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FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 35742 (Sub-No. 1)]

Clarkdale Arizona Central Railroad, L.C.—Trackage Rights Exemption—Drake Cement, LLC

Clarkdale Arizona Central Railroad, L.C. (CACR), a Class III carrier, has filed a verified notice of exemption under 49 C.F.R. § 1180.2(d)(7) to renew and modify a previous trackage rights agreement¹ between CACR and Drake Cement, LLC (Drake), also a Class III carrier, permitting CACR to operate over Drake's Track Nos. 3924, 3907, 3921, and 3904, located between milepost 0 + 15 feet and milepost 0 + 3000 feet in Drake, Ariz., a distance of approximately 2,985 feet. The Agreement also grants CACR the right to operate over Drake's Track Nos. 3922 and 3923 to provide switching operations for Drake.

The verified notice states that the proposed transaction will afford CACR the ability to continue to conduct common carrier operations in interchange with BNSF Railway Company.

¹ CACR states that the previous agreement expired on December 31, 2015, although CACR has continued to operate. A redacted version of the renewed agreement (Agreement) was filed with CACR's verified notice of exemption. CACR simultaneously filed a motion for a protective order to protect the confidential and commercially sensitive information in the unredacted version of the Agreement, which CACR submitted under seal. That motion will be addressed in a separate decision.

The transaction may be consummated on or after May 30, 2020, the effective date of the exemption (30 days after the verified notice of exemption was filed).

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 will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed by May 22, 2020 (at least seven days before the exemption becomes effective).

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.

However, 49 U.S.C. § 11326(c) does not provide for labor protection for transactions under 49 U.S.C. §§ 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.

All pleadings, referring to Docket No. FD 35742 (Sub-No. 1), must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on CACR's representative, William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Ave., N.W., Suite 300, Washington, DC 20037.

According to CACR, this action is categorically excluded from environmental review under 49 C.F.R. § 1105.6(c), and from historic reporting under 49 C.F.R. § 1105.8(b)(3).

Docket No. FD 35742 (Sub-No. 1)

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Decided: May 12, 2020.

By the Board, Allison C. Davis, Director, Office of Proceedings.