

SERVICE DATE – APRIL 7, 2022

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36566

MACQUARIE INFRASTRUCTURE PARTNERS V GP, LLC  
—ACQUISITION OF CONTROL EXEMPTION—  
GRENADA RAILROAD, LLC, AND FLORIDA, GULF & ATLANTIC RAILROAD, LLC

Digest:<sup>1</sup> The Board denies a petition to reject the verified notice of exemption and a request to stay the effectiveness of the exemption pending state court litigation. The Board finds that failure to disclose the litigation does not make the verified notice false or misleading, and that the verified notice is not otherwise deficient. The Board allows the exemption to take effect immediately.

Decided: April 6, 2022

On November 24, 2021, Macquarie Infrastructure Partners V GP, LLC (MIP GP), a noncarrier, filed on behalf of MIP Infrastructure Partners V fund vehicle (MIP V) and MIP V Rail, LLC (MIP Rail),<sup>2</sup> a verified notice of exemption under 49 C.F.R. § 1180.2(d)(2) to acquire control of two non-connecting Class III railroads (the Railroads)<sup>3</sup> currently owned by RailUSA, LLC (RailUSA). Notice of the exemption was served and published in the Federal Register on December 10, 2021 (86 Fed. Reg. 70,567). The exemption was scheduled to become effective on December 24, 2021.

On December 17, 2021, International Rail Partners, LLC (IRP), filed a petition to reject MIP GP's notice of exemption. IRP argues that the verified notice is materially misleading and deficient, and that a class exemption is inappropriate for this transaction. Alternatively, IRP asks the Board to stay the effectiveness of the exemption until the Delaware Chancery Court (Chancery Court) resolves a complaint filed by IRP against RailUSA, American Rail Partners, LLC (ARP), and Newco SBS Holdings, LLC (Newco) (collectively, ARP Parties).<sup>4</sup> On

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<sup>1</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol'y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

<sup>2</sup> The verified notice states that MIP Rail is wholly owned by MIP V, which is controlled by MIP GP. (Verified Notice 1 n.1, 3.)

<sup>3</sup> Florida, Gulf & Atlantic Railroad, LLC (FGA), and Grenada Railroad, LLC.

<sup>4</sup> RailUSA is owned by ARP, and Newco holds a majority equity interest in ARP. (MIP GP Reply 2, 3 n.4, Dec. 20, 2021.)

December 20, 2021, MIP GP filed a reply in opposition to IRP's petition to reject and request for stay. IRP filed a surreply and a motion for leave to file on December 22, 2021. MIP GP filed a response to IRP's surreply on December 23, 2021.<sup>5</sup>

To provide sufficient time to fully consider the petition to reject and request for stay, the Board postponed the effective date of the exemption on December 22, 2021, pending further Board order. On February 28, 2022, MIP GP filed a letter informing the Board that the Chancery Court had denied IRP's motion for preliminary injunction. For the reasons discussed below, the Board will deny IRP's petition and alternative request for stay and allow MIP GP's exemption to become effective immediately.

## BACKGROUND

MIP GP's verified notice states that MIP Rail has agreed to acquire all the equity interests of RailUSA from ARP, resulting in MIP Rail's indirect control of the Railroads. (Verified Notice 1, Ex. 2 (Nov. 23, 2021 purchase agreement).) IRP's petition asserts that the proposed transaction violates an October 2021 settlement agreement between IRP (which is a minority holder in ARP) and the ARP Parties. (Pet. 4-5.) IRP claims that the settlement agreement "guaranteed its ability to be the purchaser of the railroads if it wished to do so" and that, despite its higher bid, "ARP decided to choose MIP Rail [as the purchaser] in breach of its settlement agreement with IRP."<sup>6</sup> (*Id.* at 4-5.) ARP's alleged breach of the settlement agreement led to the litigation in the Chancery Court. (*Id.* at 4.) In that proceeding, IRP and the ARP Parties agreed to a status quo order (Status Quo Order) providing that no sale of RailUSA and the Railroads shall close prior to a court hearing on IRP's motion for preliminary injunction or until the court terminates the order. (*Id.* at 5, Ex. A; MIP GP Reply 3, Dec. 20, 2021.)

