbish
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Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

J.R. Wydra
Ozinga Bros., Inc.
19001 Old LaGrange Road, Ste. 300
Mokena, IL 60448
(708) 326-4225

ATTORNEYS FOR OZINGA BROS., INC.

Dated: August 26, 2016

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

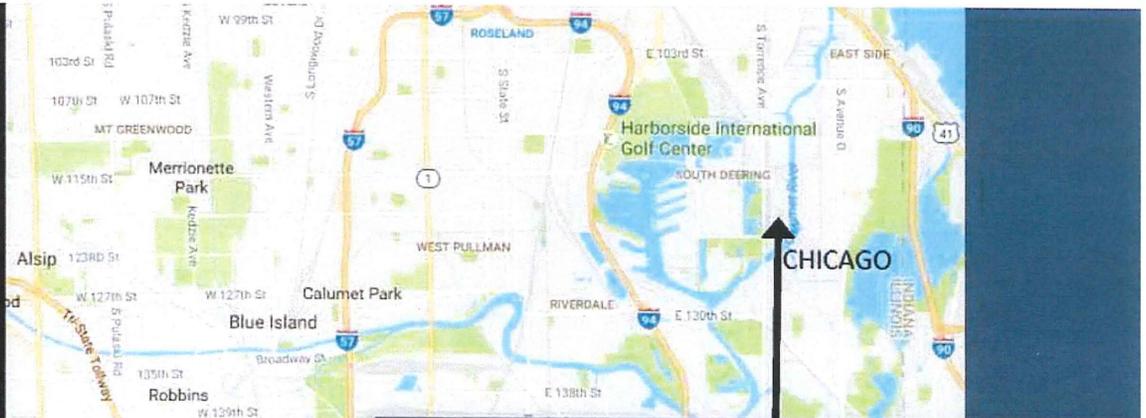
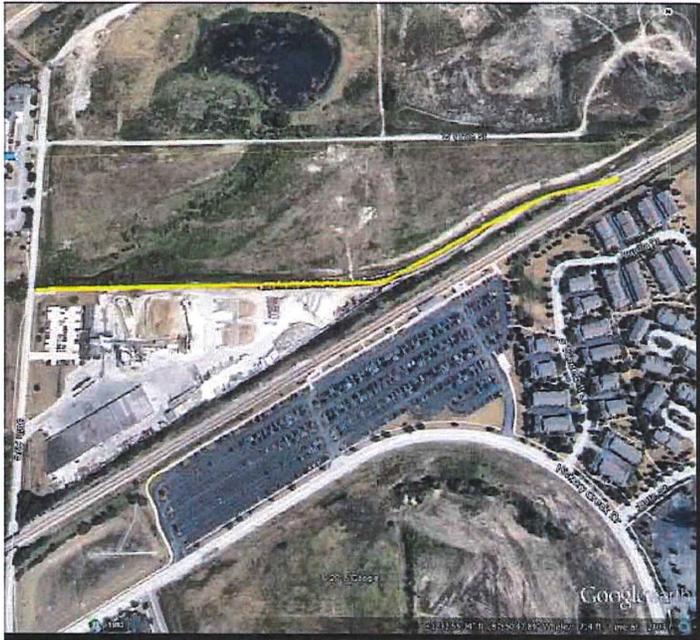
DOCKET NO. FD 36059

**OZINGA BROS., INC.
-- CONTINUANCE IN CONTROL EXEMPTION --
CHICAGO PORT RAILROAD COMPANY**

EXHIBIT A

MAP

Mokena Illinois Railroad



Chicago Port Railroad Company

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36059

**OZINGA BROS., INC.
-- CONTINUANCE IN CONTROL EXEMPTION --
CHICAGO PORT RAILROAD COMPANY**

VERIFICATION

VERIFICATION

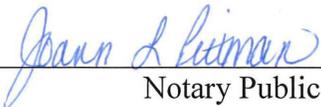
State of Illinois)
) ss:
County of Will)

Barry N. Voorn, being duly sworn, deposes and says that he is Vice President, Secretary, and General Counsel of Ozinga Bros., Inc., and that he has read the foregoing Notice of Exemption and knows the facts asserted therein, and that the same are true as stated.



Barry N. Voorn

SUBSCRIBED AND SWORN TO
before me this 17th day
of August, 2016.



Notary Public

My Commission expires:

