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SERVICE DATE — APRIL 14, 2022

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36589

MERCED COUNTY CENTRAL VALLEY RAILROAD, LLC—
LEASE AND OPERATION EXEMPTION—IN MERCED COUNTY, CAL.

Docket No. FD 36590¹

PATRIOT RAIL COMPANY LLC, STEELRIVER TRANSPORTATION VENTURES LLC,
FIRST STATE INFRASTRUCTURE MANAGERS (INTERNATIONAL) LIMITED,
GLOBAL DIVERSIFIED INFRASTRUCTURE FUND (NORTH AMERICA) LP,
AND MITSUBISHI UFJ FINANCIAL GROUP, INC.
—CONTINUANCE IN CONTROL—
MERCED COUNTY CENTRAL VALLEY RAILROAD, LLC

Decided: April 14, 2022

On March 16, 2022, Merced County Central Valley Railroad, LLC (MCCVRR), a non-carrier, filed a verified notice of exemption in Docket No. FD 36589 (Acquisition Notice) pursuant to 49 C.F.R. part 1150 subpart D to lease from Merced County, Cal. (the County) and operate 0.3 miles of existing track at the Castle Commerce Center in Atwater, Cal. (the Line).

On the same day, Patriot Rail Company LLC (Patriot), SteelRiver Transport Ventures LLC, First State Infrastructure Managers (International) Limited, Global Diversified Infrastructure Fund (North America) LP, and Mitsubishi UFJ Financial Group, Inc. (MUFG), each a non-carrier (collectively, the Owners), filed a verified notice of exemption in Docket No. FD 36590 (Control Notice) pursuant to 49 C.F.R. § 1180.2(d)(2) to continue in control of MCCVRR upon MCCVRR's becoming a Class III rail carrier.

The Acquisition Notice states that the Line is currently unregulated track owned by the County. (Notice 3, FD 36589.) The Line begins approximately 300 feet southeast of the point of switch to the northwest-southeast-running BNSF Railway Company (BNSF) mainline at BNSF milepost 1062.56 at Atwater, and it extends southeasterly for approximately 0.3 miles to a point parallel to a point on West Industrial Road that is 95 feet west of that road's terminus (not including County-owned ancillary track appurtenant to the Line). (*Id.*) The Line has no mileposts. (*Id.*) MCCVRR represents that it will provide common carrier service on the Line, which will be the entirety of its rail property. (*Id.*) As discussed below, because the Acquisition

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

Notice raises questions as to whether the necessary authority was sought to acquire the Line from the County and the Control Notice raises questions regarding the control of MCCVRR, the verified notices of exemptions in FD 36589 and FD 36590 will be held in abeyance and the effective date of the exemptions postponed.

The Acquisition Notice states that MCCVRR and the County have agreed to enter into a Lease of County Property (the Lease), pursuant to which MCCVRR will provide common carrier service on the Line. (*Id.* at 2.) However, the parties to the Lease are the County and Foster Townsend Rail Logistics LLC (FTRL). (*Id.*, Ex. C, Lease Agreement, at 1.) According to the Lease, FTRL will use the Line to “provid[e] railroad services and related activities consistent with its anticipated forthcoming status as a common carrier railroad subject to the jurisdiction of the [Board].” (*Id.*, Ex. C at 3.) The Lease allows FTRL to “transfer and assign . . . all of its rights and obligations under [the Lease] to FTRL’s parent companies, affiliates, or subsidiaries without obtaining County’s written consent.” (*Id.*, Ex. C at 25.) The Lease further provides, however, that in the event of an assignment “FTRL remains legally responsible for the performance of all [Lease] terms,” and that “assignment . . . of any work under this [Lease], even with the County’s consent, shall not relieve FTRL of its obligations and liabilities under this [Lease].” (*Id.*) According to the Acquisition Notice, MCCVRR acquired its interest in the Line through an assignment by FTRL. (Notice 2 n.1, FD 36589.)

FTRL has not sought authorization from the Board to acquire a leasehold interest in the Line. Under 49 U.S.C. § 10901, acquisition of a railroad line by a non-carrier requires Board approval. *See also* 49 C.F.R. § 1150.1. Therefore, MCCVRR will be directed to explain why Board authorization is not required for FTRL to acquire the Line, by lease, from the County. In the alternative, FTRL may seek acquisition authority, and any entities controlling FTRL may seek any necessary related authority. MCCVRR should also explain why it characterizes its acquisition as from the County rather than from FTRL.

In addition, the Control Notice states that the list of entities omits “other entities in the MUFG chain of control” in reliance on “well-established precedent providing that intermediate entities in a chain of corporate control do not have to be disclosed in proceedings such as this one.” (Notice 1, FD 36590, citing 49 C.F.R. § 1180.3(a).) It is unclear whether entities that control MCCVRR are being omitted.² The Owners will be directed to submit information sufficient to identify the entities that control MCCVRR and explain why any omitted entity should not be identified in the Control Notice.

In light of the foregoing, the effective dates of the exemptions in Docket Nos. FD 36589 and FD 36590 will be postponed until further order of the Board.

² In Patriot Rail Transportation Co.—Control Exemption—Salt Lake Garfield & Western Railway, FD 36462 (STB served Dec. 23, 2020), additional entities were involved in a transaction where Patriot acquired control of a rail carrier.

It is ordered:

1. MCCVRR's and the Owners' supplements, as discussed above, are due by April 29, 2022.
2. The effective dates of the exemptions in Docket Nos. FD 36589 and FD 36590 are postponed until further order of the Board.
3. This decision is effective on its service date.

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