In its petition to reject the verified notice, IRP argues that the proposed transaction is inappropriate for the class exemption process because it "involves pending litigation that directly relates to its validity." (Pet. 7.) IRP states that the Board has rejected verified notices in similar situations. (*Id.* (citing Revolution Rail Holding Co.—Acquis. Exemption—Saratoga & N. Creek Ry., FD 36535 (STB served Sept. 10, 2021); Burlington N. & Santa Fe Ry.—Acquis. & Operation Exemption—S.D., FD 34645 (STB served Jan. 14, 2005)).) Further, IRP argues that MIP GP's failure to disclose the Chancery Court litigation renders the verified notice misleading

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<sup>5</sup> In the interest of compiling a complete record, the Board will grant IRP's motion for leave to file a surreply and accept the surreply into the record. For the same reason, the Board will also accept MIP GP's December 23 filing into the record. *See, e.g., City of Alexandria, Va.—Pet. for Declaratory Ord.*, FD 35157, slip op. at 2 (STB served Nov. 6, 2008).

<sup>6</sup> According to MIP GP, the settlement agreement did not guarantee IRP's ability to purchase the Railroads. (MIP GP Reply 7 n.21, Dec. 20, 2021.) MIP GP also attached to its reply a copy of a December 2021 Chancery Court ruling, in which the court stated that "[t]he settlement agreement did not guarantee that ARP would ultimately select IRP's bid if it was the highest bid submitted." (*Id.*, Ex. 1; *see also* MIP GP Letter 2, Attach. 1.)

because the litigation “is material to whether it can actually acquire the railroad at issue here.”<sup>7</sup> (Pet. 8). IRP also argues that the Board should reject the verified notice because MIP GP failed to certify whether the proposed transaction involves an interchange commitment pursuant to 49 C.F.R. § 1180.4(g)(4)(i), and because there is an interchange commitment to disclose. (Pet. 9-10.)

In the alternative, IRP argues that the Board should stay this proceeding until “final resolution” of the Chancery Court litigation. (Pet. 12.) For support, IRP argues that it is likely to prevail on the merits because it provided strong arguments in favor of rejecting the verified notice, that it will suffer harm in the absence of a stay because “the illusion that MIP Rail is the successful bidder based on the class exemption process will harm IRP’s ability to conduct business,” and that no interested parties will be harmed by a stay because an order from the Chancery Court is required before the proposed transaction can be consummated pursuant to the Status Quo Order. (*Id.* at 10-11.) IRP also argues that the public interest supports a stay. (*Id.* at 11-12.)

In its reply to the petition, MIP GP asserts that IRP is “a disgruntled losing bidder attempting to hijack a straightforward class exemption” by litigating a contract dispute before the Board. (MIP GP Reply 1, Dec. 20, 2021.) MIP GP argues that the Chancery Court litigation does not make the proposed transaction complicated or controversial, and that allowing the exemption to become effective will not impact the state court case, because the Board’s authority is merely permissive. (*Id.* at 5-6.) MIP GP also argues that the failure to disclose a contract dispute does not render a verified notice false or misleading. (*Id.* at 7.) Additionally, MIP GP asserts that the interchange commitment regulation at 49 C.F.R. § 1180.4(g)(4)(i) is inapplicable because it applies to a proposed acquisition or operation of a rail line, rather than a proposed acquisition of control. (MIP GP Reply 8-9, Dec. 20, 2021 (noting that the existing interchange commitment on FGA’s rail line was reported to the Board three years ago).) Finally, MIP GP argues that IRP has failed to satisfy the criteria for a stay. (*See* MIP GP Reply 11-14, Dec. 20, 2021.)

IRP responds in its surreply that it is not attempting to litigate the contract dispute here. (IRP Surreply 1.) Further, IRP argues that the proposed transaction is “controversial and non-routine [because] one owner of the two railroads is at the Board without the authorization of the other owner involved in the transaction” and because there is a “trail of litigation involving this transaction.” (*Id.* at 3.) IRP also disputes MIP GP’s interpretation of 49 C.F.R. § 1180.4(g)(4)(i). (IRP Surreply 4.)

MIP GP’s December 23 filing responds to what it describes as “new arguments” raised in IRP’s surreply. (MIP GP Reply 1, Dec. 23, 2021.) MIP GP argues that IRP is effectively trying to litigate the contract dispute at the Board and that the existence of state court litigation is not a valid reason to reject the exemption. (*Id.* at 1-2.) Further, MIP GP states that IRP is an “owner”

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<sup>7</sup> IRP filed its complaint in the Chancery Court on the same day that MIP GP filed its verified notice. MIP GP submits that it filed its verified notice before IRP filed its complaint, (MIP GP Reply 7, Dec. 20, 2021), but IRP argues that MIP GP could have supplemented its verified notice upon learning of the state court litigation, (Pet. 6 n.3).

of the railroads only in the sense that it is a minority shareholder, and MIP GP argues that neither the seller nor its minority shareholder is required to consent to a notice of exemption. (*Id.* at 2-3.) Finally, MIP GP defends its interpretation of 49 C.F.R. § 1180.4(g)(4)(i). (MIP GP Reply 3, Dec. 23, 2021.)

