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SERVICE DATE – SEPTEMBER 8, 2023

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36716

OMNITRAX HOLDINGS COMBINED, INC., AND HGS RAILWAY HOLDINGS, INC.—
CONTINUANCE IN CONTROL EXEMPTION—OMNITRAX SBVR, LLC D/B/A SOUTH
BRANCH VALLEY RAILROAD

Docket No. FD 36717¹

OMNITRAX SBVR, LLC D/B/A SOUTH BRANCH VALLEY RAILROAD—CHANGE OF
OPERATOR EXEMPTION—RAILROAD LINE IN HAMPSHIRE, HARDY AND GRANT
COUNTIES, W. VA.

Decided: September 8, 2023

On August 14, 2023, in Docket No. FD 36717, OmniTRAX SBVR, LLC d/b/a South Branch Valley Railroad (OSL), a noncarrier controlled by short line holding company OmniTRAX Holdings Combined, Inc. (OmniTRAX), filed a verified notice of exemption under 49 C.F.R. § 1150.31 to assume operations over approximately 52.4 miles of rail line, extending from milepost 0.0 at Green Spring, W. Va., to milepost 52.4 at Petersburg, W. Va., located in Hampshire, Hardy, and Grant Counties, W. Va. (the Line). That same day, in Docket No. FD 36716, OmniTRAX and HGS Railway Holdings, Inc., both noncarriers, filed a verified notice of exemption under 49 C.F.R. § 1180.2(d)(2) to continue in control of OSL upon OSL's becoming a Class III rail carrier.

According to the verified notices, the Line is owned and currently operated by the West Virginia State Rail Authority (the Rail Authority).² OSL states that it has reached an agreement with the Rail Authority under which OSL will replace the Rail Authority as the operator on the Line. (Verified Notice 2, OmniTRAX SBVR, LLC, FD 36717; Verified Notice 3, OmniTRAX Holdings Combined, Inc., FD 36716.)

¹ These proceedings are not consolidated but are being addressed in the same decision for administrative convenience.

² (Verified Notice 1, OmniTRAX SBVR, LLC—Change of Operator Exemption—R.R. Line in Hampshire, Hardy & Grant Cntys., W. Va., FD 36717; Verified Notice 1, OmniTRAX Holdings Combined, Inc.—Continuance in Control Exemption—OmniTRAX SBVR, LLC, FD 36716.)

OSL further states that under the agreement, “the Rail Authority would be relieved of its common carrier obligations over the Line, upon consummation of the subject transaction.” (Verified Notice 2, OmniTRAX SBVR, LLC, FD 36717.) While change of operator exemptions typically relieve the current operator of its common carrier obligation to provide service, see, e.g., Bogalusa & N. Ry.—Change in Operator Exemption—Bogalusa Bayou R.R., FD 36686, slip op. at 1-2 (STB served May 26, 2023), such exemptions do not relieve a line owner of any residual common carrier obligation, see, e.g., Ogeechee Ry.—Lease & Operation Exemption—S. Ry., FD 31490, slip op. at 3 & n.3 (ICC served July 31, 1989); Bulkmatic R.R.—Acquis. & Operation Exemption—Bulkmatic Transp. Co., FD 34145 et al., slip op. at 6 (STB served Nov. 19, 2002) (“[E]ven if [the lessee] operated as a common carrier in its own right, [the line owner] would retain a residual common carrier obligation and would remain subject to our jurisdiction by virtue of its acquisition and ownership of the track.”).

The parties will be directed to provide by September 18, 2023 supplemental information either (1) explaining why a change of operator exemption is appropriate in this case and why that exemption would extinguish any residual common carrier obligation of the Rail Authority or (2) clarifying the record by retitling the proceeding in Docket No. FD 36717 to the appropriate exemption and acknowledging that, as the line owner, the Rail Authority would retain a residual common carrier obligation on the Line following consummation of the proposed transaction. To allow for further briefing and consideration of these issues, the effective date of these exemptions will be postponed pending further Board order.

It is ordered:

1. The parties are directed to submit supplemental information, as described above, by September 18, 2023.
2. The effective date of these exemptions is postponed pending further Board order.
3. This decision is effective on its service date.

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