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FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36786]

Koch, Inc.—Intra-Corporate Family Exemption—Old Augusta Railroad, LLC; Blue Rapids Railway Company LLC; Moscow Camden and San Augustine Railroad LLC; and KM Railways, LLC

Koch, Inc. (Koch),¹ has filed a verified notice of exemption for an intra-corporate family transaction under 49 CFR 1180.2(d)(3), which exempts from the prior approval requirements of 49 U.S.C. 11323 “[t]ransactions within a corporate family that do not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.”

49 CFR 1180.2(d)(3).

According to the verified notice, Koch Industries, Inc. (KII), a Kansas corporation, indirectly owns controlling interests in four common carrier railroads: Old Augusta Railroad, LLC (OAR); Blue Rapids Railway Company LLC (BRR); Moscow Camden and San Augustine Railroad LLC (MCSA); and KM Railways, LLC (KMR). The verified notice states that each of these railroads are Class III rail carriers.² Under

¹ The verified notice states that Koch is a newly formed Kansas corporation and noncarrier.

² According to the verified notice, OAR owns approximately 2.5 miles of rail line in Mississippi, BRR owns and operates an approximately 10-mile rail line in Kansas, MCSA owns and operates a 6.9-mile rail line in Texas, and KMR owns and operates 9,350 feet of rail line in Illinois.

the proposed transaction, KII will engage in an intra-corporate reorganization that will result in Koch's indirect control of OAR, BRR, MCSA, and KMR.³ According to the verified notice, the reorganization will be implemented pursuant to a merger agreement⁴ by and among KII, Koch, Koch Cos., and Sunflower Subsidiary Corp. (Sunflower).⁵ Koch states that the purpose of the transaction is to create a new corporate holding structure and to promote the investment objectives of Koch and its stockholders.⁶ The verified notice states that the proposed transaction does not impose or involve any interchange commitment by or affecting any of the subject railroads.

The verified notice states that the transaction will not result in adverse changes in service levels, operational changes, or a change in the competitive balance with carriers outside the corporate family. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(3).

Unless stayed, the exemption will be effective on July 6, 2024 (30 days after the verified notice was filed). Koch states that it intends to consummate the proposed transaction following that date.

³ Koch states that it will indirectly control such railroads through Koch Companies, LLC (Koch Cos.), a newly formed Delaware entity and direct subsidiary of Koch.

⁴ Koch submitted under seal a confidential version of its verified notice containing the agreement. Koch also filed a motion for protective order, which is addressed in a separate decision.

⁵ According to the verified notice, Sunflower, a newly formed Kansas corporation and direct subsidiary of Koch Cos., will merge with and into KII, with KII being the surviving entity.

⁶ The verified notice states that the existing stockholders of KII will continue as the stockholders of Koch in the same proportion as such stockholders held KII immediately prior to the reorganization.

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, the Board may not impose labor protective conditions here because all the carriers involved are Class III rail carriers.

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 28, 2024 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36786, must be filed with the Surface Transportation Board 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 Koch's representative, Peter W. Denton, Steptoe LLP, 1330 Connecticut Avenue, N.W., Washington, DC 20036.

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

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

Decided: June 17, 2024.

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