According to MIP GP's February 28 letter, the Chancery Court denied IRP's motion for preliminary injunction in a February 22, 2022 bench ruling, and the Status Quo Order has expired. (MIP GP Letter 1, Attach. 1 (partial copy of the Chancery Court ruling).) Therefore, MIP GP argues, there is no contractual or legal impediment to finalizing the proposed transaction and the Board should allow the exemption to become effective. (*Id.* at 1.) MIP GP asserts that the remaining issues before the Chancery Court do not render its proposed transaction ineligible for the class exemption at 49 C.F.R. § 1180.2(d)(2). (*Id.* at 3 (noting that the Chancery Court "determined that any damages that IRP may ultimately be able to prove in its litigation with ARP can be remedied by a monetary award").)

## DISCUSSION AND CONCLUSIONS

Petition to Reject. "A party seeking revocation or rejection of a notice of exemption has the burden of demonstrating that the notice contains false or misleading information, or that regulation is necessary to carry out the rail transportation policy of 49 U.S.C. [§] 10101."<sup>8</sup> Gen. Ry.—Exemption for Acquis. of R.R. Line—in Osceola & Dickinson Cntys., Iowa, FD 34867, slip op. at 4 (STB served June 15, 2007); see also 49 C.F.R. § 1150.42(c). The Board must consider not only whether a notice is demonstrably false but also whether it is misleading. Eastside Cmty. Rail, LLC—Acquis. & Operation Exemption—GNP Rly Inc., FD 35692 et al., slip op. at 2-3 (STB served Dec. 22, 2020). Failure to disclose material information can render a notice misleading by omission. Eastside Cmty. Rail, LLC, FD 35692 et al., slip op. at 4; Ohio River Partners LLC—Acquis. & Operation Exemption—Hannibal Dev., LLC, FD 35984, slip op. at 3 (STB served Apr. 1, 2016). The Board has also rejected notices of exemption in cases that require additional scrutiny because "the class exemption process is not appropriate for controversial cases in which a more detailed record is required than is produced through a notice of class exemption." Riffin—Acquis. & Operation Exemption—in York Cnty., Pa. & Balt. Cnty., Md., FD 34484, slip op. at 3 (STB served Apr. 20, 2004); see also Burlington N. & Santa Fe Ry., FD 34645, slip op. at 2 (stating that the class exemption procedure "is typically reserved for uncomplicated and noncontroversial cases").

Here, IRP has failed to show that the verified notice is false or misleading or that the proposed transaction requires additional scrutiny such that approval under the class exemption

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<sup>8</sup> MIP GP summarily argues that IRP failed to mention the Rail Transportation Policy (RTP) of 49 U.S.C. § 10101 or show why regulation of the proposed transaction is necessary to carry out the RTP. (MIP GP Reply 3, Dec. 20, 2021.) As MIP GP acknowledges, however, a party seeking rejection of a notice of exemption must show that the notice contains false or misleading information *or* that regulation is required to carry out the RTP. (Pet. 3.) Because IRP's petition to reject is not based on the RTP, the Board need not address MIP GP's RTP-related arguments.

process is inappropriate. IRP has also failed to show that the verified notice is deficient. Therefore, the petition to reject will be denied.

IRP does not contend that the notice of exemption is demonstrably false, but it does contend that it is misleading because MIP GP did not disclose the Chancery Court litigation, which “directly relates to the validity of its transaction with ARP and RailUSA” and “is material to whether it can actually acquire the railroads at issue here.” (Pet. 8.) However, the fact that a dispute might be material to consummation of the transaction does not necessarily mean that it is material to the exemption. The Board’s grant of authority under a notice of exemption is permissive, and the agency typically does not consider an applicant’s ability to effectuate the authority sought. See Lackawanna Cnty. R.R. Auth.—Acquis. Exemption—F&L Realty, Inc., FD 33905 et al., slip op. at 6 (STB served Oct. 19, 2001) (explaining that the question of whether a party has regulatory authority differs from whether a party has the necessary property interest or contractual right to exercise that authority). Accordingly, the Board has allowed exemptions to become effective even when there are contractual disputes that could prevent the transaction from going forward as planned. See, e.g., Ohio River Partners LLC, FD 35984, slip op. at 3; Ind. Ne. R.R.—Change in Operators—Branch & St. Joseph Cntys. Rail Users Ass’n in Branch Cnty., Mich., FD 33760 (STB served Sept. 1, 1999).

