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SERVICE DATE – AUGUST 24, 2023

DO

FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36708]

John Howell—Continuation of Control Exemption—Washington, Idaho & Montana
Railway LLC

John Howell (Howell), a noncarrier, has filed a verified notice of exemption under 49 C.F.R. § 1180.2(d)(2) to exempt from the provisions of 49 U.S.C. § 11323 his continuance in control of Washington, Idaho & Montana Railway LLC (WIM), a noncarrier, upon WIM's becoming a Class III rail carrier.

The transaction is related to a concurrently filed verified notice of exemption in Washington, Idaho & Montana Railway LLC—Operation Exemption—BLPI RR LLC, Docket No. FD 36707. In that proceeding, WIM seeks an exemption under 49 C.F.R. § 1150.31 to operate approximately 43.744 miles of rail line in the County of Latah, Idaho, from milepost 3.32 (Washington/Idaho state line) to milepost 47.06 at Bovill, Idaho (the Line). The Line is owned by the BLPI RR LLC (BLPI RR), a Class III carrier.

According to the verified notice, Howell controls three other Class III carriers:

(1) West Erie Shortline Inc. (WESL), which Howell controls through majority stock owned by Northern Illinois & Wisconsin Railway Corporation, d/b/a NIWX Corporation, a non-carrier (NIWX); (2) Blackwell Northern Gateway Railroad Company (BNG), which Howell controls through majority of shares owned either personally or through NIWX; and (3) Davenport Industrial Railroad (DIR), in which Howell holds a minority

interest. The verified notice states that Howell will continue in control of WIM upon WIM's becoming a Class III rail carrier. Howell represents that: (1) the rail properties operated by WESL and BNG and those to be operated by WIM do not connect with each other or any railroads in their corporate family; (2) the continuance in control of WIM is not part of a series of anticipated transactions that would connect the rail lines of WESL, BNG, DIR, and WIM with each other or any railroad in the corporate family; and (3) the transaction does not involve a Class I rail carrier. The transaction, therefore, is exempt from the prior approval requirements of 49 U.S.C. § 11323. See 49 U.S.C. § 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. Accordingly, because this transaction involves Class III rail carriers only, the Board may not impose labor protective conditions here.

The earliest this transaction may be consummated is September 7, 2023, the effective date of the exemption (30 days after the verified notice was filed). 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 August 31, 2023 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36708, 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 Howell's representative, John K. Fiorilla, Dyer & Peterson, PC, 605 Main Street, Suite 104, Riverton, NJ 08077-1440.

According to Howell, 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: August 21, 2023.

By the Board, Mai T. Dinh, Director, Office of Proceedings.