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246517

October 19, 2018

BY HAND DELIVERY

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

ENTERED
Office of Proceedings
October 19, 2018
Part of
Public Record

Re: North Central Mississippi Regional Railroad Authority – Continuance in Control
Exemption, FD 36234
Cover Letter and Filing Fee Waiver Request
Expedited Consideration Requested

Dear Ms. Brown:

Enclosed please find an original and eleven copies of a Petition for Exemption (“Petition”) pursuant to 49 U.S.C. § 10502 and 49 CFR Parts 1121 and 1180 filed on behalf of the North Central Mississippi Regional Railroad Authority (“NCMRRRA”) to exempt its continuance of control of both itself upon NCMRRRA becoming a rail carrier in North Central Mississippi Regional Railroad Authority – Acquisition and Operation Exemption – Mississippi Department of Transportation, FD 36182 and GRYR from the prior approval requirements of 49 U.S.C. § 11323. Please acknowledge receipt and filing of the Petition by date stamping the enclosed eleventh copy and returning it to the courier to return to me. This submission also includes an electronic copy of the filing.

Filing Fee Waiver Request

Pursuant to 49 CFR § 1002.2(e)(1) the Board grants filing fee waiver requests made by a federal government agency or state or local government entity; or, pursuant to 49 CFR § 1002.2(e)(2)(ii) when the requesting entity demonstrates that waiver is in the best interest of the public or that payment of the filing fee would impose an undue hardship on the requestor.

FEE RECEIVED

October 19, 2018

SURFACE

TRANSPORTATION BOARD

FILED

October 19, 2018

SURFACE

TRANSPORTATION BOARD

Cynthia T. Brown, Chief
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NCMRRA¹, a local government entity pursuant to 49 CFR § 1002.2(e)(1), respectfully requests that the filing fee be waived.

To avoid delaying the Board processing the Petition pending the Board's decision on the waiver request, NCMRRA is enclosing a filing fee check for \$11,100.00. If the Board grants NCMRRA's filing fee waiver request, NCMRRA requests that the Board send back the check or refund the amount paid.

If there are any questions concerning this matter, please contact me directly at (202) 663-7831 or by e-mail at czorbaugh@bakerandmiller.com.

Sincerely,



Crystal M. Zorbaugh

Attorney for North Central Mississippi Regional
Railroad Authority

Enclosure

cc: Larry Hart

¹ NCMRRA was created in 2012 as a regional railroad authority pursuant to Section 19-29-1 et. seq. of the Miss. Code Annotated of 1972 by representatives from the counties of Tate, Panola, Yalobusha, Grenada, Montgomery, Carroll, and Holmes Counties to protect long term rail service in the region. In 2015, NCMRRA acquired a stock interest in its first railroad, GRYR, after its previous owners filed for abandonment authority.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36234



**NORTH CENTRAL MISSISSIPPI REGIONAL RAILROAD AUTHORITY
– CONTINUANCE IN CONTROL EXEMPTION –**

**PETITION FOR EXEMPTION
FROM 49 U.S.C. § 11323**

EXPEDITED CONSIDERATION REQUESTED

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October 19, 2018

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Regional Railroad Authority**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36234



**NORTH CENTRAL MISSISSIPPI REGIONAL RAILROAD AUTHORITY
– CONTINUANCE IN CONTROL EXEMPTION –**

**PETITION FOR EXEMPTION
FROM 49 U.S.C. § 11323**

EXPEDITED CONSIDERATION REQUESTED

North Central Mississippi Regional Railroad Authority (“NCMRRA”), a non-carrier that controls through stock ownership Grenada Railway, LLC (“GRYR”), a Class III carrier, pursuant to 49 U.S.C. § 10502 and 49 CFR Parts 1121 and 1180, hereby submits this Petition for Exemption (“Petition”) requesting that the Board exempt its acquisition of a rail line from the prior approval and authorization requirements of 49 U.S.C. § 11323 of the Surface Transportation Board (“STB” or “Board”) and allow NCMRRA to control both NCMRRA upon it becoming a carrier after receiving authority to acquire and operate a rail line in North Central Mississippi Regional Railroad Authority – Acquisition and Operation Exemption – Mississippi Department of Transportation, FD 36182 (“FD 36182”) and GRYR, which NCMRRA currently controls through stock ownership.²

The end result of the above-captioned proceeding and the transaction involved in FD 36182 is that NCMRRA will become a Class III carrier that controls a separate Class III carrier, GRYR. Given

² On September 13, 2018, NCMRRA filed to acquire and operate the rail line that is the subject of the FD 36182 proceeding and filed a corporate family exemption in FD 36224 to bring GRYR and NCMRRA under the same corporate family upon NCMRRA becoming a rail carrier. In a decision served October 12, 2018, the Board rejected the corporate family exemption, stated that the proposed transaction requires continuance in control authority from the Board, and directed NCMRRA to file a petition for exemption if it wished to obtain the requisite authority.

that NCMRRA's acquisition will result in two operating carriers within the same corporate family where before there was only one, NCMRRA hereby petitions the Board for authority to control GRYR while also remaining in control NCMRRA upon it becoming a rail carrier.

