

DO

FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36440]

OPSEU Pension Plan Trust Fund, Jaguar Transport Holdings, LLC, and Jaguar Rail Holdings, LLC—Acquisition of Control Exemption—Cimarron Valley Railroad, L.C.; Southwestern Railroad, Inc.; Texas & Eastern Railroad, LLC; Washington Eastern Railroad, LLC; and Wyoming and Colorado Railroad, Inc.

OPSEU Pension Plan Trust Fund (OP Trust), Jaguar Transport Holdings, LLC (JTH), and Jaguar Rail Holdings, LLC (JRH) (collectively, Jaguar), all noncarriers, have filed a verified notice of exemption under 49 C.F.R. § 1180.2(d)(2) to acquire control of Cimarron Valley Railroad, L.C. (CVRR); Southwestern Railroad, Inc. (SWRR); Texas & Eastern Railroad, LLC (TERR); Washington Eastern Railroad, LLC (WERR); and Wyoming and Colorado Railroad, Inc. (WYCO) (collectively, Western Railroads)¹ each a Class III rail carrier.

¹ Jaguar states that CVRR is located in Kansas, Colorado, and Oklahoma; SWRR is located in New Mexico, Texas, and Oklahoma; TERR is located in Texas; WERR is located in Washington; and WYCO is located in Oregon. On October 6, 2020, Jaguar supplemented its verified notice of exemption with a map depicting SWRR's Shattuck Subdivision. According to Jaguar, it learned that SWRR sought and obtained abandonment authority for the Shattuck Subdivision but did not give timely notice of consummation under the Board's regulations, although that trackage has been removed and the corridor sold. (See Verified Notice of Exemption 4 n.2.) Accordingly, Jaguar acknowledges that SWRR maintains a common carrier obligation over the Shattuck Subdivision. Id.

The verified notice states that OP Trust invests and manages one of Canada's largest pension funds and indirectly controls JRH and JTH, which in turn controls West Memphis Base Railroad, L.L.C (WMBR), a Class III rail carrier located in Arkansas. According to the verified notice, pursuant to an as-yet unexecuted Stock and Membership Interest Purchase Agreement among Snowy Range Cattle Company, Inc., and David L. Durbano on behalf of the sellers and JRH as the buyer, JRH will acquire direct control of SWRR, TERR, and WYCO and, through JRH's acquisition of control of WYCO, indirect control of CVRR and WERR.²

The earliest the transaction may be consummated is October 30, 2020, the effective date of the exemption (30 days after the verified notice was filed).³

The verified notice states that: (1) WMBR would not connect with any of the Western Railroads, and none of the Western Railroads connect with each other; (2) the subject acquisition of control is not intended to connect the Western Railroads to one another or with WMBR; and (3) the proposed transaction does not involve a Class I 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).

Jaguar states that the proposed transaction will promote Jaguar's investment objectives and sustain the Western Railroads' efficiency, financial strength, and ability to meet the needs of shippers.

² Concurrently with its verified notice, Jaguar filed a motion for protective order under 49 C.F.R. § 1104.14(b), which will be addressed in a separate decision.

³ Jaguar states that it intends to consummate the proposed transaction on November 1, 2020.

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 October 23, 2020 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36440, 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 Jaguar's representative, Robert A. Wimbish, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606-3208.

According to Jaguar, this action is categorically excluded from environmental review under 49 C.F.R. § 1105.6(c) and from historic review under 49 C.F.R. § 1105.8(b).

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

Decided: October 13, 2020.

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