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**ENTERED
Office of Proceedings
March 8, 2023
Part of
Public Record**

**Admitted to Practice
District of Columbia & New Jersey
*Not admitted in Maryland***

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March 8, 2023

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, D.C. 20423

VIA ELECTRONIC FILING

**Re: STB Finance Docket No. 36659 Paul Didelius--Continuance in Control Exemption
Petition—Rainier Rail LLC**

Dear Ms. Brown:

Pursuant to the Board's electronic filing Rules, Paul Didelius, an individual, an individual with controlling interests in multiple railroad common carriers, has submitted a Petition for Exemption pursuant to 49 U.S.C. § 10502 and 49 CFR part 1121 to continue in control of Rainier Rail LLC ("Rainier Rail") at such time as Rainier Rail becomes a railroad common carrier. Petitioner has separately submitted the filing fee of \$12,000 per 49 C.F.R. § 1002.2(f)(39)(iv) via pay.gov as follows:

Amount: \$ 1,600
Date submitted: February 22, 2023
Pay.gov tracking ID: 2741SHAK
Agency Tracking ID number: 76371873190

Amount: \$6,800
Date submitted: March 8, 2023
Pay.gov tracking ID: 274BGT81
Agency Tracking ID number: 76382509785

Amount: \$3,600
Date submitted: March 8, 2023
Pay.gov Tracking ID: 274C7GRB
Agency Tracking ID: 76382723340

**FILED
March 8, 2023
SURFACE
TRANSPORTATION BOARD**

**FEE RECEIVED
March 8, 2023
SURFACE
TRANSPORTATION BOARD**

If there are any questions about this matter, please contact me by telephone at **(908) 361-7097** or by email to ***jsavagelaw@aim.com***.

Respectfully submitted,

/s/ James H. M. Savage
[electronically signed]

James H. M. Savage, Esq.
Counsel for Paul Didelius

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 36659

**PAUL DIDELIUS
- CONTINUANCE IN CONTROL EXEMPTION -
RAINIER RAIL LLC**

**PETITION FOR EXEMPTION
FROM 49 U.S.C. §11323**

EXPEDITED CONSIDERATION REQUESTED

Pursuant to 49 U.S.C. § 10502 and 49 CFR Part 1121, Paul Didelius ("Didelius"), a non-carrier individual who currently controls multiple Class III railroad common carriers in the U.S., hereby submits this Petition for Exemption ("Petition") to permit him to continue in control of Rainier Rail LLC ("Rainier Rail"), currently a non-carrier holding of Mr. Didelius, at such time as Rainier Rail becomes a Class III carrier pursuant to Rainier Rail's concurrently-filed notice of exemption in *Rainier Rail LLC -- Acquisition and Change of Operators Exemption -- City of Tacoma, Washington, Department of Public Works D/B/A Tacoma Rail Mountain Division*, FD 36658 ("Rainier – Exemption").

BACKGROUND

Rainier Rail, a Didelius-controlled non-carrier, has been organized as a limited liability company under the laws of the State of Washington to acquire and operate certain railroad lines in Washington (collectively, the “Line”) owned by the City of Tacoma, Washington, Department of Public Works d/b/a Tacoma Rail Mountain Division (“TRMW”), and operated, in part, by the City of Tacoma, Washington, Department of Public Utilities d/b/a Tacoma Rail (“Tacoma Rail”), and in part by WRL LLC (“WRL”), the latter an existing rail carrier holding of Didelius. A description of the lines that Rainier Rail seeks to acquire and operate, and other transactional details are set forth in *Rainier – Exemption*. At such time as Rainier Rail possesses the requisite Board authorization to purchase the Line and closes on that transaction, Rainier Rail would become a railroad common carrier.

While the proposed continuance in control transaction involves Didelius, his existing Class III railroad holdings, and Rainier Rail, it also happens that Rainier Rail and WRL would, as a consequence of the *Rainier – Exemption* transaction, connect with one another at milepost 28.6 near McKenna, Washington. That connection renders the otherwise-applicable continuance in control class exemption at 49 CFR § 1180.2(d)(2) unavailable, thus requiring Didelius’ resort to the use of the Board’s individual petition for exemption procedures. WRL is currently the exclusive operator of the railroad lines in and around McKenna, and,

as such, neither the *Rainier – Exemption* transaction nor Didelius’ common control of WRL and Rainier Rail that is the subject of this proceeding would result in any shipper losing access to alternative railroad service.

