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SERVICE DATE – JANUARY 26, 2021
SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36460

MICHAEL WILLIAMS—CONTROL EXEMPTION—
S&S SHORTLINE LEASING, LLC

Docket No. FD 36461

S&S SHORTLINE LEASING, LLC—ACQUISITION EXEMPTION—CITY OF ELY AND
NEVADA NORTHERN RAILWAY FOUNDATION

Docket No. FD 36474¹

MICHAEL WILLIAMS—CONTROL EXEMPTION—
MCCLOUD RAILWAY COMPANY

Decided: January 26, 2021

On November 13, 2020, S&S Shortline Leasing, LLC (S&S) filed a verified notice of exemption (Acquisition Notice) under 49 C.F.R. § 1150.41 in Docket No. FD 36461 to acquire from the City of Ely and the Nevada Northern Railway Foundation approximately 127 miles of rail line extending from milepost 0.0 at or near Cobre in Elko County, Nev., to milepost 127.0 at or near McGill Junction in White Pine County, Nev. (the Line).² On November 13, 2020, Michael Williams (Williams), a noncarrier individual, filed a verified notice of exemption (Control Notice) under 49 C.F.R. § 1180.2(d)(2) in Docket No. FD 36460 to control S&S.

By decision served on December 10, 2020, the Control Notice in Docket No. FD 36460 and the Acquisition Notice in Docket No. FD 36461 were held in abeyance, and their effective dates were postponed until further order of the Board. Williams—Control Exemption—S&S Shortline Leasing, LLC, FD 36460 et al. (STB served Dec. 10, 2020). The decision noted that

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

² S&S was previously authorized to operate over the Line and an additional 0.9-mile section from milepost 127.0 to milepost 127.9. See S&S Shortline Leasing, LLC—Operation Exemption—City of Ely, Nev., et al., FD 35284 (STB served Aug. 14, 2009). On November 13, 2020, Great Basin and Northern Railroad (Great Basin) filed a verified notice of exemption pursuant to 49 C.F.R. § 1150.41 to assume operations over the 0.9-mile line, which became effective on December 13, 2020. See Great Basin & N. R.R.—Change in Operators Exemption—City of Ely, et al., FD 36459 (STB served Nov. 27, 2020).

the Control Notice raised issues related to Williams' apparent failure to obtain Board authorization prior to assuming control of S&S and several other rail carriers. Accordingly, Williams was directed to provide, among other things, the following information:

- Regarding S&S, clarification as to whether Williams is, in fact, seeking after-the-fact authority for the unauthorized acquisition of stock that occurred during or after 2009, and all information required under 49 C.F.R. part 1180 pertaining to that transaction.
- A comprehensive list of all rail carriers owned or controlled by Williams (including rail carriers owned or controlled through holding companies or other entities), including but not limited to S&S, BG & CM Railroad (BG & CM), Ozark Valley Railroad (Ozark), and McCloud Railway (McCloud). For each rail carrier, Williams was directed to state: (1) the date of his acquisition of control of the rail carrier; (2) the entity from whom he acquired control of the rail carrier; (3) whether he first obtained Board authorization to control the rail carrier; (4) a citation to the Board's authorization, if any; and (5) if no authorization was sought and obtained, an explanation as to why not.

On December 29, 2020, Williams filed in Docket No. FD 36460 a clarification providing some of the requested information, and in Williams—Control Exemption—McCloud Railway, Docket No. FD 36474, a verified notice of exemption (McCloud Notice) pursuant to 49 C.F.R. § 1180.2(d) for after-the-fact authority to acquire control of McCloud.³

Williams' filings raise additional issues that require further clarification. As noted above, S&S filed a verified notice of exemption in July 2009 to operate over the Line and the additional 0.9-mile segment for which Great Basin recently obtained authority to operate. In his supplement, Williams states that he purchased the shares of S&S on or about July 12, 2011, and that at the time of his purchase of S&S, the only property interest S&S had in the Line was a lease to provide car storage. (Williams Suppl., V.S. Williams 2-3, 7.) Williams states that the car storage lease remains the only property interest S&S currently holds in the Line, and that S&S's authority to operate the Line for common carrier purposes has therefore not been consummated. (Williams Suppl., V.S. Williams 3.) This statement, however, contradicts the Acquisition Notice, which was verified by Williams, and which states "S&S currently operates the Line pursuant to S&S Shortline Leasing, LLC—Operation Exemption—City of Ely, FD 35284 (STB served Aug. 14, 2009)." (Acquisition Notice 3.) It also contradicts the verified notice of exemption filed by Great Basin, in which Great Basin stated that it would replace S&S as the operator of the 0.9-mile segment of rail line, and that S&S agreed to discontinue its service over that segment concurrent with its replacement by Great Basin. Great Basin Notice 3, Nov. 13, 2020, Great Basin & N. R.R.—Change in Operators Exemption—City of Ely, et al.,

