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SERVICE DATE – NOVEMBER 25, 2020

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36451

THE BAUPOST GROUP, L.L.C. AND US INFRAVEST MANAGERS LP—CONTROL
EXEMPTION—PIONEER RAILCORP, ET AL.

Docket No. FD 36306¹

BROOKHAVEN RAIL PARTNERS, LLC, RELATED INFRASTRUCTURE, LLC, BRX
TRANSPORTATION HOLDINGS, LLC, AND BRX ACQUISITION SUB, INC.—CONTROL
EXEMPTION—PIONEER RAILCORP, ET AL.

Decided: November 25, 2020

In June 2019, Brookhaven Rail Partners, LLC (Brookhaven), Related Infrastructure, LLC (Related Infrastructure), BRX Transportation Holdings, LLC (BRX Transportation), and BRX Acquisition Sub, Inc. (BRX Acquisition), obtained an exemption to acquire control of Pioneer Railcorp (Pioneer), a noncarrier holding company that controls 15 Class III railroads.² See Brookhaven Rail Partners, LLC—Control Exemption—Pioneer Railcorp, FD 36306, slip op. at 1 (STB served June 21, 2019) (84 Fed. Reg. 29,276).

On October 22, 2020, in Docket No. FD 36451, The Baupost Group, L.L.C. (Baupost), and US Infravest Managers LP (collectively, Applicants) filed a verified notice of exemption under 49 C.F.R. § 1180.2(d)(2) to acquire indirect control of Pioneer (and therefore the Pioneer Railroads) by acquiring a majority equity interest in BRX Transportation. (See Baupost Verified Notice 1, 3-4, Oct. 22, 2020, FD 36451.) As discussed below, because Applicants have presented information that raises questions as to the current control of Pioneer, the verified notice of exemption in Docket No. FD 36451 will be held in abeyance and the effective date of the exemption postponed.

¹ These proceedings are not consolidated. A single decision is being issued for administrative purposes.

² They are: Alabama & Florida Railway Co., Inc.; Alabama Railroad Co., Inc.; Decatur Junction Railway Co.; Elkhart & Western Railroad Co.; Fort Smith Railroad Co.; The Garden City Western Railway, Inc.; Georgia Southern Railway Co.; Gettysburg & Northern Railroad Co.; Indiana Southwestern Railway Co.; Kendallville Terminal Railway Co.; Keokuk Junction Railway Co.; Michigan Southern Railroad Company; Mississippi Central Railroad Co.; Pioneer Industrial Railway Co.; and Vandalia Railroad Company (collectively, the Pioneer Railroads).

In Docket No. FD 36306, Brookhaven and Related Infrastructure represented that BRX Acquisition would merge into Pioneer, with Pioneer as the surviving corporation, with the effect that Pioneer would become a wholly-owned subsidiary of BRX Transportation and would be indirectly controlled by Brookhaven and Related Infrastructure. Brookhaven Rail Partners, LLC—Control Exemption—Pioneer Railcorp, FD 36306, slip op. at 1-2.³ In Docket No. FD 36451, Applicants state in their verified notice that the current members of BRX Transportation “are an affiliate of Related Infrastructure (its majority equity owner), Stephens Pioneer (its minority equity owner), and Brookhaven (its manager and minority equity owner).” (Baupost Verified Notice 3, Oct. 22, 2020, FD 36451.) Applicants further state that, under the proposed transaction, US Infravest Holdings LLC would “indirectly acquire the majority equity interest in BRX Transportation currently held by an affiliate of Related Infrastructure.” (*Id.* at 3-4.) The verified notice does not identify the affiliate of Related Infrastructure or explain the affiliate’s relationship to Related Infrastructure.

In a supplement filed in Docket No. FD 36451 on November 2, 2020, Applicants⁴ state that, following the 2019 filing of the verified notice of exemption in Docket No. FD 36306, two additional transactions took place. First, Related Infrastructure Acquisitions LLC (Related Acquisitions) transferred its interest in BRX Transportation to Related Infrastructure BRX Holdings LLC (Related BRX Holdings).⁵ (Baupost Suppl. 2, Nov. 2, 2020, FD 36451.) Second, Related Infrastructure transferred its interest in Related BRX Holdings to Related Infrastructure Holdings LLC (Related Infrastructure Holdings), which now “directly owns and controls Related BRX Holdings.” (*Id.*) The supplement further states that Related Infrastructure and Related Infrastructure Holdings are subsidiaries of Related Fund Management, (*id.*), and the verified notice in Docket No. FD 36306 identified Related Fund Management as a subsidiary of Related Companies, L.P. (Related Companies), (Brookhaven Verified Notice 2 n.2, June 7, 2019, FD 36306).

Under 49 U.S.C. § 11323(a)(4), the “[a]cquisition of control of at least 2 rail carriers by a person that is not a rail carrier” requires Board authorization. Related Infrastructure and Related Infrastructure Holdings are affiliates and are subsidiaries of Related Fund Management, which is itself a subsidiary of Related Companies, but only Related Infrastructure was authorized to acquire control of Pioneer and the Pioneer Railroads in Docket No. FD 36306. Applicants have

³ In September 2019, Stephens Pioneer Rail LLC (Stephens Pioneer) was authorized to acquire a minority interest in BRX Transportation. See Stephens Pioneer Rail LLC—Control Exemption—BRX Transp. Holdings, LLC, FD 36343 (STB served Sept. 6, 2019).

⁴ The supplement was filed by Applicants Baupost and US Infravest Managers LP, but facts regarding Related Infrastructure and its affiliates were verified by Richard O’Toole, Vice President of Related Fund Management, LLC (Related Fund Management). (See Baupost Suppl. 5, Nov. 2, 2020, FD 36451.)

⁵ Applicants state that, when the verified notice was filed in Docket No. FD 36306, Related Acquisitions held the majority ownership interest in BRX Transportation, and “Related Infrastructure—the entity authorized to control Pioneer and the Pioneer Railroads through that proceeding—directly owned and controlled Related Acquisitions.” (Baupost Suppl. 2, Nov. 2, 2020, FD 36451.)

not cited any decision authorizing Related Infrastructure Holdings, Related Fund Management, and Related Companies to acquire control of the Pioneer Railroads. Because of the questions regarding the current control of Pioneer, the verified notice of exemption in Docket No. FD 36451 will be held in abeyance and the effective date of the exemption postponed until further Board order.

This decision is also being issued in Docket No. FD 36306. Related Infrastructure Holdings, Related Fund Management, and Related Companies (and any other entity or individual that controls Related Companies, as appropriate) should submit a filing in these dockets by December 21, 2020, providing any other relevant information as to the current control of Pioneer and explaining why Board authority was not required for the two transactions that occurred in 2019. Alternatively, if they believe such authority was needed, by December 21, 2020, they should seek after-the-fact authority under § 11323 to control Pioneer and the Pioneer Railroads.

It is ordered:

1. The notice of exemption in Docket No. FD 36451 is held in abeyance and the effective date is postponed until further order of the Board.
2. Related Infrastructure Holdings, Related Fund Management, and Related Companies are directed to make additional filings by December 21, 2020, as discussed above.
3. This decision is effective on its service date.

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