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FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35291]

Sterlite (USA), Inc.—Acquisition and Operation Exemption—Copper Basin Railway, Inc.

Sterlite (USA), Inc. (Sterlite), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31¹ to acquire and operate all of Copper Basin Railway, Inc.’s (CBRY) rail assets, including its main line between Magma (milepost 949.5)² and Winkelman (milepost 1003.5), and all spurs from that main line, including the spur between Ray Junction (milepost 0) and Ray Mine (milepost 4), and the spur between Hayden Junction (milepost 0) and Hayden Smelter (milepost 2),³ in Pinal and Gila Counties, AZ, for a total of 54 route miles (not including industrial track or the Ray Mine and Hayden Smelter spurs).⁴

¹ On August 19, 2009, Sterlite filed an amendment to its verified notice of exemption stating that the proposed acquisition and operation would not involve any provision or agreement of the kind described in 49 CFR 1150.33(h).

² According to Sterlite, CBRY uses the milepost designations on the line that were assigned by CBRY’s former owner, Southern Pacific Transportation Company.

³ Sterlite states that it does not represent that these two spurs constitute “railroad lines” whose acquisition is subject to the Board’s jurisdiction under 49 U.S.C. 10901. To the extent, however, that there is any question regarding the status of these tracks, Sterlite requests that they be covered by this verified notice of exemption.

⁴ Sterlite states that, on or about March 6, 2009, a Settlement and Purchase and Sale Agreement (PSA) among ASARCO LLC, AR Silver Bell, Inc., CBRY, ASARCO

Sterlite certifies that, based on representations made to it by CBRY regarding CBRY's annual revenues, Sterlite's projected annual revenues would be those of a Class III rail carrier.

Because Sterlite's projected annual revenues will exceed \$5 million, Sterlite is required, at least 60 days before an exemption is to become effective, to send notice of the transaction to the national offices of the labor unions with employees on the affected lines, to post a copy of the notice at the workplace of the employees on the affected lines, and to certify to the Board that it has done so. 49 CFR 1150.32(e). Sterlite has certified to the Board that on August 14, 2009, it posted a notice at the workplace of the employees on the affected lines, containing the information required in 49 CFR 1150.32(e). However, Sterlite has noted that none of the employees on the affected lines are represented by a labor union and, therefore, no notice has been provided to the national office of any labor union. Accordingly, Sterlite simultaneously has filed a petition for waiver from the requirements of 49 CFR 1150.32(e) regarding notice to labor of the proposed transaction to permit the exemption to become effective 30 days after the notice of exemption was filed, rather than the requisite 60 days. Sterlite's waiver request will be addressed by the Board in a subsequent decision.

(continued . . .)

Santa Cruz, Inc., Sterlite, and Sterlite Industries (India), Ltd., was executed, providing for the acquisition by Sterlite of the rail assets of CBRY. According to Sterling, closing under the PSA cannot take place unless and until the Debtors' Sixth Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code, as Modified, is approved by the United States Bankruptcy Court for the Southern District of Texas and by the United States District Court for the Southern District of Texas in the proceedings in In re ASARCO LLC (Case No. 05-21207).

Sterlite states that, if the waiver request is not granted, it intends to consummate the transaction on or after October 13, 2009 (60 days from the date the notice was posted at the worksite of affected CBRY employees), and, if the waiver petition is granted in a decision served later than September 13, 2009, then Sterlite intends to consummate the transaction on or after such time established by the Board.

Pursuant to the Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing, or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting, and shredding). The term “solid waste” is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

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 for stay must be filed no later than 7 days before the exemption becomes effective.⁵

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35291, 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

⁵ In the absence of a waiver granted by the Board, the earliest the exemption could become effective would be October 13, 2009 (60 days after Sterlite has certified that it has satisfied the requirements of 49 CFR 1150.32(e)).

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Decided: August 21, 2009

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Anne K. Quinlan

Acting Secretary