Didelius currently controls, directly or indirectly the following seven common carrier railroads in the United States (the “Didelius Roads”), each of which is a Class III carrier: CCET LLC, WRL LLC, RYAL LLC, CWW LLC, Yak Rail LLC (“Yak”), YCR Corporation (“YCR”),¹ and KET LLC. *See CWW LLC – Continuance in Control – Yak Rail LLC*, FD 36664 (STB served Feb. 10, 2023).

Maps of the Didelius Roads, including a map of the Line that Rainier Rail proposes to acquire and operate pursuant to *Rainier – Exemption* are attached as Exhibits A-1 through A-3. As the maps show, Rainier Rail and WRL would interconnect, but Rainier Rail would not connect to any of the other Didelius Roads, and the present transaction is not intended to effectuate connections among any of the other Didelius Roads, other than WRL and Rainier Rail.²

¹ YCR is an inactive railroad common carrier whose only rail operations were conducted pursuant to a modified certificate of public convenience and necessity issued in *YCR Corporation – Modified Rail Certificate – In Yakima County, WA*, FD 35336 (STB served Jan. 15, 2010). Yak, an affiliated company, recently assumed operations of the lines formerly operated by YCR pursuant to *Yak Rail – Modified Rail Certificate*, FD 36663 (STB served Feb. 10, 2023), with Yak noting in its notice filing that YCR’s leasehold rights in the subject lines had been terminated. YCR has not yet filed notice of termination of its modified certificate operations pursuant to 49 C.F.R. § 1150.24, an oversight that it plans soon to rectify so that YCR will cease to be a rail common carrier.

² At such time as Rainier Rail acquires the Line, Didelius intends immediately thereafter to undertake an intra-corporate family transaction pursuant to which Rainier Rail and WRL would

LEGAL ARGUMENT

I. THE TRANSACTION SATISFIES THE EXEMPTION CRITERIA.

Pursuant to 49 U.S.C. § 11323(a)(5), the control of a rail carrier by a person that is not a rail carrier but that controls any number of existing rail carriers requires prior approval by the Board. 49 U.S.C. § 11324(d) sets forth formal application procedures under which a transaction such as this one could be reviewed and authorized. However, under 49 U.S.C. § 10502, the Board must exempt a transaction from the more taxing regulations set forth Part A of Subtitle IV of Title 49 of the U.S. Code (including Sections 11323-11325) if the Board finds that: (1) regulation of the transaction is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either – (a) the transaction is of limited scope or (b) regulation is not necessary to protect shippers from the abuse of market power.

In enacting the Staggers Rail Act of 1980, Congress made clear its intent that the Interstate Commerce Commission (and now the Board) would use its expanded exemption authority under former Section 10505 to free certain transactions and service from the administrative and financial costs associated with continued regulation:

merge, with Rainier Rail emerging as the surviving common carrier company. As part of this multi-step process, Didelius intends very soon after the present Petition is filed to tender an intra-corporate family transaction notice of exemption pursuant to 49 C.F.R. § 1180.2(d)(3) to authorize the aforementioned intra-corporate family transaction.

The policy underlying this provision is that while Congress has been able to identify broad areas of commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with the policies of this Act, the Commission will pursue partial and complete exemption from remaining regulation.

H.R. Conf. Rep. No. 1430, 96th Cong. 2d Sess. 105 (1980). Congress reaffirmed this policy in the conference report accompanying the ICC Termination Act of 1995,³ which reenacted the existing exemption provisions as Section 10502. H.R. Conf. Rep. No. 422, 104th Cong. 1st Sess. 168-169 (1995).

An individual exemption from the requirements of Sections 11323-11325 for Didelius' continued control of Rainier Rail would be fully consistent with the standards set forth in Section 10502. Detailed scrutiny of the transaction, through an application for review and approval under Section 11323, is unnecessary to carry out the rail transportation policy of 49 U.S.C. § 10101. In fact, exemption from such review and approval would further several of the objectives established in the transportation policy. Moreover, the proposed transaction is of limited scope and will not result in any abuse of market power.

³ Pub. L. No. 104-88, 109 Stat. 803 (1995).