STATEMENT OF FACTS

NCMRRA, a local government entity pursuant to 49 CFR § 1002.2(e)(1), was created in 2012 as a regional railroad authority pursuant to Section 19-29-1 et. seq. of the Miss. Code Annotated of 1972 by representatives from the counties of Tate, Panola, Yalobusha, Grenada, Montgomery, Carroll, and Holmes Counties to protect long-term rail service in the region. In 2015, NCMRRA acquired its first railroad interest by purchasing the stock and assuming control of GRYR after it filed for abandonment authority for its rail lines. See Grenada Railway, LLC – Abandonment Exemption – In Grenada, Montgomery, Carroll, Holmes, Yazoo, and Madison Counties, MS, AB-1087 (Sub-No. 1x) and Grenada Railway, LLC – Abandonment Exemption – In Yalobusha County, MS, AB-1087 (Sub-No. 2x).³ GRYR's rail lines are located in Grenada, Montgomery, Carroll, Holmes, Yazoo, Madison, and Yalobusha Counties, MS. A map of GRYR and the line to be acquired by NCMRRA is included as Exhibit A.

After acquiring control of GRYR in 2015, NCMRRA and GRYR leased the rail lines owned by GRYR to Illinois Central Rail Road, LLC in July 2015. See Illinois Company Rail Road, LLC—Lease and Operation Exemption—North Central Mississippi Regional Railroad Authority and Grenada Railway, LLC, FD 35940 (STB served July 9, 2015).⁴

³ GRYR became a class III carrier, in 2009, after filing for authority to acquire and operate lines owned by Illinois Central Railroad Company and Waterloo Railroad Company. See Grenada Railway, LLC-- Acquisition and Operation Exemption—Illinois Central Railroad Company and Waterloo Railway Company, FD 35247 (STB served May 29, 2009).

⁴ In a filing to the Board on July 14, 2015, Illinois Company Rail Road's name was changed to Grenada Railroad, LLC.

In FD 36182, NCMRRA, a non carrier, has filed to acquire and operate an approximately 21.70-mile rail line owned by the Mississippi Department of Transportation that extends from milepost H-0.20 (at Aberdeen Junction) to milepost H-21.90 (at Kosciusko) in Holmes and Attala Counties, MS ("Kosciusko Line"). Annual revenues on the Kosciusko Line will not exceed \$5 million. As a result of the FD 36182 transaction, NCMRRA will become a Class III carrier. A map of GRYR and the line to be acquired by NCMRRA is included as Exhibit A. Upon consummation of the FD 36182 transaction, NCMRRA and GRYR will exist as separately managed and maintained entities within the same corporate family. The agreement governing NCMRRA's acquisition and operation of the Kosciusko Line does not include any provisions that would limit future interchange with any connecting carriers. Additionally, the involved transactions will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family. Operational changes, if any, would be de minimis.

While the proposed control transaction does not involve any class I carrier, the control transaction does not qualify for the class exemption under 49 CFR § 1180.2(d)(2), because NCMRRA and GRYR connect at or near Aberdeen, Jct. Accordingly, NCMRRA is filing the Petition seeking authority to control GRYR, while also remaining in control of NCMRRA once it becomes a rail carrier.

Name and Address of the Petitioner:

Larry Hart
Chairman – Executive Committee
North Central Mississippi Regional Railroad Authority
Post Office Box 888
Water Valley, MS 38965
Tel: (662) 473-7411

Petitioner's Representative:

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List of States in Which the Parties' Property is Located. 49 C.F.R. § 1180.6(a)(5)

The Kosciusko Line that NCMRRA is acquiring is in Mississippi. GRYR's rail lines are also in Mississippi.

Map Exhibit. 49 C.F.R. § 1180.6(a)(6)

Attached is a map that shows GRYR's rail lines and Kosciusko Line that NCMRRA is acquiring. See Exhibit A.

49 C.F.R. §1180.6(a)(7)(ii) -- Agreement. 49 C.F.R. § 1180.6(7)(ii)

NCMRRA and GRYR have not entered into any agreements or written instruments related to NCMRRA's continuance in control.