Here, the Chancery Court dispute between IRP and the ARP Parties is immaterial to the exemption. IRP does not dispute the accuracy or consistency of MIP GP’s description of the transaction,<sup>9</sup> nor call into question any material information provided by MIP GP under 49 C.F.R. § 1180.4(g) (2020). Contra Eastside Cmty. Rail, LLC, FD 35692 et al., slip op. at 4-6 (finding a notice of exemption materially misleading where the applicant failed to disclose information raising serious doubts about whether the verified notice correctly identified the owner of the easement to be acquired). Because the Chancery Court dispute is not material to the exemption, we find that it was not false or misleading for MIP GP to make no mention of the dispute in the verified notice. See Ohio River Partners LLC, FD 35984, slip op. at 3; see also Berkshire Scenic Ry. Museum, Inc. v. ICC, 52 F.3d 378, 381 (1st Cir. 1995) (noting that information is material if the transaction would not have otherwise qualified for an exemption).

Moreover, the Chancery Court litigation does not make the verified notice complicated or controversial. As explained above, the Board’s grant of authority under a notice of exemption is permissive, so the state court dispute does not impact the appropriateness of the exemption process or the exemption authority being sought. See City of Alameda—Acquis. Exemption—Alameda Beltline R.R., FD 34798, slip op. at 3 (STB served Apr. 3, 2006) (“The fact that [the parties] are litigating the validity of the repurchase option in state court, however, does not make the City’s notice complicated or controversial insofar as use of the exemption is concerned.”). Accordingly, IRP’s argument that the Chancery Court litigation pertaining to “the fate of the transaction set forth in the Notice” renders the exemption process inappropriate here, (Pet. 6), is without merit, see Wis. Cent. Ltd.—Trackage Rights Exemption—Lines of Union Pac. R.R. & Ill. Cent. R.R., FD 35992, slip op. at 2 (STB served Mar. 4, 2016) (finding that a contractual

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<sup>9</sup> In fact, IRP’s description of the transaction mirrors the transaction outlined in MIP GP’s verified notice. (Compare Pet. 4-5, with Verified Notice 1.)

dispute was “a matter for another forum to decide and need not be resolved before the Board’s permissive authority is allowed to take effect”).<sup>10</sup>

Additionally, the cases cited by IRP are inapposite. (See Pet. 6-8.) In Burlington Northern & Santa Fe Railway, the Burlington Northern and Santa Fe Railway Company (BNSF) filed a notice of exemption under 49 C.F.R. § 1150.31 to acquire state-owned railroad lines, asserting that it had the right to purchase those lines under agreements with the state. Burlington N. & Santa Fe Ry., FD 34645, slip op. at 2-3. The state disagreed and filed a petition to stay the notice of exemption while the parties litigated the purchase option in state court. Id. at 2. The Board found that a more complete record was required to resolve the complicated and controversial issues raised by the pleadings, and it therefore rejected BNSF’s exemption notice. Id. at 3. Here, the issues raised in the pleadings do not rise to the level of complexity and controversy that led the Board to seek a more detailed record in Burlington Northern & Santa Fe Railway. As the Board explained in City of Alameda, FD 34798, the Board’s rejection of the exemption in Burlington Northern & Santa Fe Railway was not based solely on the existence of state court litigation. Rather, “issues regarding what level of service would be provided over the line, and competitive access for small carriers that the State was likely to raise before the Board, complicated the [Burlington Northern & Santa Fe Railway] transaction beyond the bounds intended for the class exemption procedure.” City of Alameda, FD 34798, slip op. at 4. Because MIP GP’s notice of exemption and the parties’ filings do not raise any similarly complex issues, Burlington Northern & Santa Fe Railway does not support rejecting MIP GP’s notice of exemption.