Further, exemption of Didelius' continued control of Rainier Rail would be consistent with the Board's decisions in prior dockets in which an exemption was sought (and granted) for the common control of a railroad carrier that physically connected to one or more railroad carriers already controlled by the petitioner. *See, e.g., Genesee & Wyoming Inc. – Acquisition of Control Exemption – Atlantic Western Transportation, Inc. and Heart of Georgia Railroad, Inc.*, FD 36105 (STB served Apr. 18, 2017); *Genesee & Wyoming Inc. – Acquisition of Control Exemption – Providence and Worcester Railroad Company*, FD 36064 (STB served Dec. 16, 2016); *Pinsly Railroad Company – Control Exemption – Warren & Saline River Railroad Company*, FD 35923 (STB served Nov. 3, 2009).

A. Regulation Is Not Necessary to Carry Out the Rail Transportation Policy of 49 U.S.C. § 10101.

Didelius' continued control of Rainier Rail as a carrier is wholly consistent with the Rail Transportation Policy ("RTP") set forth at 49 U.S.C. § 10101. Control authorization will extend to Rainier Rail the strengths and resources of an established short-line operator in Didelius, and will assure the preservation and viability of the local rail service on the Line. As such, exemption will promote the continuation of a sound rail system to meet the needs of the public. 49 U.S.C. § 10101(4). Didelius' continued control of Rainier Rail will allow coordination, efficient utilization of resources, and expanded economies of scope and scale among the Didelius Roads, enhancing effective rail management and the economic benefits

of Rainier Rail's services. Thus, the addition of Rainier Rail to the Didelius family of railroads will promote efficiency, coordination among rail carriers and competition with other transport modes. See 49 U.S.C. §§ 10101(5) and (9).

Granting the relief sought herein will also advance several other goals enumerated in the RTP. Section 10101 provides that the Board should minimize the need for federal regulatory control over the rail transportation system, reduce the barriers to entry into and exit from the rail transportation industry and provide for the expeditious resolution of all proceedings. 49 U.S.C. §§ 10101(2), (7) and (15). Authorization under Section 10502 obviates the need for the expensive and time-consuming processes attendant to a proceeding under Sections 11323-11325. By limiting the level of regulatory review of this transaction and by relying upon the adequate and more expeditious exemption procedure, the Board would minimize the burden of unnecessary regulation. *E.g., Livonia, Avon & Lakeville Railroad Corporation – Acquisition and Operation Exemption – Line of Consolidated Rail Corporation*, FD 32754 (STB served Mar. 11, 1996) at 4. Other aspects of the rail transportation policy will not be adversely affected.

Ultimately granting the Petition will permit expanded privatization of railroad operations in the Pacific Northwest, expand efficiencies within the Didelius Roads generally, and facilitate the pursuit of additional traffic opportunities.

B. The Transaction is Limited in Scope.

One indicator that a transaction is of limited scope is where the transaction involves a carrier operating in a limited geographical area. *See, e.g., Genesee & Wyoming, Inc. – Continuance In Control Exemption – Pittsburgh & Shawmut Railroad, Inc.*, FD 32904 (STB served June 21, 1996) (“*Pittsburgh*”); *Emons Holdings, Inc. – Continuance in Control Exemption – York Rail, Inc.*, FD 31170 (ICC served Dec. 19, 1987).

Here, the line that Rainier Rail seeks to acquire and operate is less than 42 route miles long and located in relatively compact geographic area. Not only is the transaction of limited scope because it involves a relatively short rail line and compact territory, but also when a transaction merely joins separate Class III carrier-members of an existing short line family, the Board has typically found the transaction to be of limited scope. *See Pittsburgh*. Under these circumstances, a finding that the transaction is of limited scope is clearly supported by the record.

C. Regulation of the Transaction is Not Needed to Protect Shippers From Abuse of Market Power.

Because Didelius' continuance in control of Rainier Rail as a carrier is a limited-scope transaction, it is not necessary to consider whether formal review is needed to protect shippers from an abuse of market power. 49 U.S.C. § 10502(a)(2)(A).

