

SERVICE DATE – OCTOBER 30, 2026

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36948

HENRY POSNER, III—CONTROL EXEMPTION—
MORRISTOWN & ERIE RAILWAY, INC.

Decided: October 30, 2026

On August 20, 2026,¹ Henry Posner, III (Posner), a noncarrier who controls a Class II carrier, filed a verified notice of exemption under 49 C.F.R. § 1180.2(d)(2) for authority to acquire 27.75% of the shares of Morristown & Erie Railway, Inc. (M&E), a Class III rail carrier operating in New Jersey. He also filed a motion to dismiss the notice of exemption, arguing that the contemplated stock purchase would not constitute acquisition of control of M&E.

Notice of the exemption was served and published in the Federal Register on September 4, 2026 (91 Fed. Reg. 56,939); that notice indicated that the motion to dismiss would be addressed in a subsequent decision.

According to the verified notice, Posner indirectly controls the Class II rail carrier Iowa Interstate Railroad, LLC,² through his control of RDC Domestic Holdings (RDC), a noncarrier holding company. (Notice 1; Mot. to Dismiss 1.) Posner proposes to acquire 27.75% of the stock of M&E as part of a new group of investors (collectively the RDC Group). (*Id.*) After the transaction is consummated, M&E will have two distinct ownership groups: 1) the Incumbent Ownership Consortium consisting of prior M&E owners Choo Choo, LLC, and the Weis Exemption Trust, who will each hold 25% of M&E's stock, and 2) the new RDC Group comprised of Posner and four other individuals, which collectively will hold 50% of M&E's stock.³ (Mot. to Dismiss 1-2.) According to the motion to dismiss, the current and prospective stockholders have entered into a Stockholders' Agreement that allows each ownership group to appoint two of M&E's four directors and further limits the amount of control any single

¹ Posner originally submitted his verified notice on August 10, but on August 20 he filed, among other things, a supplement. Accordingly, the date of the supplement is deemed the filing date of the verified notice.

² See Iowa Interstate Reply 2, March 1, 2024, Canadian Nat'l Ry.—Control—Iowa N. Ry., FD 36744.

³ The other RDC Group members are Ida Molloy Posner and Alain L. Kornhauser, who will each acquire a 10% ownership share; Margaret E. Richards, who will acquire a 1.25% ownership share; and Craig E. Phillip, who will acquire a 1% ownership share. (Mot. to Dismiss 2.)

stockholder will have over M&E by imposing supermajority stockholder voting requirements for certain significant business and corporate decisions. (Id.; Supplement 2 n.1.) Posner states that M&E will be managed day-to-day by the same general manager that held the position prior to his investment. (Mot. to Dismiss 3.) He argues that his 27.75% ownership share will not allow him to control the company, (id. at 4), and that therefore the Board lacks jurisdiction over his stock acquisition and the notice of exemption should be dismissed, (id. at 5).

Under 49 U.S.C. § 11323(a)(5), the “[a]cquisition of control of a rail carrier by a person that is not a rail carrier but that controls any number of rail carriers” requires Board authorization. Here, the proposed transaction does not constitute an “acquisition of control” of a rail carrier within the meaning of § 11323. As defined at 49 U.S.C. § 10102(3), control includes “actual control, legal control, and the power to exercise control, through or by (A) common directors, officers, stockholders, a voting trust, or a holding or investment company, or (B) any other means.” Rather than a formula based only on the percentage of stock ownership, the Board looks to a number of additional factors, including distribution of the remaining stock, the ability to elect directors and otherwise control or influence decision-making machinery, and the existence of management, marketing, operating and financial ties. See Union Pac. Corp.—Control—Chi. & N.W. Holdings Corp., 9 I.C.C.2d 939, 947 (1993). In prior cases, the Board has declined to find control by a single owner in transactions where the ownership interest was no more than 50% of the company’s outstanding stock and the company was “structured as [a] cooperative venture” and set up in such a way as “to prevent domination or control by a single proprietary [owner].” Paducah & Louisville Ry.—Control Exemption—Paducah & Illinois R.R., FD 33362, slip op. at 2-3 (STB served Aug. 25, 1997) (citing Burlington N. Inc.—Control and Merger—St. Louis-S.F. Ry., 366 I.C.C. 862, 866 (1983)). Although Posner will own more shares than any other shareholder, the Stockholders’ Agreement divides selection of M&E’s directors equally between the two ownership groups and ensures that Posner cannot make certain significant decisions without the agreement of at least one member of the Incumbent Ownership Consortium. Further, no other apparent factors generally considered by the Board in prior cases suggest that Posner will have the power to control M&E. Accordingly, consistent with precedent, Posner will not gain control of M&E, and the transaction is not subject to 49 U.S.C. § 11323. See id. Therefore, Posner’s motion to dismiss the notice of exemption will be granted and the proceeding will be dismissed.

It is ordered:

1. Posner’s motion to dismiss the notice of exemption is granted, and this proceeding is dismissed.
2. This decision is effective on its service date.

By the Board, Anika S. Cooper, Chief Counsel, Office of Chief Counsel.