Interchange commitments: 49 CFR §1121.3(d)

As a result of the above-captioned proceeding and the transaction involved in FD 36182, NCMRRA will become a Class III carrier that controls a separate Class III carrier, GRYR. NCMRRA's acquisition will result in two operating carriers within the same corporate family where before there was only one, but neither of the transactions involves any provision or agreement that would limit NCMRRA or GRYR's future interchange with any third-party connecting carriers.

ARGUMENT

I. THE TRANSACTION SATISFIES THE EXEMPTION CRITERIA.

The "[a]cquisition of control of at least 2 rail carriers by a person that is not a rail carrier", and 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 the prior approval of the Board. 49 U.S.C. §§ 11323(a)(4) and 11323(a)(5).⁵ However, under 49 U.S.C. § 10502, the Board must exempt a transaction from its prior approval requirements when the Board finds that: (1) prior approval "is not necessary to carry out the rail transportation policy of" 49 U.S.C. § 10101 (the "RTP"); and (2) either (a) "the transaction or service is of limited scope;" or (b) regulation is not necessary "to protect shippers from the abuse of market power". 49 U.S.C. § 10502. The transaction proposed in the above-captioned proceeding satisfies all three criteria.

A. Regulation Is Not Needed to Carry Out the Rail Transportation Policy.

Detailed scrutiny of NCMRRA's continued control of GRYR while becoming a rail carrier itself is not necessary to carry out the objectives of the RTP. To the contrary, an exemption from the prior approval requirements here will promote several of objectives of the RTP. The Board granting the Petition will minimize the expense and delay associated with the application process, enable NCMRRA to fulfill its mission of "protecting long-term rail service in the region," and ensure that shippers on the Kosciusko Line continued to have access to freight rail service.

⁵ On its face, none of these statutory provisions apply. NCMRRA is not owned or controlled by another person, a single entity, another corporation, any one shareholder or a group of shareholders, or any other person or non-person. Accordingly, there is no "person that is not a rail carrier" that will control two carriers. Nor is NCMRRA acquiring control of another rail carrier. It already controls GRYR. By becoming a carrier in its own name, it is not acquiring control of another rail carrier. As such, there is no "[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." Instead, NCMRRA is becoming a carrier itself. That is why it filed for authority in FD 36182. It is that transaction that allows parties to present evidence and argument as to why NCMRRA should not be allowed to become a railroad while remaining in control of GRYR. Not technically falling within 49 U.S.C. §11323, et. seq., this Petition should be dismissed.

Moreover, granting the exemption will allow NCMRRA to dedicate its limited resources to the preservation of freight rail service, "minimize the need for Federal regulatory control over the rail transportation system," 49 U.S.C. § 10101(2), and "reduce regulatory barriers to entry into and exit from the industry," 49 U.S.C. § 10101(7).

Additionally, exempting a transaction, which will bring the Kosciusko Line in the same family as the rail line's only connection to the national rail system, promotes the RTP's goals of ensuring "the development and continuation of a sound rail transportation system . . . to meet the needs of the public and the national defense" (49 U.S.C. § 10101(4); "foster[ing] sound economic conditions in transportation and[] ensur[ing] effective competition and coordination between rail carriers and other modes" (49 U.S.C. § 10101(5), and "encourage[ing] honest and efficient management of railroads" (49 U.S.C. § 10101(9)). Finally, an exemption here would expedite handling and resolution of Board proceedings consistent with 49 U.S.C. § 10101(15). Other aspects of the RTP will not be adversely affected.

Under similar, but not identical circumstances, an exemption has been granted. See Twin Cities & Western Railroad Company, The Estate of Douglas M. Head, and The DMH Trust FBO Martha M. Head – Continuance in Control Exemption – Sisseton Milbank Railroad Company, FD 35642 (STB served July 18, 2012; see also Genesee & Wyoming Inc. – Continuance in Control Exemption – Chattahoochee Bay Railroad, Inc., FD 34913, (STB served Nov. 9, 2006) ("Chattahoochee Bay"); see also Summit Vien, Inc. - Control Exemption – Mahoning Valley Railroad Company, FD 34026 (served May 11, 2001) (enabling carrier to become part of a family of small carriers furthers the RTP) ("Summit Vien"). Indeed, in this case, given the connection between NCMRRA and GRYR, exempting the transaction and allowing NCMRRA to control GRYR while it becomes a rail carrier itself will promote many elements of the RTP and will not foreclose any current transportation options presently open to shippers.

