

DO

FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36091]

David L. Durbano, Wyoming and Colorado Railroad Company, Inc., and Saratoga Railroad, LLC—Corporate Family Transaction

David L. Durbano (Durbano), an individual, Saratoga Railroad, LLC (Saratoga), a noncarrier corporation wholly owned by Durbano, and Wyoming and Colorado Railroad Company, Inc. (WYCO), a Class III rail carrier controlled by Durbano,¹ (collectively, the Parties) have filed a verified notice of exemption under 49 C.F.R. § 1180.2(d)(3) for a corporate family transaction in which: (1) Saratoga will acquire from WYCO and operate an approximately 23.71-mile rail line between milepost 0.57 at Walcott and milepost 24.28 at Saratoga in Carbon County, Wyo. (the EB Line); and (2) Durbano will

¹ Durbano has controlled WYCO since WYCO acquired a 131.52-mile line from Union Pacific Railroad Company (UP) in 1987. See Wyo. & Colo. R.R.—Acquis. & Operation Exemption—Certain Lines of Union Pac. R.R., FD 31140 (ICC served Nov. 30, 1987) (1987 Acquisition). The line being acquired by Saratoga was part of the 1987 Acquisition and is known as Encampment Branch or the EB Line. The remainder of the former UP line acquired in the 1987 Acquisition has either been abandoned or sold through a series of proceedings. See Wyo. & Colo. R.R.—Aban. Exemption—in Jackson Cty., Colo., AB 307 (Sub-No. 1X) (ICC served June 25, 1990); Wyo. & Colo. R.R.—Aban. Exemption—in Jackson Cty., Colo., AB 307 (Sub-No. 2X) (ICC served May 19, 1995 and Sept. 15, 1995); Wyo. & Colo. R.R.—Aban. Exemption—in Albany Cty., Wyo., AB 307 (Sub-No. 3X) (STB served Sept. 16, 1996, as modified by subsequent decisions served on May 16, 2003, and December 31, 2003;); Wyo. & Colo. R.R.—Aban. Exemption—in Albany Cty., Wyo., AB 307 (Sub-No. 4X) (STB served Oct. 10, 2003, as modified by subsequent decisions served on Nov. 10, 2003, and Feb. 27, 2009).

continue in control of Saratoga when it becomes a Class III rail carrier, upon Saratoga's acquisition of the EB line, while remaining in control of WYCO and Durbano's three other Class III rail carriers: Southwestern Railroad, Inc. (SWRR), Cimarron Valley Railroad, L.C. (CVR), and Clarkdale Arizona Central Railroad, L.C. (CACR).

According to the Parties, Durbano, individually and through his control and ownership of Western Group and Snowy Range Cattle Company, both noncarrier holding companies, currently owns and controls WYCO, SWRR, CVR and CACR.² WYCO operates in Oregon doing business as the Oregon Eastern Railroad. WYCO owns but does not operate the EB Line in Wyoming.³ SWRR operates in New Mexico; CVR operates in Kansas, Oklahoma, and Colorado; and CACR operates in Arizona. The Parties state that, because Durbano owns and controls all four rail carriers, Durbano has not entered into any agreements or written instruments to undertake the proposed transaction.

The Parties state that the purpose of this transaction is to undertake a corporate reorganization for the eventual purpose of selling certain assets or stock of various

² Mr. Durbano also owns, and Western Group manages, Verde Canyon Railroad, LLC, an intrastate passenger excursion railroad not subject to the Board's jurisdiction.

³ The EB Line was authorized for abandonment in 2006 and the Parties state that the tracks, ties, and other track materials were salvaged. See Wyo. & Colo. R.R.—Aban. Exemption—in Carbon Cty., Wyo., AB 307 (Sub-No. 6X) (STB served May 31, 2006). The Parties state that, for a number of reasons, WYCO never consummated the abandonment of the EB Line and never filed a notice of consummation. As a result, WYCO's abandonment authority expired and the corridor remains a line of railroad subject to the Board's jurisdiction.

Durbano-controlled railroad companies, except for Saratoga.⁴ Saratoga certifies that its annual revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier and will not exceed \$5 million.

Unless stayed, the exemption will be effective on February 16, 2017 (30 days after the verified notice was filed).

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 C.F.R. § 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 §§ 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 rail carriers.

⁴ See W. Branch & Cont'l Rail—Acquis. of Control Exemption—Cimarron Valley R.R., Docket No. FD 36084; N.M. Cent. R.R.—Acquis. & Operation Exemption—Sw. R.R., Whitewater Div., Docket No. FD 36085; and W. Branch Intermediate Holdings & Cont'l Rail—Continuance in Control Exemption—N.M. Cent. R.R., Docket No. FD 36087.

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 no later than February 9, 2017 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36091, 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 William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Ave., N.W., Suite 300, Washington, DC 20037.

According to the Parties, this action is categorically excluded from environmental review under 49 C.F.R § 1105.6(c).

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Decided: January 27, 2017.

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