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Surface Transportation Board

[Docket No. FD 36085]

New Mexico Central Railroad, LLC—Acquisition and Operation Exemption—
Southwestern Railroad, Inc., Whitewater Division

New Mexico Central Railroad, LLC (NMCR),¹ a noncarrier, has filed a verified notice of exemption under 49 C.F.R. § 1150.31 to acquire and operate certain lines of railroad in New Mexico (the Lines) collectively referred to as the Whitewater Division, currently operated and owned or leased by Southwestern Railroad, Inc. (Southwestern). In particular, NMCR will acquire Southwestern's leasehold interest in a line between Deming (MP 1134) and Rincon (MP 1080) and ownership interest in lines: between Deming (MP 0.0) and Peruhill (MP 5+3,763 feet); between Peruhill (MP 5+3,763 feet) and Whitewater (MP 30+2,972 feet); between Whitewater (near MP 30+2,972 feet) and the Tyrone Industrial Spur at Burro Mountain Jct. (near MP 33+5,256 feet); between Whitewater (MP 0+0750 feet) and Santa Rita (MP 16+1,500 feet); and between Hannover, Jct. (MP 14+1,345.4 feet) and the connection line at the Fierro Industrial Spur at the Sharon Steel Plant (near MP 6+1,804 feet). The total

¹ NMCR is a newly established entity owned by West Branch Intermediate Holdings, LLC (West Branch), and managed by Continental Rail LLC (Continental). West Branch currently controls an existing Class III carrier, Delta Southern Railroad, Inc. (Delta).

Southwestern mileage NMCR will acquire (by purchase or lease) and operate is approximately 116 miles.²

On the same day NMCR filed its verified notice of exemption, West Branch and Continental also filed a verified notice of exemption in West Branch Intermediate Holdings & Continental Rail—Continuance in Control Exemption—New Mexico Central Railroad, Docket No. FD 36087, for West Branch to acquire and for Continental to manage NMCR upon NMCR's becoming a Class III carrier.³

NMCR has executed a letter of intent for it to purchase the Lines. NMCR and Southwestern are currently negotiating a purchase and sale agreement governing the purchase of the Lines as well as certain other assets. The parties expect to reach an agreement shortly, which NMCR states will not contain an interchange agreement.

NMCR certifies that its projected annual revenues resulting from the transaction will not result in its becoming a Class I or Class II rail carrier. NMCR notes, however, that its annual operating revenues will exceed \$5 million. Accordingly, in compliance with 49 C.F.R. § 1150.32(e), NMCR submitted a letter on December 16, 2016, certifying that it posted the required 60-day labor notice of this transaction at the Southwestern employees' workplace at Deming.

² Southwestern also leases and operates a BNSF Railway Company (BNSF) line known as the Carlsbad Division, which consists of approximately 227.6 miles of railroad linking Clovis, