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SERVICE DATE – DECEMBER 20, 2022

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36642

PATRIOT RAIL COMPANY LLC, STEELRIVER TRANSPORT VENTURES LLC;
GLOBAL DIVERSIFIED INFRASTRUCTURE FUND (NORTH AMERICA) LP;
FIRST STATE INFRASTRUCTURE MANAGERS (INTERNATIONAL) LIMITED; AND
MITSUBISHI UFJ FINANCIAL GROUP, INC.
—CONTROL EXEMPTION—
DELTA SOUTHERN RAILROAD, INC.

Digest:¹ The Board lifts the abeyance order and allows the notice of exemption in this proceeding to be published in the Federal Register. The Board also denies Lake Providence Port Commission's request to reject the notice of exemption.

Decided: December 16, 2022

For the reasons discussed below, the Board will lift the abeyance order in Docket No. FD 36642 and allow the verified notice of exemption filed by Patriot Rail Company LLC (Patriot), SteelRiver Transport Ventures LLC, Global Diversified Infrastructure Fund (North America) LP, First State Infrastructure Managers (International) Limited, and Mitsubishi UFJ Financial Group, Inc. (MUFG) (collectively, Patriot Rail), to be published in the Federal Register. The Board also will deny a request by Lake Providence Port Commission (LPPC) to reject the notice of exemption.

BACKGROUND

On September 23, 2022, Patriot Rail filed a verified notice of exemption pursuant to 49 C.F.R. § 1180.2(d)(2) to acquire control of Delta Southern Railroad, Inc. (DSRR), a Class III rail carrier. Through this transaction, Patriot Rail would acquire from West Branch Intermediate Holdings, LLC (West Branch), a noncarrier, a controlling interest in DSRR.² Currently, Patriot

¹ 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).

² The verified notice states that DSRR owns and operates two lines: the first rail line begins at Tallulah, La., and continues to Lake Providence, La.; the second line extends from Monroe, La., to Sterlington, La. Maps depicting the DSRR lines are contained in Exhibit B of the verified notice. (Verified Notice 3, 12.)

Rail indirectly controls 31 Class III rail carriers (the Patriot Short Lines).³ The verified notice notes that DSRR has been the target of a feeder line application filed by the Lake Providence Port Commission (LPPC) in Lake Providence Port Commission—Feeder Line Application—Line of Delta Southern Railroad Located in East Carroll & Madison Parishes, La., Docket No. FD 36447. The verified notice states that Patriot Rail would “assume responsibility for that matter” and “looks forward to working with the LPPC to obviate the need for any further feeder line proceedings” going forward. (Verified Notice 3.)

On September 28, 2022, LPPC filed a reply in opposition to the verified notice, requesting that the Board postpone the effective date of the exemption and “ultimately reject [Patriot Rail’s] petition insofar as it would permit [West Branch] and [DSRR] to disrupt” the ongoing feeder line proceeding. (LPPC Reply 1-2, Sept. 28, 2022.) LPPC stated that its counsel initiated discussions concerning a meeting with Patriot Rail personnel “to explore whether grounds for a possible agreement may exist,” but that it was not possible to schedule a meeting during the first week of October due to Hurricane Ian. (*Id.* at 6 n.5.)

On October 7, 2022, Patriot Rail replied to LPPC’s request, asserting that the relief sought by LPPC is unsupported and unnecessary and should be denied. On October 11, 2022, LPPC requested waiver of 49 C.F.R. § 1104.13(c) to allow LPPC to file a reply to Patriot Rail’s reply, asserting that “the abrupt change in ownership raises substantial questions regarding the timing of the instant transaction and whether it is in the public interest.” (LPPC Reply 2, Oct. 11, 2022.) On October 12, 2022, Patriot Rail filed a reply in opposition to LPPC’s request for waiver.