³ Although Williams indicates in the McCloud Notice that he acquired the stock of McCloud when it was a rail carrier, (McCloud Notice 2), Williams describes the authorization he seeks as continuance in control. A continuance in control typically occurs when "a person already in control of an existing carrier or carriers creates a new noncarrier subsidiary that subsequently achieves carrier status by acquiring a nonconnecting line and the parent then continues in control of the subsidiary." Rail Consol. Procs.—Continuance in Control of a Nonconnecting Carrier, 2 I.C.C.2d 677, 678 (1986)

FD 36459. In addition, contrary to Williams' claim that "the 2009 operator exemption was sought for an anticipated amendment to the lease that did not transpire," (Williams Suppl, V.S. Williams 3), S&S stated in the 2009 docket that "[a]n agreement *has been reached* between S&S and the City and the Foundation for S&S's operation of the subject rail line." S&S Verified Notice of Exemption 4, July 31, 2009, S&S Shortline Leasing, LLC—City of Ely, Nev., et al., FD 35284 (emphasis added). Accordingly, Williams will be directed to address these conflicting statements.

Additionally, Williams failed to provide at least some of the requested information with respect to his ownership of BG & CM and Ozark. Williams lists proceedings through which BG & CM and Ozark acquired various rail lines and became rail carriers,⁴ but omits some or all of the requested information regarding *his control* of those carriers. If BG & CM or Ozark (or both) were rail carriers at the time Williams acquired control of them, his December 29 clarification provides no responsive information as to these two entities, and he will again be directed to answer the five information requests stated in the December 10 decision regarding BG & CM and Ozark.

It is unclear, however, whether BG & CM or Ozark became rail carriers before or after Williams controlled them.⁵ Williams will therefore be directed to inform the Board whether he already controlled BG & CM or Ozark when they became rail carriers. If he did, it would affect two of the information requests in the December 10 decision. Item (1), which requested "the date of his acquisition of control of the rail carrier," would instead call for the date on which the entity became a rail carrier (which may be the effective dates of decisions that Williams cited in his December 29 clarification, *see supra* note 4). Williams will be directed to confirm these dates. Item (2), which requested "the entity from whom he acquired control of the rail carrier," would not apply.

Because Board authority is required for "[a]cquisition of control of a rail carrier by a person that is not a rail carrier *but that controls any number of rail carriers*," Williams did not require Board authorization to control his first single railroad. *See* 49 U.S.C. § 11323(a)(5) (emphasis added). However, if Williams' first acquisition of control included more than one rail

⁴ *See* BG & CM R.R.—Exemption from 49 U.S.C. Subtitle IV, FD 34399 et al. (STB served Oct. 17, 2003); BG & CM R.R.—Acquis. & Operation Exemption—Great Nw. R.R., FD 34713 (STB served July 6, 2005); BG & CM R.R.—Acquis. & Operation Exemption—Rail Line of Great Nw. R.R., FD 36098 (STB served Mar. 1, 2017); Ozark Valley R.R.—Acquis. & Operation Exemption—Kan. City S. Ry., FD 34989 (STB served June 8, 2007).

⁵ A review of filings by BG & CM and Ozark suggests that, when each entity first acquired a rail line and in doing so became a rail carrier, it had substantial connections to Williams. *See* Ozark Verified Notice of Exemption, Ex. D, May 25, 2007, Ozark Valley R.R.—Acquis. & Operation Exemption—Kan. City S. Ry., FD 34989 (Williams signed verification as president of Ozark); BG & CM Letter 1 & n.1, Sept. 5, 2003, Camas Prairie RailNet, Inc.—Aban.—in Lewis, Nez Perce, & Idaho Cntys., Idaho, AB 564 (citing an agreement with BG & CM as an "Agreement for Sale of Certain Assets . . . to Mike Williams"). However, the filings do not indicate whether Williams controlled each of these entities at the time of these transactions.

carrier, then authorization was required. See 49 U.S.C. § 11323(a)(4) (requiring Board authorization for “[a]cquisition of control *of at least 2 rail carriers* by a person that is not a rail carrier.”) (emphasis added). The information provided by Williams does not indicate which rail carrier(s) he controlled first.

Accordingly, Williams will be directed to file a further supplement addressing these issues by February 15, 2021. Because of the remaining uncertainty regarding S&S, BG & CM, and Ozark,⁶ the Board will hold the McCloud Notice in Docket No. FD 36474 in abeyance and postpone the effective date of the exemption until further order of the Board. The Control Notice in Docket No. FD 36460 and the Acquisition Notice in Docket No. FD 36461 remain in abeyance.

It is ordered:

1. The McCloud Notice in Docket No. FD 36474 is held in abeyance and the effective date of the exemption is postponed until further order of the Board.
2. Williams is directed to file a verified supplement addressing the information and issues described above by February 15, 2021.
3. This decision is effective on its service date.

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

⁶ Additionally, on January 12, 2021, the U.S. Department of Agriculture, Forest Service, Shasta McCloud Management Unit, filed a letter with the Board expressing concerns with the operations of Williams and McCloud.