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SERVICE DATE – SEPTEMBER 10, 2021

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36475

MIDWEST & BLUEGRASS RAIL, LLC, AVORY BEGGS, BRIAN MILLER AND DUSTIN
SHAVER AND MB RAIL TTI, LLC—CONTROL EXEMPTION—TRANSKENTUCKY
TRANSPORTATION RAILROAD, INC.

Decided: September 10, 2021

On December 29, 2020, Midwest & Bluegrass Rail, LLC (MB Rail), Avory Beggs (Beggs), Brian Miller (Miller), and Dustin Shaver (Shaver) (collectively, Applicants) filed a verified notice of exemption pursuant to 49 C.F.R. § 1180.2(d)(2) to acquire indirect control of TransKentucky Transportation Railroad, Inc. (TransKentucky), upon acquisition of all of the stock in TransKentucky by MB Rail TTI, LLC (MBRT) from The Carrollton Railroad, a wholly owned subsidiary of CSX Transportation, Inc. MB Rail is owned by Beggs, Miller, and Shaver. (Verified Notice 1.) Applicants simultaneously submitted a motion for protective order, which was granted on January 15, 2021.

Due to inconsistencies within the verified notice and between the verified notice and motion for protective order, the verified notice was held in abeyance, and its effective date was postponed until further order of the Board. Midwest & Bluegrass Rail—Control Exemption—TransKentucky Transp. R.R. (January Decision), FD 36475 (STB served Jan. 27, 2021).

On February 10, 2021, Applicants filed a supplement and motion to dismiss the verified notice, stating, among other things, that MBRT is and will be a noncarrier holding company that owns only one railroad—TransKentucky—and therefore Applicants do not need Board authority to acquire TransKentucky. (Mot. to Dismiss 2.) Applicants further claimed that MB Rail does not control any railroads. (Id.)

On August 26, 2021, Applicants filed a notice of substitution of counsel and motion to withdraw the verified notice. Applicants acknowledge the inconsistencies in their prior pleadings and state, “on further careful review of the facts and law and in consultation with new counsel,” that the February 10, 2021 motion to dismiss “is not accurate in some respects.” (Mot. to Withdraw 3.) Accordingly, Applicants proceed to “explain in greater (and consistent) detail the relationship among” the parties. (Id.)

According to Applicants, MB Rail does not own any common carrier railroads in the United States, but it manages four Class III carriers: Vermilion Valley Railway Company, Inc.; Camp Chase Rail, LLC; Youngstown & Southeastern Rail, LLC; and Chesapeake & Indiana Railroad Company (collectively, the IB Carriers). (Id. at 4.) The IB Carriers are owned and

controlled by MB Rail IB, LLC (MBR-IB), which received control authorization from the Board last year. See MB Rail IB, LLC—Acquis. & Continuance in Control Exemption—Chesapeake & Ind. R.R., FD 36413 (STB served July 1, 2020). Applicants state that MB Rail “function[s], essentially, as a short line holding company” in relation to the IB Carriers.¹ (Mot. to Withdraw 5.) Based on this management role, Applicants admit that MB Rail also controls the IB Carriers. (*Id.*) Consequently, Applicants acknowledge that MB Rail should have joined MBR-IB in seeking authorization to control the IB Carriers in Docket No. FD 36413. (*Id.* at 5-6); see also 49 U.S.C. § 11323(a)(4) (requiring Board authority for acquisition of control of at least two rail carriers by a person that is not a rail carrier). To remedy this oversight, MB Rail has filed a verified notice of exemption in Midwest & Bluegrass Rail—Control Exemption—Vermilion Valley Railway, FD 36413 (Sub-No. 1), for authorization to control the IB Carriers.

Applicants state that MB Rail also has an agreement with MBRT to manage TransKentucky at such time as MBRT assumes a controlling ownership stake in that railroad. (Mot. to Withdraw 6.) MB Rail has filed a verified notice of exemption in Midwest & Bluegrass Rail—Control Exemption—TransKentucky Transportation Railroad, Docket No. FD 36530, for authorization to control TransKentucky. According to Applicants, TransKentucky would be the first railroad controlled by MBRT or its controlling member. (Mot. to Withdraw 7.) Therefore, MBRT and its controlling member do not require Board authorization to control TransKentucky. See 49 U.S.C. § 11323.

The three individuals, Beggs, Miller, and Shaver, are among the Applicants who initially sought Board authorization to control TransKentucky. (Verified Notice 1-2.) The January Decision “assume[d] that these individuals control [MB Rail] for purposes of 49 U.S.C. § 11323 given their request for [control] authority in this docket” and sought further clarification from Applicants if this assumption was not correct. January Decision, slip op. at 2 n.5. In their motion to withdraw, Applicants have now provided the requested clarification. They state that Beggs holds a non-controlling 34% membership stake in MB Rail, a non-controlling 10% membership stake in MBRT, and a non-controlling 9% membership stake in MBR-IB; Miller holds a non-controlling 33% membership stake in MB Rail, a non-controlling 10% membership stake in MBRT, and a non-controlling 16.2% membership stake in MBR-IB; and Shaver holds a non-controlling 33% membership stake in MB Rail, a non-controlling 10% membership stake in MBRT, and a non-controlling 9% membership stake in MBR-IB. (Mot. to Withdraw 6, 9-10); see also OmniTRAX Holdings Combined, Inc.—Acquis. of Control Exemption—Ala. & Tenn. River Ry., FD 36032 (STB served July 14, 2016) (granting authority only to OmniTRAX Holdings Combined, Inc., which represented that it was owned by three separate entities, none of which possessed a controlling interest). According to Applicants, none of these individuals directly or indirectly control any common carrier railroads. (Mot. to Withdraw 6-7.)

¹ Specifically, MB Rail states that it: ensures that the IB Carriers are properly maintained in the interest of MBR-IB; makes hiring and related personnel decisions for the railroads (actual operation of each of the railroads is entrusted to a general manager, who is an employee of the individual railroad); oversees the IB Carriers’ marketing, rail services pricing, and contracts; and supplies various back-office functions (such as human resources, payroll, strategic planning, and accounting). (Mot. to Withdraw 5.)

Applicants conclude that, “given the occasionally inaccurate and conflicting information” in the record in Docket No. FD 36475, that docket “is not well suited for its intended purpose,” and “the better approach” is to seek permission to withdraw that verified notice and start again with respect to the TransKentucky transaction in a new docket. (Id. at 7-8); see Midwest & Bluegrass Rail—Control Exemption—TransKentucky Transp. R.R., Docket No. FD 36530.

Applicants’ motion to withdraw sufficiently dispels the confusion and explains the inaccuracies in the previous record. Given the state of the record prior to the motion to withdraw, Applicants’ proposal to start the exemption process afresh in a new docket will promote clarity under the circumstances of this case. Accordingly, Applicants’ motion to withdraw will be granted, and their motion to dismiss will be denied as moot.

It is ordered:

1. Applicants’ August 26, 2021 motion to withdraw is granted and this proceeding is closed.
2. Applicants’ February 10, 2021 motion to dismiss is denied as moot.
3. This decision is effective on its service date.

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