In light of the parties’ indications of willingness to work with one another to seek to resolve the issues raised in Docket No. FD 36447, by decision served October 14, 2022, in both dockets, Patriot Rail, DSRR, and LPPC were directed to meet and confer on these issues and to file a status report by November 14, 2022. Lake Providence Port Comm’n—Feeder Line Application—Line of Delta S. R.R. Located in E. Carroll & Madison Pars., La., FD 36447 et al., slip op. at 2 (STB served Oct. 14, 2022). This proceeding was placed in abeyance until further order of the Board. *Id.*

On November 8, 2022, the parties jointly filed a status report indicating that they were unable to reach a mutual resolution of issues. On November 10, 2022, Patriot Rail filed a request that the Board remove this proceeding from abeyance and allow the exemption to take effect immediately. On November 14, 2022, LPPC filed a reply to Patriot Rail’s request.

DISCUSSION AND CONCLUSIONS

“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.” Gen. Ry.—

³ Exhibit C of the verified notice of exemption lists the Patriot Short Lines. Maps depicting the Patriot Short Lines are contained in Exhibit D of the verified notice. (Verified Notice 4.)

Exemption for Acquis. of R.R. Line— in Osceola & Dickinson Cntys., Iowa, FD 34867, slip op. at 4 (STB served June 15, 2007). If a verified notice of exemption “contains false or misleading information, the exemption is void ab initio.” 49 C.F.R. § 1150.32(c). Failure to disclose material information can render a notice misleading by omission. Ohio River Partners, LLC—Acquis. & Operation Exemption—Hannibal Dev., LLC, FD 35984, slip op. at 3 (STB served Apr. 1, 2016). “Material” means the transaction would not have otherwise qualified for an exemption. Berkshire Scenic Ry. Museum, Inc. v. ICC, 52 F.3d 378, 381 (1st Cir. 1995).

Here, LPPC has not shown that the notice is false or misleading. LPPC raises arguments that pertain to the feeder line proceeding in Docket No. FD 36447 but has not shown, in this proceeding, that regulation under 49 U.S.C. § 10901 is necessary to carry out the rail transportation policy, as LPPC has not demonstrated how Patriot Rail’s acquisition of DSRR would adversely impact LPPC’s ability to file or pursue an amended feeder line application in Docket No. FD 36447. As Patriot Rail notes, its acquisition of DSRR “does not foreclose either LPP[C] from pursuing a supplemental feeder line application or Patriot Rail from defending against it.” (Verified Notice 3.) In particular, LPPC does not show that, should the transaction go through, Patriot Rail will be unable to provide LPPC with the information it needs regarding the relevant feeder line criteria.⁴ Therefore, the Board will deny the request to reject.⁵

Accordingly, the Board will lift the abeyance order in this proceeding and allow the verified notice of exemption filed by Patriot Rail on September 23, 2022, to be published in the Federal Register. Notice of this exemption will appear in the Federal Register on December 23, 2022.

It is ordered:

1. LPPC’s request that the Board reject the notice of exemption is denied.
2. The abeyance order in this proceeding is lifted and the notice of the exemption will be published in the Federal Register.

⁴ LPPC asserts that “no explanation has been offered as to how Patriot Rail will provide LPPC and the Board with information regarding [DSRR’s] refusal to make ‘necessary efforts to provide adequate service to shippers who transport traffic over the segment of track between milepost 471.0 and milepost 491.0.’” (LPPC Reply 3-4, Sept. 28, 2022.) However, LPPC overlooks that the proposed transaction is a stock purchase, rather than an asset acquisition, and will have no effect on DSRR’s status as a corporate entity. (See Verified Notice 3.) DSRR and any successor thereto will remain obligated to maintain company records and to respond to any properly propounded requests for information pertinent to the proceeding in Docket No. FD 36447.

⁵ The Board on occasion has rejected or revoked notices of exemption in non-routine or controversial cases, 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). But there has been no showing here that any more detail is required in this matter.

3. This decision is effective on its service date.

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