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FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36409]

Jon Delli Priscoli and First Colony Development and Rail Holdings Co.—Acquisition of Control Exemption—Massachusetts Coastal Railroad LLC

Jon Delli Priscoli (Delli Priscoli) and First Colony Development and Rail Holdings Co. (Holdings) (collectively, the parties) have filed a verified notice of exemption under 49 C.F.R. § 1180.2(d)(2) to acquire control of Massachusetts Coastal Railroad LLC (Mass Coastal), a Class III rail carrier operating in Massachusetts.

The verified notice states that Delli Priscoli owns all of the outstanding stock of Grafton and Upton Railroad Co. (G&U), a Class III rail carrier, and all of the outstanding stock of Holdings, a newly formed noncarrier holding company. Mass Coastal is a wholly owned subsidiary of San Luis & Rio Grande Railroad, Inc. (SLRG), which is the debtor in a Chapter 11 bankruptcy proceeding in the U.S. Bankruptcy Court for the District of Colorado (the Bankruptcy Court).¹ The Bankruptcy Court and William A. Brandt, as Chapter 11 trustee for the bankruptcy estate of SLRG (the Trustee), have established procedures for bidding on SLRG's LLC membership interests in Mass Coastal, and Holdings states that it intends to submit a bid.² According to the verified

¹ See In re San Luis & Rio Grande R.R., Case No. 19-18905-TBM (Bankr. D. Colo.).

² The Board's exemption authority is permissive only; it does not require the authorized transaction to be consummated. See Oakland Glob. Rail Enter.—Pet. For

notice, if Holdings submits the winning bid and the sale is approved by the Bankruptcy Court, Holdings would be entitled to acquire all of the outstanding membership interests of Mass Coastal. The parties state that, upon acquisition of Mass Coastal, Delli Priscoli, through Holdings, would control Mass Coastal indirectly and G&U directly.

The verified notice states that the schedule for the proposed acquisition contemplates consummating the transaction shortly after the anticipated approval of the sale by the Bankruptcy Court on a schedule that would not allow sufficient time for the parties to file a verified notice after the winning bid is selected. Notwithstanding that the Board's exemption authority is permissive, under the circumstances, the Board will not establish the effective date of this exemption at this time, but rather will require Holdings to inform the Board as to the result of the bidding process, at which point an effective date can be established if Holdings is the successful bidder.

The parties represent that: (1) the rail lines to be owned or operated by G&U and Mass Coastal do not connect with each other or any railroads in their respective corporate families; (2) the proposed transaction is not part of a series of anticipated transactions that would connect the railroads with each other or with any other railroads in their respective corporate families; and (3) the proposed transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. § 11323. See 49 C.F.R. § 1180.2(d)(2).

Declaratory Order, FD 36168 et al., slip op. at 6 n.8 (STB served June 20, 2019) (explaining that Board authority is permissive and an entity must still obtain the requisite property rights). Thus, this exemption does not foreclose any other entity from seeking to acquire Mass Coastal (subject to any Board authority that may be needed), and it does not assume or affect the outcome of the bidding process.

The parties state that the purpose of the proposed transaction is to afford Mass Coastal improved access to financial resources and opportunities to achieve operating efficiencies as a result of common control with another rail carrier.

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, the Board may not impose labor protective conditions here because all of the carriers involved are Class III carriers.

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 25, 2020.

All pleadings, referring to Docket No. FD 36409, must be filed with the Surface Transportation Board either via e-filing 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 the parties' representative, James E. Howard, 57 Via Buena Vista, Monterey, CA 93940.

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

Decided: June 15, 2020.

By the Board, Allison C. Davis, Director, Office of Proceedings.