

DO

FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36180]

HGS Railway Holdings, Inc.—Continuance in Control Exemption—HGS-FCR, LLC and HGS-ATN, LLC

HGS Railway Holdings, Inc. (HGS Holdings), has filed a verified notice of exemption under 49 C.F.R. § 1180.2(d)(2) to continue in control of HGS-ATN, LLC (HGS-ATN), and HGS-FCR, LLC (HGS-FCR) (collectively, the LLCs), upon HGS-ATN's and HGS-FCR's becoming Class III rail carriers.

This transaction is related to verified notices of exemption in HGS-ATN, LLC—Acquisition Exemption—CSX Transportation, Inc., Docket No. FD 36175 and HGS-FCR, LLC—Acquisition Exemption—CSX Transportation, Inc., Docket No. FD 36176. In those proceedings, the LLCs individually seek authority pursuant to 49 C.F.R. § 1150.31 to acquire rail lines from CSX Transportation, Inc. (CSXT): HGS-ATN for approximately 121 miles of rail line in Alabama, and HGS-FCR for approximately 55 miles of rail line in Georgia. The transaction is also related to verified notices of exemption in Alabama & Tennessee River Railway—Lease & Operation Exemption—HGS-ATN, LLC, Docket No. FD 36173, and Fulton County Railway—Lease & Operation Exemption—HGS-FCR, LLC, Docket No. FD 36174. In those proceedings,

Alabama & Tennessee River Railway (ATN), and Fulton County Railway, LLC (FCR), seek authority to lease and operate over the Alabama and Georgia lines, respectively.¹

The earliest this transaction may be consummated is June 6, 2018, the effective date of the exemption.

HGS Holdings is a non-carrier that owns 100 percent of the issued and outstanding stock of HGS-ATN and HGS-FCR, two limited liability companies and non-carriers that were formed for the purpose of acquiring certain lines from CSXT.

OmniTrax Holdings Combined, Inc. (OmniTRAX), is a non-carrier that controls 18 Class III railroads.² HGS Holdings and OmniTRAX share the same address, chief executive officer, and additional officials or officers. Together, the two companies' holdings appear to encompass the entirety of the rail carriers in the corporate family.³

¹ By decision served April 13, 2018, the Board held all five exemption proceedings in abeyance pending HGS Holdings' filing of supplemental information about its corporate family. On April 23, 2018, HGS Holdings filed a reply and revised notice of exemption. The information in that filing is sufficient for the Board to remove all five proceedings from abeyance and publish the notices.

² OmniTRAX controls the following railroads operating in the identified states: ATN (Alabama); FCR (Georgia); Brownsville & Rio Grande International Railway, LLC (Texas); Chicago Rail Link, LLC (Illinois); Georgia & Florida Railway, LLC (Georgia, Florida); Georgia Woodlands Railroad, LLC (Georgia); Great Western Railway of Colorado, LLC (Colorado); Illinois Railway, LLC (Illinois); Kettle Falls International Railway, LLC (Washington); Manufacturers' Junction Railway, LLC (Illinois); Nebraska, Kansas & Colorado Railway, LLC (Nebraska, Kansas, Colorado); Newburgh & South Shore Railroad, LLC (Ohio); Northern Ohio & Western Railway (Ohio); Panhandle Northern Railway, LLC (Texas); Peru Industrial Railroad, LLC (Illinois); Sand Springs Railway Company (Oklahoma); Stockton Terminal and Eastern Railroad (California); and Central Texas & Colorado River Railway, LLC (Texas).

³ HGS Holdings concedes in its April 23, 2018 supplemental filing that it and OmniTRAX are under joint managerial and operational control because individuals who
(continued . . .)

HGS Holdings represents that: (1) the rail lines to be owned by HGS-ATN are located in Alabama and the rail lines to be owned by HGS-FCR are located in Atlanta, Ga.; (2) the continuance in control is not part of a series of anticipated transactions that would connect the rail lines to be operated by HGS-ATN, HGS-FCR, and the 18 railroads in the OmniTRAX family; and (3) there are no Class I rail carriers in the HGS Holdings/OmniTRAX corporate family. Moreover, the verified notice shows that the rail lines to be acquired by HGS-ATN and HGS-FCR do not connect with each other or with any railroads in the OmniTRAX family. 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. 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 carriers.

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

are officers or officials at both companies are able to direct the day-to-day operations of the railroad subsidiaries. HGS Holdings is reminded that common control can be established due to other factors as well, e.g., common ownership. See 49 U.S.C. § 11323(b), (c). To the extent that any additional rail carriers come under the control of an entity with an ownership interest in HGS Holdings or OmniTRAX, prior authorization by the Board could be required. Id.

time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed no later than May 30, 2018 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36180 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 Karl Morell, Karl Morell & Associates, 440 1st Street, N.W., Suite 440, Washington, DC 20001.

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Decided: May 18, 2018.

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