

DO

FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36593]

OPSEU Pension Plan Trust Fund, Jaguar Transport Holdings, LLC, and Jaguar Rail Holdings, LLC—Continuance in Control Exemption—Charlotte Western Railroad, LLC

OPSEU Pension Plan Trust Fund (OPTrust), Jaguar Transport Holdings, LLC (JTH), and Jaguar Rail Holdings, LLC (JRH, and collectively with OPTrust and JTH, Jaguar), all noncarriers, have filed a verified notice of exemption under 49 C.F.R.

§ 1180.2(d)(2) to continue in control of Charlotte Western Railroad, LLC (CWRR), a noncarrier, upon CWRR's becoming a Class III rail carrier.

This transaction is related to a concurrently filed verified notice of exemption in Charlotte Western Railroad, LLC—Change in Operator Exemption—Line in Gaston County, N.C., Docket No. FD 36592. In that proceeding, CWRR has filed a verified notice of exemption pursuant to 49 C.F.R. § 1150.31 to assume operation of approximately 13.04 miles of rail line currently operated by Piedmont and Northern Railroad LLC (PNRW) and owned by the North Carolina Department of Transportation (NCDOT), extending from milepost SFC 11.39 at Mt. Holly to milepost SFC 23.0 at Gastonia, including the Belmont Spur extending from milepost SFF 0.13/SFC 13.6 at Mt. Holly to milepost SFF 1.56 at or near Belmont (collectively, the Line), all in Gaston County, N.C. CWRR will assume an existing lease of the Line, to be assigned to CWRR by PNRW with NCDOT's consent.

Jaguar states that it will continue in control of CWRR upon CWRR's becoming a railroad common carrier. According to the verified notice, OPTrust indirectly controls JTH, which directly controls JRH. JTH currently controls, indirectly: four Class III railroads directly controlled by JRH—Southwestern Railroad, Inc., Texas & Eastern Railroad, LLC, Wyoming and Colorado Railroad, Inc., (WYCO) (which also does business under the name Oregon Eastern Railroad), and Missouri Eastern Railroad, LLC; two Class III railroads indirectly controlled by JRH through WYCO—Cimarron Valley Railroad, L.C., and Washington Eastern Railroad, LLC; and one Class III railroad indirectly controlled by JTH through its subsidiary Jaguar Transport, LLC—West Memphis Base Railroad, L.L.C. The lines of the rail carriers controlled by JTH and JRH are located in Arkansas, Colorado, Kansas, Missouri, New Mexico, Oklahoma, Oregon, Texas, and Washington.

Jaguar states that: (1) the Line does not connect with any other rail lines operated by carriers controlled by Jaguar, and none of those rail lines connect with each other; (2) the continuance in control transaction is not part of a series of anticipated transactions that would connect the Line with any railroad lines controlled by Jaguar or that would connect any of those rail lines with each other; and (3) the transaction does not involve a Class I rail carrier. Therefore, the proposed transaction is exempt from the prior approval requirements of 49 U.S.C. § 11323. See 49 C.F.R. § 1180.2(d)(2).

Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. However, 49 U.S.C. § 11326(c) does not provide for labor protection for transactions under 49 U.S.C. §§ 11324 and 11325 that involve only Class III rail carriers. Because

this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

The earliest this transaction may be consummated is March 30, 2022, the effective date of the exemption (30 days after the verified notice was filed). If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than March 23, 2022.

All pleadings, referring to Docket No. FD 36593, should be filed with the Surface Transportation Board via e-filing on the Board's website. In addition, a copy of each pleading must be served on Jaguar's representative, Robert A. Wimbish, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606-3208.

According to Jaguar, this action is excluded from environmental review under 49 C.F.R. § 1105.6(c) and from historic preservation reporting requirements under 49 C.F.R. § 1105.8(b).

Board decisions and notices are available at www.stb.gov.

Decided: March 10, 2022.

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