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FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36767]

Grupo México, S.A.B. de C.V.—Acquisition of Control Exemption—Copper Basin Railway, Inc.

Grupo México, S.A.B. de C.V. (GM), a noncarrier holding company, has filed a verified notice of exemption pursuant to 49 CFR 1180.2(d)(2) for after-the-fact authority to acquire control of Copper Basin Railway, Inc. (CBRY), a Class III rail carrier that owns and operates a rail line in Arizona.¹ According to a supplemental filing by GM, CBRY's line consists of a 54.6-mile main line between Magma Junction, at milepost 948.9, and Winkleman, at milepost 1003.5; a four-mile branch line from Ray Junction, at milepost 987.8, to Ray; and a two-mile branch line from Hayden Junction, at milepost 1000.2, to Hayden Smelter.

¹ By decision served April 4, 2024, in another proceeding, the Board directed GMéxico Transportes, S.A.B. de C.V. (GMXT), a subsidiary of GM and the applicant in that proceeding, to clarify the status of CBRY given the apparent absence of authorization for GM to acquire common control of more than one rail carrier when it acquired CBRY. See GMéxico Transportes, S.A.B. de C.V.—Acquis. of Control Exemption—CG Ry., FD 36701, slip op. at 3 (STB served Apr. 4, 2024). The April 2024 decision in Docket No. FD 36701 noted that a filing by GMXT and GM in a 2017 exemption proceeding identified CBRY as a Class III carrier controlled by GM, and that GM had been expected at that time to promptly seek authorization for common control if such authority were required. *Id.* (citing Grupo México, S.A.B. de C.V.—Control Exemption—Fla. E. Coast Holdings Corp., FD 36109, slip op. at 1 n.2 (STB served May 9, 2017)).

The verified notice states that, through an indirect, wholly owned subsidiary named ASARCO LLC (ASARCO), GM acquired a 100% ownership interest in CBRY in 2006.² According to the verified notice, at the time of the transaction GM also controlled (through its subsidiary GMXT) Texas Pacifico Transportation, Ltd. (Pacifico), a Class III rail carrier operating in the State of Texas. Thereafter, in 2017, GM acquired control of Florida East Coast Railway, LLC (FECR), a Class II rail carrier that owns and operates approximately 351 miles of main line track, as well as additional branch, switching, and other secondary track, along the east coast of Florida. See Grupo México, S.A.B. de C.V.—Control Exemption—Fla. E. Coast Holdings Corp., FD 36109 (STB served May 9, 2017). The verified notice certifies that GM and its subsidiaries have not entered into any agreement with respect to the transaction that includes a provision that may limit future interchange with a third-party connecting carrier.

GM represents that none of the railroads in the GM corporate family connect with each other; that no further transactions are planned that would create a connection between any GM railroads; and that no GM-controlled railroad is a Class I carrier. GM further states that for the same reasons, GM's acquisition of control of CBRY qualified for an exemption at the time of the transaction and has remained qualified at every point in time since then. The transaction is therefore exempt from the prior approval requirements of 49 U.S.C. 11323 pursuant to 49 CFR 1180.2(d)(2).

² According to the verified notice, prior to that transaction, ASARCO held a 45% interest in CBRY, with the remaining 55% held by Rail Partners II, LLC, a now-defunct Florida limited liability corporation.

Public and confidential versions of the agreement under which GM acquired full ownership of CBRY were filed with the verified notice. The confidential version was submitted under seal concurrently with a motion for protective order, which was granted by a decision served on May 13, 2024.

The earliest this exemption may become effective is June 28, 2024 (30 days after the verified notice was filed).³

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. In addition to two Class III rail carriers (CBRY and Pacifico), this after-the-fact notice of a continuance-in-control exemption involves a Class II rail carrier, FECR. Accordingly, the transaction is subject to the labor protection requirements of 49 U.S.C. 11326(b) and Wisconsin Central Ltd.—Acquisition Exemption—Lines of Union Pacific Railroad, 2 S.T.B. 218 (1997).

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 June 21, 2024 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36767, 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, one copy of each pleading must be served on GM's representative, Charles A. Spitulnik, Kaplan, Kirsch & Rockwell, LLP, 1634 I (Eye) Street N.W., Suite 300, Washington, DC 20006.

³ Because GM supplemented its verified notice of exemption on May 29, 2024, that date is deemed the filing date of the verified notice.

According to GM, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at www.stb.gov.

Decided: June 11, 2024.

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