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SERVICE DATE – DECEMBER 28, 2020

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36306 (Sub-No. 1)

RFM HOLDCO LLC—CONTROL EXEMPTION—PIONEER RAILCORP, ET AL.

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: December 28, 2020

On December 2, 2020, in Docket No. FD 36306 (Sub-No. 1), RFM HoldCo LLC (RFM) filed a verified notice of exemption under 49 C.F.R. § 1180.2(d)(2) to seek after-the-fact authority to acquire control of Pioneer Railcorp (Pioneer), a noncarrier holding company that controls 15 Class III railroads.² For the reasons discussed below, RFM's verified notice of exemption will not become effective until further order of the Board.³

BACKGROUND

In June 2019, Brookhaven Rail Partners, LLC (Brookhaven), Related Infrastructure, LLC (Related Infrastructure), BRX Transportation Holdings, LLC (BRX Transportation), and BRX

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).

³ This decision holding RFM's verified notice in abeyance is also being issued in Docket Nos. FD 36306 and FD 36451, two related proceedings.

Acquisition Sub, Inc. (BRX Acquisition), obtained an exemption to acquire control of Pioneer. 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 (Infravest Managers) filed a verified notice of exemption under 49 C.F.R. § 1180.2(d)(2) to acquire indirect control of Pioneer (and the Pioneer Railroads) by acquiring a majority equity interest in BRX Transportation. (See Baupost Verified Notice 1, Oct. 22, 2020, FD 36451.) Baupost and Infravest Managers identified the current owner of the majority equity interest in BRX Transportation as “an affiliate of Related Infrastructure.” (*Id.* at 3-4.) In a supplement filed on November 2, 2020, Baupost and Infravest Managers⁴ stated that, following the 2019 filing of the verified notice of exemption in FD 36306 but before the filing of the verified notice in FD 36451, two additional transactions had taken 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 stated 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).

In a decision served November 25, 2020, the Board postponed the effective date of the exemption sought by Baupost and Infravest Managers in Docket No. FD 36451, held that proceeding in abeyance, and directed Related Infrastructure Holdings, Related Fund Management, and Related Companies (and any other entity or individual that controls Related Companies, as appropriate) to explain why Board authority was not required for the two transactions that occurred in 2019, or, if they believe such authority was needed, to seek after-the-fact authority under 49 U.S.C. § 11323 to control Pioneer and the Pioneer Railroads. See Baupost Grp., L.L.C.—Control Exemption—Pioneer Railcorp, FD 36451 et al., slip op. at 3 (STB served Nov. 25, 2020).

On December 2, 2020, RFM filed its verified notice of exemption, identifying itself as “the highest person currently in the corporate chain of control,” (RFM Verified Notice 2), and elaborating on the transactions described in Baupost and Infravest Managers’ November 2, 2020

⁴ The supplement was filed by 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 Baupost and Infravest Managers stated 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.)

supplement. As stated by RFM, when the notice of exemption in Docket No. FD 36306 was filed on June 7, 2019, “Related Companies controlled Related Fund Management, which controlled Related Infrastructure, which controlled Related Acquisitions, which controlled BRX Transportation.” (*Id.*) Therefore, according to RFM, “Related Companies, as the ultimate controlling party, should have sought control authority . . . in FD 36306.” (*Id.* at 3.)

RFM states, however, that it is the proper party to file the verified notice of exemption because of the second transaction that occurred in 2019—the transfer of the ownership interest in Related BRX Holdings from Related Infrastructure to Related Infrastructure Holdings—which RFM claims was part of a “broader intracompany reorganization.” (*Id.* at 3-4.) RFM states that, in the reorganization, Related Companies formed RFM; RFM formed a subsidiary, Related Infrastructure Holdings Investor LLC (Related Infrastructure Investor); Related Infrastructure Investor formed a subsidiary, Related Infrastructure Holdings; and Related Infrastructure’s interest in Related BRX Holdings was transferred to Related Infrastructure Holdings. (See *id.* at 4.) As a result, RFM replaced Related Companies as “the ultimate controlling party.” (*Id.* at 3-4.) According to RFM, it is “owned by equity holders of Related Companies,” and Related Companies and Related Fund Management no longer have any ownership interest in entities controlling BRX Transportation, Pioneer, or RFM. (*Id.* (footnote omitted).)⁶ RFM also notes that none of its equity owners have control of Related Companies or RFM. (RFM Verified Notice 4 n.4.)

On December 3, 2020, Baupost and Infravest Managers filed a letter requesting that the Board remove Docket No. FD 36451 from abeyance and allow the exemption to take effect “promptly” or “no later than the day the Board resolves the issues regarding current control of Pioneer.” (Baupost Letter 1, Dec. 3, 2020, FD 36451.)