B. The Transaction Is Limited In Scope.

One indicator that a transaction is of limited scope is where the transaction involves a carrier operating in a limited geographical area. See, e.g., Genesee & Wyoming, Inc. – Continuance In Control Exemption – Pittsburgh & Shawmut Railroad, Inc., FD 32904 (served June 21, 1996) (“Pittsburgh”). See also Emons Holdings, Inc. – Continuance in Control Exemption – York Rail, Inc., FD 31170 (ICC served Dec. 19, 1987). Here, the Line that NCMRRA is seeking to acquire and operate is only 21.7 route miles long and is located in a small geographic area. Not only is the transaction of limited scope because it involves a relatively small rail line and territory, but when a transaction merely adds a separately incorporated class III carrier to an existing family of short lines, the Board has typically found the transaction to be of limited scope. See Pittsburgh, see also Summit Vien Such a finding is likewise apropos here. Analogous to other similar transactions exempted by the Board, the control authority sought by NCMRRA will not result in a reduction of transportation options on the Kosciusko Line. NCMRRA’s control of GRYR while becoming a railroad itself will not affect the previously authorized operations of any other carrier. Under these circumstances, a finding that the transaction is of limited scope is supported by the record.

C. Regulation of the Transaction Is Not Needed to Protect Shippers From Abuse of Market Power.

Because NCMRRA’s proposed continuance in control of GRYR while it becomes a carrier itself is limited in scope, it is not necessary to consider whether prior review is needed to protect shippers from an abuse of railroad market power. 49 U.S.C. § 10502(a)(2)(A). Regardless, there is no potential for such abuse here. Common carrier rail service will continue to be available to shippers who request it. NCMRRA will simply become the owner, operator, and provider of service over the Kosciusko Line. Likewise, GRYR will continue to own and

lease its rail line as it did prior to NCMRRA's acquisition of the Kosciusko Line. As such, the involved transactions will not result in any current shipper on the Kosciusko Line or GYRY's line losing access to rail service or experiencing a reduction in transportation options.

Therefore, a finding of a lack of market power is proper. See Gulf & Ohio Railways Holding Co., Inc., H Peter Claussen and Linda C. Claussen – Continuance in Control Exemption – Chattahoochee & Gulf Railroad Co., Inc., FD 34299 (STB served May 16, 2003).

II. NO LABOR PROTECTION PERMITTED.

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. Section 11326(c), however, does not provide for labor protection for transactions under §§ 11324 and 11325 that involve only Class III rail carriers. This transaction involves NCMRRA becoming a Class III carrier while also controlling another Class III carrier. Accordingly, the Board may not impose labor protective conditions here because both of the carriers involved are Class III rail carriers.

III. ENVIRONMENTAL REVIEW IS NOT NECESSARY.

Under 49 CFR § 1105.6(2)(i), no environmental documentation need be prepared for a control transaction that will not cause any significant changes in carrier operations. NCMRRA's continuance in control of the Kosciusko Line, upon NCMRRA becoming a class III carrier, is simply a change in ownership of the Kosciusko Line and the change in ownership will not lead to significant changes in rail operations or traffic volumes. GYRY's rail service will continue the status quo. As such, the threshold criteria for environmental documentation will not be met, and no such documentation is required.

Similarly, this proceeding is exempt from historic review under 49 CFR §1105.8.(b)(1) because the transaction involves the sale, lease, or transfer of a rail line for the purpose of continued

rail operations where further STB approval is required to abandon any service and there are no plans to dispose of or alter properties subject to STB jurisdiction that are 50 years old or older.

EXPEDITED CONSIDERATION REQUESTED

As the Board is aware, NCMRRA original sought authority for the transactions proposed in FD 36182 and this proceeding over a month ago.⁶ As such, an extended review period could adversely impact continued operations. Accordingly, NCMRRA respectfully requests that the Board expedite this matter and issue a decision as soon as practicable. The Board has granted expedited review in similar situations where a petitioner has sought continuance in control authority. See Chattahoochee Bay.

CONCLUSION

For the reasons stated herein, NCMRRA respectfully requests that the Board expeditiously grant the Petition for NCMRRA to control GRYR and itself once it becomes a rail carrier.

Respectfully submitted,



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October 19, 2018

Attorneys for North Central Mississippi
Regional Railroad Authority

⁶ The Parties propose to consummate any control authority granted in this Petition as soon as possible and concurrent with any authority authorized in FD 36182.

**BEFORE THE
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VERIFICATION

VERIFICATION

I, Larry Hart, hereby verify under penalty of perjury on behalf of North Central Mississippi Regional Railroad Authority and Grenada Railway, LLC that to the best of my knowledge the foregoing petition for exemption is true and correct. Further, I certify that I am qualified and authorized to make such verification on behalf of North Central Mississippi Regional Railroad Authority and Grenada Railway, LLC in connection with this proceeding before the Surface Transportation Board.

Executed this 17th day of October 2018



Larry Hart
Chairman – Executive Committee
North Central Mississippi Regional Railroad Authority

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**EXHIBIT A
MAP**

