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SERVICE DATE – APRIL 7, 2023

DO

FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36684]

Jason W. Grube—Continuance in Control Exemption—Rochester & Erie Railway, LLC

Jason W. Grube (Grube), a noncarrier, has filed a verified notice of exemption under 49 C.F.R. § 1180.2(d)(2) to exempt from the provisions of 49 U.S.C. § 11323 his continuance in control of Rochester & Erie Railway, LLC (RERY), a noncarrier, upon RERY's becoming a Class III rail carrier.

The transaction is related to a concurrently filed verified notice of exemption in Rochester & Erie Railway—Operation Exemption—Fulton County, LLC, Docket No. FD 36671. In that proceeding, RERY seeks an exemption under 49 C.F.R. § 1150.31 to operate 11.7 miles of rail line between milepost I-108.6 near Argos and milepost I-96.9 at Rochester, in Marshall and Fulton Counties, Ind. (the Line). The Line is owned by Fulton County, LLC, d/b/a Fulton County Railroad (FCRR), a Class III carrier.

According to the verified notice, Grube indirectly controls FCRR—the owner of the Line—through his ownership of Grube Industries, LLC, which owns Steel on Steel Railways, LLC, which in turn owns FCRR. The verified notice states that Grube will continue in control of RERY (as majority owner) upon RERY's becoming a Class III rail carrier. Grube states that the Line is the only rail line owned or operated by the corporate family, and therefore it does not connect with any other railroads in the corporate family; nor is the continuance in control of RERY part of series of anticipated transactions that

would connect the Line with any other railroad in the corporate family. Furthermore, the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. § 11323. See 49 U.S.C. § 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. Accordingly, because this transaction involves Class III rail carriers only, the Board may not impose labor protective conditions here.

The earliest this transaction may be consummated is April 21, 2023, 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 for stay must be filed no later than April 14, 2023 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36684, must be filed with the Surface Transportation Board either 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 Grube's representative, Eric M. Hocky, Clark Hill PLC, Two Commerce Square, 2001 Market Street, Suite 2620, Philadelphia, PA 19103.

According to Grube, this action is categorically 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: April 4, 2023.

By the Board, Mai T. Dinh, Director, Office of Proceedings.