

51263

SERVICE DATE — JUNE 3, 2022

DO

FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36597]

Kean Burenga and Chesapeake and Delaware, LLC—Continuance in Control

Exemption—Delaware and Raritan River Railroad, LLC

Kean Burenga (Burenga), an individual and noncarrier, and Chesapeake and Delaware, LLC (CAD), a noncarrier holding company, (collectively, Applicants) filed a verified notice of exemption under 49 C.F.R. § 1180.2(d)(2) to continue in control of Delaware and Raritan River Railroad, LLC (DRRR), a noncarrier, upon DRRR's becoming a Class III rail carrier.

This notice of exemption is related to a concurrently filed notice of exemption in Delaware & Raritan River Railroad—Operation Exemption—Consolidated Rail Corporation, Docket No. FD 36596, in which DRRR seeks authority to operate over certain rail lines owned by New Jersey Transit Corporation (NJT) and to lease and operate certain rail lines owned by Consolidated Rail Corporation (Conrail), totaling 49.9 miles in New Jersey, and a concurrently filed notice of modified certificate of public convenience and necessity in Delaware & Raritan River Railroad—Modified Rail Certificate, Docket No. FD 36598, in which DRRR seeks to operate over an additional NJT-owned line segment in New Jersey.

The transaction may be consummated on or after June 19, 2022, the effective date of the exemption (30 days after the verified notice was filed).

According to the notice, CAD currently controls two Class III railroads, Dover and Rockaway River Railroad, LLC (DRRV) and Dover and Delaware River Railroad, LLC (DDRR), and Burenga has authority to control DRRV, DDRR, Belvidere & Delaware River Railway Company, Inc. (BDRV), and Black River & Western Corp. (BRW).¹

Applicants represent that: (1) DRRR will not connect with any of the Burenga Railroads; (2) the transaction is not part of a series of anticipated transactions that would connect DRRR with any of the Burenga Railroads or any of the Burenga Railroads with each other; and (3) the transaction does not involve a Class I rail carrier. Therefore, the proposed 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.

¹ DRRV, DDRR, BDRV, and BRW collectively are referred to as the Burenga Railroads. The verified notice states that Burenga has a controlling interest in BDRV and that he recently acquired a controlling interest in BRW, but that he only possesses a minority equity interest in DDRR and DRRV, although he is a director for both railroads and currently holds a management position in each. According to the verified notice, Burenga will assume a similar minority stake in DRRR and will hold a like directorship in, and management position with, DRRR, and that Burenga “seeks permissive control authority for DRRR out of an abundance of caution.”

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 June 10, 2022 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36597, must be filed with the Surface Transportation Board either via e-filing on the Board's website 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, Robert A. Wimbish, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606-3208.

According to Applicants, this action is categorically 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).

Board decisions and notices are available at www.stb.gov.

Decided: May 31, 2022.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.