Regardless, there is no potential for such abuse here. No shipper or shipper facility will lose access to competitive intra-modal service from more than one railroad. The point at which Rainier Rail would connect – milepost 28.6 near McKenna – currently is served exclusively by WRL, a carrier already under Didelius’ control. Moreover, there is no jointly-served shipper or shipper facility at the current dividing line between WRL and Tacoma Rail operations – milepost 27.8C near McKenna. Consequently, Didelius’ continuance in control of Rainier Rail as a common carrier will not increase Rainier Rail’s market power or otherwise lessen competition or transportation options for shippers on the Line. Instead, Rainier Rail will be incorporated into the Didelius family of short line carriers, and shippers may benefit from greater service efficiencies as a result. *See Genesee & Wyoming Inc. – Control Exemption – Georgia Southwestern Railroad, Inc.*, FD 35183 (STB served Dec. 15, 2008) at 4 (no abuse of market power likely where no shipper located on a rail carrier's line “is expected to lose rail service options as a result of the control transaction.”). Accordingly, the transaction satisfies the market abuse standard set forth in 49 U.S.C. § 10502(a)(2)(B).

II. LABOR PROTECTION IS NOT AVAILABLE.

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. 49 U.S.C. § 11326(c), however, does not provide for labor protection

for transactions falling under § 11324 and § 11325 that involve only Class III rail carriers. Because this transaction involves Didelius' continuance in control of Rainier Rail, which will become a Class III railroad upon its acquisition of the Line that is the subject of *Rainier – Exemption*, alongside the other, existing Didelius Roads, all of which are also Class III carriers, labor protective conditions are statutorily unavailable.

III. ENVIRONMENTAL/HISTORIC IMPACTS REVIEW IS UNNECESSARY.

Under 49 C.F.R. § 1105.6(c)(1)(i), the proposed control transaction is exempt from environmental reporting requirements. Didelius' continued control of Rainier Rail as a carrier will not result in significant changes in carrier operations, *i.e.*, changes that exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5).

Also, under 49 C.F.R. § 1105.8(b)(3), the proposed continuance in control also is exempt from historic preservation reporting requirements. The control transaction will not substantially change the level of maintenance of any railroad property.

EXPEDITED CONSIDERATION REQUESTED

If the Line sale transaction between Rainier Rail (a Didelius non-carrier holding) and TRMW had been structured differently – had Didelius designated WRL

(an existing carrier under his control) to acquire the Line instead of Rainier Rail – the multi-step Board process that is currently in motion would have been avoided. Instead, WRL would have been able to invoke the class exemption provisions of 49 C.F.R. part 1150, subpart E, as involving a routine Class III railroad line extension proceeding, and the exemption for that that transaction would have taken effect 30 days from the e-filing date. (WRL’s existing annual operating revenues, combined with those it could expect from acquiring the Line that is the subject of *Rainier – Exemption* are projected to be less than \$5 million, hence bypassing the 60-day advance labor notice requirements of 49 C.F.R. § 115.42(e).)

Given a municipality’s involvement as the Line seller and the delay that would arise from seeking and obtaining supplemental approval for a substantive change in the transaction structure (from Rainier Rail to WRL), it is more appealing, on balance, to proceed with the transaction as planned, even though that transaction now triggers more exacting regulatory review than the transaction truly warrants.

The regulatory considerations that prompted the Board after 1995 to adopt the Section 10902 class exemption procedures at 49 C.F.R. part 1150, subpart E directly support the proposition that the present control transaction is, by logical extension, worthy of prompt exemption under the Section 10502 standards. That is, if WRL would be entitled to acquire the Line under a presumed-to-be-exempt class

exemption standard, then the same should be true for WRL's non-carrier affiliate, Rainier Rail. The present Petition is an example of how regulatory processes can inadvertently elevate form over substance.

Didelius, TRMW and Tacoma Rail (the latter, two divisions of the City of Tacoma Washington) all desire that Rainier Rail be permitted to commence common carrier operations in place of Tacoma Rail as soon as Board approval processes would permit. The parties agree that Rainier Rail will bring entrepreneurial short line operating experience to the Line that is likely to attract new railroad traffic, promote economic development in the region, and encourage a shift of freight transportation from motor carriers to rail. Those benefits of the Rainier Rail transaction will be delayed the longer it takes for Rainier Rail to be authorized to commence common carrier operations, and the uncertainty of Board processing of the present Petition appears to be the single largest obstacle to the transition in carriers that the City of Tacoma and Didelius both want.