Revolution Rail Holding Co. is similarly distinguishable. In that case, Revolution Rail Holding Company, LLC (RRHC), filed a verified notice of exemption under 49 C.F.R. § 1150.31 to acquire a rail line from Saratoga and North Creek Railroad (SNCR). Revolution Rail Holding Co., FD 36535, slip op. at 1. Because SNCR previously had filed a Chapter 11 bankruptcy petition, RRHC stated that it intended to acquire the rail line through a purchase agreement with SNCR’s Chapter 11 trustee. (Id.) At the outset, the decision noted that there was uncertainty pertaining to the proposed acquisition because RRHC did not have an agreement with the trustee and RRHC did not know if it would be the successful bidder. (Id. at 2.) The decision also explained that the record raised questions about RRHC’s interest in providing freight rail service (rather than solely rail banking the line) and noted RRHC expressed interest in establishing intrastate tourist trains outside of the Board’s jurisdiction. (Id. at 3.) It was those concerns that led to rejection of the verified notice. (Id.) In contrast, MIP GP’s verified notice does not raise concerns about rail service or the Board’s jurisdiction. The verified notice also is accompanied by a purchase agreement, and disputes pertaining to that agreement are not within the Board’s purview. See N.H. Cent. R.R.—Lease & Operation Exemption—Line of N.H. Dep’t of Transp.,

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<sup>10</sup> Moreover, the Board is not persuaded by IRP’s argument that the transaction is controversial and non-routine because one of the owners of the railroads—namely, IRP itself—has not consented to the filing of the notice of exemption. (See IRP Surreply 3.) IRP is a minority owner of the railroads through its minority ownership of ARP and RailUSA, (id.), and the majority owner (ARP) has not filed any objection to the notice of exemption. IRP does not cite STB decisions or regulations indicating that notices of exemption, in general, require the consent of all minority shareholders.

FD 35022, slip op. at 4 (STB served Dec. 11, 2007) (noting that contractual disputes lie within the purview of the courts, and not with the Board).<sup>11</sup>

Finally, IRP fails to show that MIP GP's verified notice should be rejected because it does not "certify whether or not a proposed acquisition or operation of a rail line involves a provision or agreement that may limit future interchange with a third-party connecting carrier." 49 C.F.R. § 1180.4(g)(4)(i) (2020);<sup>12</sup> (see Pet. 9.) IRP states that "there is such an interchange agreement in place" on the FGA rail line. (Pet. 9.) However, as IRP acknowledges, that existing interchange had already been disclosed to the Board. (*Id.* (citing Fla. Gulf & Atl. R.R.—Acquis. & Operation Exemption with Interchange Commitment—CSX Transp., Inc., FD 36247 (STB served Dec. 21, 2018)).) In addition, the transaction at issue would not itself impose an interchange commitment.<sup>13</sup> (See MIP GP Reply 9 (stating that the interchange commitment on the FGA rail line "was not agreed to or otherwise created by the control transaction at issue in this proceeding").) For these reasons, the Board will deny IRP's petition to reject.

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<sup>11</sup> IRP's petition cites to several other cases, which also are distinguishable. (Pet. 6-7); see, e.g., Saratoga & N. Creek Ry.—Operation Exemption—Tahawus Line, FD 35559, slip op. at 6 (STB served May 14, 2012) (upholding the Director's rejection of a notice of exemption that raised unresolved issues, including whether the exemption sought was for freight rail service); Winamac S. Ry.—Trackage Rights Exemption—A. & R. Line, Inc., FD 35208, slip op. at 2 (STB served Jan. 9, 2009) (rejecting a trackage rights class exemption that "would belatedly authorize trackage rights under an agreement entered into nearly 14 years ago" where the successor to the original granting party was actively opposed to the grant of the exemption); FPN-USA, Inc.—Operation Exemption—Tijuana-Tecate Shortline, FD 35155, slip op. at 2 (STB served Aug. 8, 2008) (rejecting a notice of exemption that "raise[d] more questions than it answer[ed]" and failed to show that the rail line over which authority was sought was within the United States); Pro-Go Corp.—Operation Exemption—in Suffolk Cnty., N.Y., FD 35120, slip op. at 2 (STB served Mar. 13, 2008) (rejecting a notice that raised numerous questions, including "exactly what is transpiring in the transaction for which [the applicant] has invoked the class exemption").

