

DO

FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36620]

OPSEU Pension Plan Trust Fund, Jaguar Transport Holdings, LLC, and Jaguar Rail Holdings, LLC—Continuance in Control Exemption—Kinston 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 Kinston Railroad, LLC (KNR), a noncarrier, upon KNR's becoming a Class III rail carrier.

This transaction is related to a concurrently filed verified notice of exemption in Kinston Railroad—Change in Operator Exemption—Kinston & Snow Hill Railroad, Docket No. FD 36621. In that proceeding, KNR has filed a verified notice of exemption pursuant to 49 C.F.R. § 1150.31 to assume operation of approximately 5.7 miles of rail line currently operated by Kinston & Snow Hill Railroad Co., Inc. (KSHR), and owned by the North Carolina Department of Transportation (NCDOT), extending between milepost GTP-0.0 (and a connection at that location to a North Carolina Railroad Company track) and milepost GTP-5.7 at the North Carolina Global TransPark (the Line), near Kinston, in Lenoir County, N.C. KNR will assume an existing lease of the Line, to be assigned to KNR by KSHR with NCDOT's consent.

Jaguar states that it will continue in control of KNR upon KNR's becoming a railroad common carrier. According to the verified notice, OPTrust indirectly controls JTH, which directly controls JRH. JTH currently controls, indirectly: five 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), Missouri Eastern Railroad, LLC, and Charlotte Western 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, West Memphis Base Railroad, L.L.C., which is indirectly controlled by JTH through its subsidiary Jaguar Transport, LLC. The lines of the rail carriers controlled by JTH and JRH are located in Arkansas, Colorado, Kansas, Missouri, New Mexico, North Carolina, 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; (2) the continuance in control transaction is not part of a series of anticipated transactions that would connect the Line with any rail 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 June 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 June 23, 2022 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36620, must be filed with the Surface Transportation Board via e-filing on the Board's website or in writing addressed to 395 E Street, S.W., Washington, DC 20423-0001. 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: June 13, 2022.

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