DISCUSSION AND CONCLUSIONS

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. RFM states that Related Companies “should have sought control authority for Pioneer and the Pioneer Railroads in FD 36306.” (RFM Verified Notice 3.) RFM, however, asserts that because Related Companies transferred control of Pioneer to RFM, “[t]he previous omissions no longer have substantive effect,” and “the authority for RFM to indirectly control Pioneer through the various non-carrier subsidiaries created after the June 2019 decision should cure any defect.” (*Id.* at 5 n.6.)

⁶ RFM’s verified notice appears to conflict with the November 2, 2020 supplement filed by Baupost and Infravest Managers, although each filing appears to be verified by the same individual. Whereas the supplement identified Related Infrastructure Holdings as a subsidiary of Related Fund Management, (Baupost Suppl. 2, Nov. 2, 2020, FD 36451), RFM’s verified notice states that, as a result of one of the transactions that occurred in 2019, Related Fund Management “ceased to have any ownership interest . . . in any of the entities that control . . . BRX Transportation and Pioneer,” (RFM Verified Notice 4), which would include Related Infrastructure Holdings. RFM does not explain this discrepancy.

RFM's notice raises issues that require clarification before the Board can determine how to proceed. Although RFM's verified notice discusses various transactions that appear to have occurred since 2019, it does not provide sufficient information regarding the transaction in which RFM acquired control of the Pioneer Railroads. First, RFM does not specify when it took control of Pioneer and the Pioneer Railroads. RFM implies that it acquired control of the Pioneer Railroads when Related Infrastructure transferred its interest in Related BRX Holdings to Related Infrastructure Holdings. (See RFM Verified Notice 3-4 (referring to transaction between Related Infrastructure and Related Infrastructure Holdings and stating that "[t]his second transaction also resulted in RFM . . . replacing Related Companies as the ultimate controlling party"); *id.* at 4 (describing RFM as controlling BRX Transportation, the direct owner of Pioneer, following reorganization in which Related Infrastructure transferred its interest in Related BRX Holdings to Related Infrastructure Holdings).) However, the organizational chart provided by RFM depicts both Related Infrastructure and Related Infrastructure Holdings as being under RFM's control, (see RFM Verified Notice, Ex. 2 at 1), and RFM has not specified when it acquired control of Related Infrastructure. From the evidence provided by RFM, the transfer from Related Infrastructure to Related Infrastructure Holdings appears to have occurred between two subsidiaries of RFM.

Additionally, as part of its verified notice, RFM includes two agreements in Exhibit 4, but neither appears relevant to the transaction in which *RFM* acquired control of the Pioneer Railroads. The first is an assignment agreement between Related Infrastructure and Related Infrastructure Holdings, which was made effective December 13, 2019. (See RFM Verified Notice, Ex. 4 at 1.) According to Exhibit 2 of the verified notice, RFM appears to control both Related Infrastructure and Related Infrastructure Holdings. (See RFM Verified Notice, Ex. 2 at 1.) RFM does not explain how it acquired control of Pioneer through the assignment from Related Infrastructure to Related Infrastructure Holdings, two entities that it appears to control. The second agreement is an assignment agreement entered into as of June 27, 2019, in which Related Acquisitions transferred its interest in BRX Transportation Holdings to Related BRX Holdings. (See RFM Verified Notice, Ex. 4 at 3.) Exhibit 1 to RFM's verified notice reflects "the entities in the chain of ownership from Pioneer up to Related Companies, the ultimate parent, after giving effect to the [a]ssignment." (RFM Verified Notice 3.) The assignment between two entities controlled by Related Companies does not appear relevant to RFM's acquisition of control of Pioneer and the Pioneer Railroads, which is the subject of the notice in Docket No. FD 36306 (Sub-No. 1).

For these reasons, RFM's verified notice of exemption will be held in abeyance and the effective date postponed until further Board order. RFM will be directed to provide, by January 8, 2021, additional information describing the transaction in which it acquired control of Pioneer and the Pioneer Railroads from Related Companies and the date on which that transaction occurred, and copies of the agreement or agreements through which it acquired control.

Given that RFM's notice of exemption will be held in abeyance, Baupost and Infravest Managers' notice of exemption in Docket No. FD 36451 will continue to be held in abeyance.

It is ordered:

1. The notice of exemption in Docket No. FD 36306 (Sub-No. 1) is held in abeyance and the effective date is postponed until further order of the Board.
2. RFM is directed to provided additional information, as discussed above, by January 8, 2021.
3. This decision is effective on its service date.

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