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Surface Transportation Board

[Docket No. FD 36084]

West Branch Intermediate Holdings, LLC and Continental Rail LLC—Acquisition of Control Exemption—Cimarron Valley Railroad, L.C., Clarkdale Arizona Central Railroad, L.C., Wyoming and Colorado Railroad Company, Inc.

West Branch Intermediate Holdings, LLC (West Branch) and Continental Rail LLC (Continental) have filed a verified notice of exemption pursuant to 49 C.F.R. § 1180.2(d)(2), for West Branch to acquire control of, and for Continental to manage, the following Class III rail carriers: Cimarron Valley Railroad, L.C. (Cimarron), Clarkdale Arizona Central Railroad, L.C. (Clarkdale), and Wyoming and Colorado Railroad Company, Inc. (WYCO).¹ David L. Durbano (Durbano) commonly controls these railroads now as well as a fourth Class III carrier, Southwestern Railroad, Inc. (Southwestern).² The applicants have submitted to the Board a letter of intent

¹ West Branch currently controls another Class III carrier, Delta Southern Railroad, Inc. (Delta), and it will continue to do so after it consummates its acquisition of Cimarron, Clarkdale, and WYCO.

² The applicants do not intend to acquire control of Southwestern. Instead, West Branch will acquire certain assets of Southwestern through a newly formed subsidiary, New Mexico Central Railroad, LLC (NMCR). On the same day the applicants filed their verified notice in this docket, NMCR filed a verified notice of exemption under 49 C.F.R. § 1150.31 to acquire and operate those Southwestern assets. See N.M. Cent. R.R.—Acquis. & Operation Exemption—Sw. R.R., Whitewater Division, Docket No. FD 36085. Concurrently, West Branch and Continental filed a verified notice of exemption under 49 C.F.R. § 1180.2(d)(2) for West Branch to acquire and for Continental to manage NMCR upon NMCR's becoming a Class III carrier. See W. Branch Intermediate Holdings & Cont'l Rail—Continuance in Control Exemption—N. M. Cent. R.R., Docket No. FD 36087.

concerning the transaction in this docket and will submit a final Purchase and Sale Agreement once negotiations are complete and the agreement is executed.³

The applicants certify that: (1) the carriers that are the subject of this notice do not connect with each other, Delta, or NMCR; (2) this transaction is not part of a series of anticipated transactions that would connect these rail carriers with each other; and (3) the transaction does not involve a Class I carrier. The proposed transaction is therefore exempt from the prior approval requirements of 49 U.S.C. § 11323 pursuant to 49 C.F.R. § 1180.2(d)(2).

The earliest the transaction could be consummated is February 16, 2017, the effective date of the exemption (30 days after the verified notice was filed). The parties expect to consummate the transaction on or about February 17, 2017.

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. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III 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 to stay must be

³ The applicants filed their letter of intent under seal and have moved that the Board issue a protective order governing access to the confidential materials. That motion is being addressed separately.

filed by February 9, 2017 (at least seven days before the exemption becomes effective).

An original and ten copies of all pleadings, referring to Docket No. FD 36084, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on: John D. Heffner, Strasburger & Price, LLP, 1025 Connecticut Ave., N.W., Suite 717, Washington, DC 20036.

Board decisions and notices are available on our website at “WWW.STB.GOV.”

Decided: January 30, 2017.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.