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SERVICE DATE — DECEMBER 22, 2021

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36568

TENNKEN RAILROAD CO. INC.—INTRACORPORATE FAMILY EXEMPTION—SOUTH  
CENTRAL RAIL GROUP, INC.

Docket No. FD 36569

HOHORST RAILROADS, LLC, AND LIFA MANAGEMENT, LLC—CONTINUANCE IN  
CONTROL EXEMPTION—TENNKEN RAILROAD CO. INC.

Decided: December 22, 2021

On November 29, 2021, Tennken Railroad Co. Inc. (Tennken), and South Central Rail Group, Inc. (SCRG), jointly filed a verified notice of exemption under 49 C.F.R. § 1180.2(d)(3) for an intra-corporate family transaction in Docket No. FD 36568. Currently, SCRG holds all of the issued stock of Tennken.<sup>1</sup> The applicants seek to consolidate SCRG with Tennken resulting in Tennken as the surviving corporation. Pursuant to the plan of reorganization, Hohorst Railroads, LLC (Hohorst), and LIFA Management, LLC (LIFA), which together own all of the stock of SCRG, would surrender their shares of SCRG in return for a proportional share of the stock of Tennken. (Tennken & SCRG Verified Notice 1.)

Concurrently, in Docket No. FD 36569, Tennken, Hohorst, and LIFA jointly filed a verified notice of exemption for continuance in control of Tennken after its stock is transferred to Hohorst and LIFA.<sup>2</sup>

Under 49 U.S.C. § 11323(a)(5), the “[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” requires Board authorization. The transaction proposed in Docket No. FD 36568, however, does not constitute an “acquisition of control” of a rail carrier within the meaning of § 11323. In the context of a corporate reorganization, “to determine whether a transaction will cause a change in control of one party over another, the inquiry must focus on whether the transaction will accomplish a

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<sup>1</sup> Although the applicants state that SCRG is a Class III carrier (see Tennken & SCRG Verified Notice 1), SCRG’s status as a holding company for Tennken does not in itself render SCRG a rail carrier within the meaning of the statute.

<sup>2</sup> According to the verified notice, some of the partners of these applicants own or control the West Tennessee Railroad; IRW, LLC; and SCTRR, LLC. (Tennken, Hohorst, & LIFA Verified Notice 2-3.)

significant increase in the power of one party over another.” Glob. Transp. Servs.—Control Exemption—Lyon Van Lines, Inc., MCF 19382, slip op. at 1 (ICC served Apr. 18, 1989) (citing Alleghany Corp. v. Breswick & Co., 353 U.S. 151, 169 (1957)). Transferring direct ownership of Tennken’s shares from SCRG to Hohorst and LIFA Management, as described in the verified notice, would not increase either entity’s power over Tennken: Hohorst and LIFA currently control Tennken through their ownership of SCRG, and they will continue to control Tennken after the transaction in the same proportion that each currently controls SCRG. Accordingly, there would be no cognizable change in control, and the transaction is not subject to 49 U.S.C. § 11323. See Ronald Bridges—Corp. Fam. Exemption, FD 36417, slip op. at 1-2 (STB served July 16, 2020). Similarly, the continuance-in-control exemption in Docket No. FD 36569 is moot because it flows from the transaction underlying the exemption sought in Docket No. FD 36568.

Therefore, the effectiveness of the exemptions sought in these dockets will be postponed and, unless further comments are filed by January 21, 2022, the notices will be dismissed without further Board order, effective January 22, 2022. If further comments are filed by January 21, 2022, the verified notices will not be dismissed but the effectiveness of the exemptions will remain postponed pending further Board order.

It is ordered:

1. The effectiveness of the exemptions in Docket Nos. FD 36568 and FD 36569 is postponed.
2. Unless further comments are filed by January 21, 2022, the verified notices will be dismissed without further Board order, effective January 22, 2022. If further comments are filed by January 21, 2022, the verified notices will not be dismissed but the effectiveness of the exemptions will remain postponed pending further Board order.
3. The decision is effective on its service date.

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