<sup>12</sup> This version of 49 C.F.R. § 1180.4, which was in effect when MIP GP filed its verified notice, is cited by IRP and MIP GP. (See Pet. 9; MIP GP Reply 8, Dec. 20, 2021.) On November 30, 2021, the Board issued a final rule, effective December 30, 2021, that revised the regulation in ways not relevant here and renumbered its subsections. See Pet. for Rulemaking—R.R. Consolidation Procs.—Exemption for Emergency Temp. Trackage Rts., EP 282 (Sub-No. 21) (STB served Nov. 30, 2021); compare 49 C.F.R. § 1180.4(g)(4)(i) (2020), with 49 C.F.R. § 1180.4(g)(3)(i) (2021). All references to the regulation in this decision are references to the version in effect before December 30, 2021.

<sup>13</sup> Although the heading for 49 C.F.R. § 1180.4(g)(3)(i) ("Transactions imposing interchange commitments") was deleted when the regulation was revised, the provision still requires that "proposed" acquisitions that involve an interchange commitment be disclosed, and nothing in the Board's decision indicates that the deletion extended the regulation to transactions that do not themselves impose interchange commitments. See generally Pet. for Rulemaking, EP 282 (Sub-No. 21).

Request for Stay. In deciding a request for stay, the Board considers: (1) whether the party seeking a stay is likely to prevail on the merits; (2) whether the party seeking a stay will be irreparably harmed in the absence of a stay; (3) whether issuance of a stay would substantially harm other parties; and (4) whether issuance of a stay is in the public interest. City of Alameda, FD 34798, slip op. at 3 (citing Wash. Metro. Area Transit Comm’n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977)). “On a motion for stay, ‘it is the movant’s obligation to justify the . . . exercise of such an extraordinary remedy.’” City of Alameda, slip op. at 3 (quoting Cuomo v. U.S. Nuclear Regul. Comm’n, 772 F.2d 972, 978 (D.C. Cir. 1985)). The threshold consideration in deciding whether a stay is appropriate is whether the moving party will be irreparably harmed without it. R. J. Corman R.R. Prop.—Aban. Exemption—in Scott, Campbell, & Anderson Cntys., Tenn., AB 1296X, slip op. at 3 (STB served Dec. 1, 2020). As to irreparable harm, the party seeking a stay must show that the injury claimed is “imminent, ‘certain and great.’” Sault Ste. Marie Bridge Co.—Acquis & Operation Exemption—Lines of Union Pac. R.R., FD 33290, slip op. at 6 (STB served Jan. 24, 1997) (quoting Wis. Gas Co. v. FERC, 758 F.2d 669, 674 (D.C. Cir. 1985)).

As an initial matter, the Chancery Court’s ruling on IRP’s motion for preliminary injunction does not moot IRP’s request for a stay in this proceeding. MIP GP acknowledges that there are “remaining issues in the litigation between IRP and ARP” pending before the Chancery Court, (MIP GP Letter 3), and IRP has asked for a stay until the Chancery Court issues a “final resolution” in that matter, (Pet. 2, 12). Nevertheless, for the reasons discussed below, we find that IRP has not shown that it will suffer irreparable harm in the absence of a stay here. Therefore, its request for stay will be denied.

IRP argues that it will be irreparably harmed without a stay because the exemption will create a “cloud of uncertainty” concerning the proper purchaser of the Railroads and create an “illusion that MIP Rail is the successful bidder,” which will eliminate IRP’s business opportunities. (Pet. 10-11.) As explained above, however, the exemption being granted here is permissive and does not constitute a ruling about which party may purchase the Railroads under state property or contract law. Ohio River Partners LLC, FD 35984, slip op. at 3. In any event, IRP’s speculation that it will be harmed by potential economic loss does not warrant a stay, as the Board has consistently held that monetary or economic loss does not constitute irreparable harm. See N. Coast R.R. Auth. v. Sonoma-Marin Area Rail Transit Dist., NOR 42148, slip op. at 3 (STB served Oct. 21, 2016) (finding no irreparable harm based on “inconvenience and associated monetary losses”). Therefore, IRP has not shown that it will suffer irreparable harm in the absence of the requested stay. Accordingly, the petition for stay will be denied, and the Board need not address the remaining stay criteria. R. J. Corman R.R. Prop., AB 1296X, slip op. at 3; see 49 U.S.C. § 1321(b)(4).

Thus, the Board will allow MIP GP’s verified notice to become effective immediately.

It is ordered:

1. IRP’s petition to reject the verified notice of exemption and its alternative request to stay the effectiveness of the exemption are denied.

2. MIP GP's exemption is effective immediately.
3. This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.