

DO

FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36338]

OmniTRAX Holdings Combined, Inc., and HGS Railway Holdings, Inc.—Control Exemption—The Winchester and Western Railroad Company

OmniTRAX Holdings Combined, Inc. (OmniTRAX), and HGS Railway Holdings, Inc. (HGS) (collectively, Applicants), both noncarriers, filed a verified notice of exemption under 49 C.F.R. § 1180.2(d)(2) to acquire control of the Winchester and Western Railroad Company (WWRR), a Class III rail carrier.

According to Applicants, OmniTRAX and HGS are under joint managerial and operational control.¹ Applicants state that OmniTRAX currently controls 18 Class III railroads.² Applicants further state that HGS currently controls two Class III railroads.³

Applicants also note that they filed a notice of exemption in OmniTRAX Holdings Combined, Inc.—Continuance in Control Exemption—Cleveland & Cuyahoga

¹ See also HGS Ry. Holdings, Inc.—Continuance in Control Exemption—HGS-FCR, LLC, FD 36180, slip op. at 2-3 n.3 (STB served May 23, 2018).

² According to Applicants, OmniTRAX controls the following railroads: Alabama & Tennessee River Railway, LLC; Brownsville & Rio Grande International Railway, LLC; Chicago Rail Link, LLC; Fulton County Railway, LLC; Georgia & Florida Railway, LLC; Georgia Woodlands Railroad, LLC; Great Western Railway of Colorado, LLC; Illinois Railway, LLC; Kettle Falls International Railway, LLC; Manufacturers' Junction Railway, LLC; Nebraska, Kansas & Colorado Railway, LLC; Newburgh & South Shore Railroad, LLC; Northern Ohio & Western Railway, LLC; Panhandle Northern Railway, LLC; Peru Industrial Railroad, LLC; Sand Springs Railway Company; Stockton Terminal and Eastern Railroad; and Central Texas & Colorado River Railway LLC.

³ According to Applicants, HGS controls HGS-ATN, LLC, and HGS-FCR, LLC.

Railway, FD 36288, in which Applicants seek to continue in control of Cleveland & Cuyahoga Railway, LLC (CCR), upon CCR's becoming a Class III rail carrier.⁴

Attached to the verified notice is an executed agreement to effectuate Applicants' control of WWRR.

The earliest this transaction may be consummated is September 5, 2019, the effective date of the exemption (30 days after the verified notice was filed).

The verified notice states that: (i) the rail lines operated by the OmniTRAX carriers and the HGS carriers, as well as the rail lines to be operated by CCR, do not connect with the rail lines to be operated by WWRR; (ii) the proposed transaction is not part of a series of anticipated transactions that would connect the rail lines that will be operated by WWRR with any railroad in the OmniTRAX and HGS corporate families, or with any rail line to be operated by CCR; and (iii) neither WWRR nor any of the carriers controlled by OmniTRAX or HGS, nor CCR, is 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).

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. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

⁴ The notice of exemption in Docket No. FD 36288 was served and published in the Federal Register on August 15, 2019 (84 Fed. Reg. 41,804), and the exemption is scheduled to become effective on August 30, 2019.

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. Petitions to stay must be filed no later than August 29, 2019 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36338, must be filed with the Surface Transportation Board via e-filing or in writing addressed to 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Applicants' representative, Karl Morell, Karl Morell & Associates, 440 1st Street, N.W., Suite 440, Washington, DC 20001.

According to Applicants, this action is excluded from environmental review under 49 C.F.R. § 1105.6(c) and from historic preservation reporting requirements under 49 C.F.R. § 1105.8(b)(1).

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Decided: August 16, 2019.

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