

SERVICE DATE—JUNE 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

Digest:² This decision permits the lease and operating authority granted to Merced County Central Valley Railroad, LLC and the continuance in control authority granted to Patriot Rail Company LLC, SteelRiver Transport Ventures LLC, First State Infrastructure Managers (International) Limited, Global Diversified Infrastructure Fund (North America) LP, and Mitsubishi UFJ Financial Group, Inc., to become effective on June 14, 2022.

Decided: June 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 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 (the Center) in Atwater, Cal. (the Line). Also on March 16, 2022, Patriot Rail Company LLC, SteelRiver Transport Ventures LLC, First State Infrastructure Managers (International) Limited, Global Diversified Infrastructure Fund (North America) LP, and Mitsubishi UFJ Financial Group, Inc., each a non-carrier (collectively, the Owners), filed a verified notice of exemption in Docket No. FD 36590 pursuant to 49 C.F.R.

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

² 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).

§ 1180.2(d)(2) to continue in control of MCCVRR upon MCCVRR's becoming a Class III rail carrier.

By decision served April 14, 2022, the effective dates of the exemptions were postponed, and the parties were directed to submit certain additional information to address issues raised by the two verified notices. See Merced Cnty. Cent. Valley R.R.—Lease & Operation Exemption—Track in Merced Cnty., Cal. (April Decision), FD 36589 et al., slip. op. at 2 (STB served Apr. 14, 2022).

On April 29, 2022, MCCVRR and the Owners filed a letter (Reply) responding to the directives and inquiries in the April Decision. On May 26, 2022, the parties submitted an additional filing (Supplement), providing further information in response to the April Decision. Following the filing of the Reply and the Supplement, notices of the exemptions in Docket Nos. FD 36589 and FD 36590 were served and published in the Federal Register on June 10, 2022 (87 Fed. Reg. 35,590 and 35,591, respectively).

In the Reply, the parties note that there are several shippers on the Line, including a fertilizer company, a lumber company, and a propane company. (Reply 2.) The parties explain that, at the time of the filing, shippers received twice-weekly switching service from BNSF Railway Company pursuant to an industrial track agreement that had an expiration date of April 30, 2022. (Id. at 2.) One shipper expressed concern that, after the expiration of the contract, its ability to ship and bill for products at the Center may be disrupted. (Reply, Ex. C., Shipper Support Letter, at 1.) As such, the parties request expedited consideration and that the notices of exemption be made effective as of May 1, 2022. (Reply 6-7.) In the Supplement, the parties again seek expedited processing of the notices so as to “ensure a prompt and efficient transition in rail service for shippers in the Center.” (Suppl. 2.)

As reflected in the Board's served and published notices, each exemption ordinarily would become effective on June 25, 2022. See 49 C.F.R. § 1150.32(b) (a notice of exemption filed pursuant to § 1150.31 becomes effective 30 days after the verified notice is filed); 49 C.F.R. § 1180.4(g)(1) (a notice of exemption filed pursuant to § 1180.2(d)(2) must be filed at least 30 days before a transaction is consummated).³ Here, however, the Board finds good cause to expedite the effectiveness of the exemptions, as accelerating the effective date will help ensure a prompt and efficient transition in rail service for shippers on the Line and no party has objected to the parties' requests that the notices be expedited. Therefore, the Board will partially grant the parties' request for expedited action and will waive the 30-day periods under § 1150.32(b) and § 1180.4(g)(1) to the extent necessary to permit the exemptions in Docket Nos. FD 36589 and FD 36590, respectively, to take effect immediately.

It is ordered:

1. The request for expedited consideration is granted, in part, as described above.

³ As indicated in the Board's notices, May 26, 2022, the date the parties filed the Supplement, is deemed the filing date for the purpose of calculating the effective date of the exemptions.

2. The 30-day provision under 49 C.F.R. § 1150.32(b) is waived, in part, as to Docket No. FD 36589 as discussed above, and the exemption will be effective on the service date of this decision. The notice served and published in the Federal Register on June 10, 2022, is modified accordingly.

3. The 30-day provision under 49 C.F.R. § 1180.4(g)(1) is waived, in part, as to Docket No. FD 36590 as discussed above, and the exemption will be effective on the service date of this decision. The notice served and published in the Federal Register on June 10, 2022, is modified accordingly.

4. This decision is effective on its service date.

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