Accordingly, Didelius respectfully submits that the facts and circumstances behind this transaction clearly militate in favor of swift Board approval of this Petition, and Didelius therefore requests expedited Board consideration of the Petition with a decision (and decision effective date) to be issued as expeditiously as Board processes and resources will allow.

CONCLUSION

For the above-stated reasons and based upon the above-cited authority herein, Didelius respectfully requests that the Board expeditiously grant the Petition for him to continue to control Rainier Rail (once it becomes a common carrier) alongside the existing Didelius Roads.

Respectfully submitted:

/s/ James H. M. Savage
[By electronic signature]

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Counsel for Petitioner
Paul Didelius

Dated: March 8, 2023

EXHIBIT A-1

RAINIER RAIL MAP

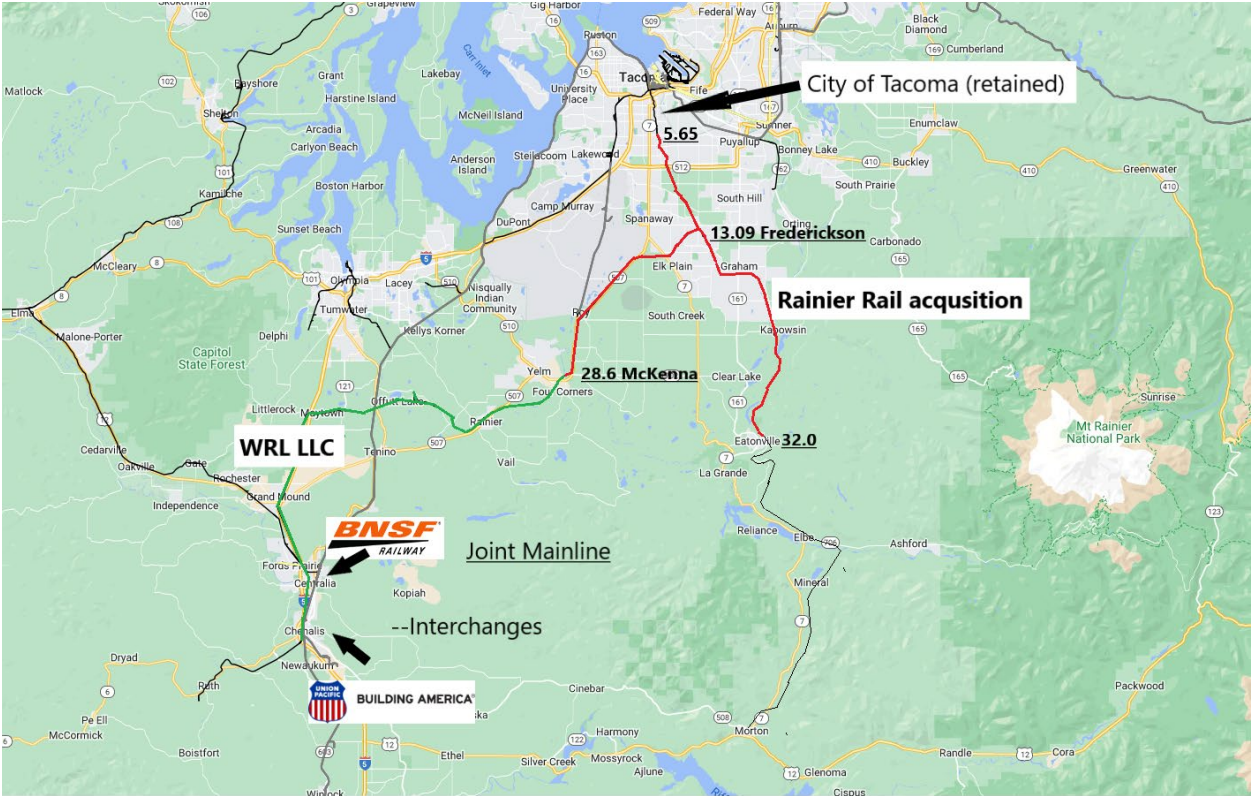


EXHIBIT A-2

MAP OF CCET OHIO OPERATIONS



EXHIBIT A-3

MAP OF DIDEIUS WASHINGTON STATE OPERATIONS

