

SERVICE DATE – MAY 8, 2020

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36390

TRANS RAIL HOLDING COMPANY—ACQUISITION OF CONTROL
EXEMPTION—VERMONT RAILWAY, INC., THE CLARENDON AND
PITTSFORD RAILROAD COMPANY, WASHINGTON COUNTY
RAILROAD COMPANY, THE NEW YORK & OGDENSBURG
RAILWAY COMPANY, INC., AND GREEN MOUNTAIN RAILROAD
CORPORATION

Digest:¹ The Board dismisses a petition for retroactive exemption because the transaction described in the petition was not subject to the Board’s prior approval.

Decided: May 7, 2020

Trans Rail Holding Company (TRHC), a noncarrier, filed a petition on March 6, 2020, pursuant to 49 U.S.C. § 10502 and 49 C.F.R. part 1121, for a retroactive exemption from the prior approval requirements of 49 U.S.C. § 11323-25 to authorize its acquisition of the controlling stock of the Vermont Railway, Inc., The Clarendon and Pittsford Railroad Company, Washington County Railroad Company, The New York & Ogdensburg Railway Company, Inc., and the Green Mountain Railroad Corporation (collectively, the Vermont Rail System).

According to the petition, the Vermont Rail System was formerly controlled by five noncarrier individuals (collectively, Sellers) who formed TRHC in July 2006 to purchase their controlling shares in the Vermont Rail System.² (Pet. 1, 3.) The purchase was made via a stock swap dated July 1, 2006, “such that the relative ownership of TRHC was the same as the Sellers’ ownership of the individual railroads.” (*Id.* at 3.) As a noncarrier holding company, TRHC does not engage in any rail operations and is not involved in any of the day-to-day operations of the Vermont Rail System railroads. (*Id.* at 3.) TRHC states that the Sellers believed any necessary authority for the 2006 transaction had been obtained by their late counsel, (*id.* at 3), and that

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² The five noncarrier individuals—David W. Wulfson, Gary E. Wulfson, Lisa W. Wulfson, Richard C. Szuch, and Peter A. Szuch—obtained Board authorization to own their respective controlling shares of the Vermont Rail System railroads in 1998, 1999, and 2002. (See Pet. 1-3.)

TRHC recently discovered that no authorization for the 2006 transaction had been sought, (id. at 2, 3-4).

When a transaction will not result in a cognizable change in control, the agency has determined that “the mere insertion of a noncarrier holding company in the chain of control is a transaction outside the scope of § 11343(a) [now § 11323(a)] and not subject to its prior approval.” RailAmerica, Inc.—Corp. Family Transaction Exemption—Huron & E. Ry., FD 32068, slip op. at 1 (ICC served June 18, 1992) (dismissing notice of exemption involving insertion of noncarrier holding company between three stockholders and two rail carriers that they controlled); see also DMH Trust fbo Martha M. Head—Corp. Family Exemption, FD 36316 (STB served July 10, 2019) (dismissing notice of exemption in a similar transaction); Hainesport Transp. Grp.—Corp. Family Transaction Exemption, FD 36184 (STB served May 24, 2018) (same).

In the 2006 transaction, the Sellers merely inserted TRHC, a noncarrier holding company, in the chain of control between the Sellers and the railroads they own. (See Pet. 4 (stating that “[t]he only thing that has changed is that TRHC, . . . a holding company owned by the Sellers, subsequently acquired the Sellers’ respective interests in those railroads”).) As in RailAmerica, DMH Trust, and Hainesport, the 2006 transaction was outside the scope of § 11323(a) and not subject to the Board’s prior approval, and consequently no exemption for the holding company’s acquisition was required. Therefore, the petition for retroactive exemption will be dismissed.

It is ordered:

1. The petition for retroactive exemption is dismissed.
2. This decision is effective on its service date.

By the Board, Board Members Begeman, Fuchs, and Oberman.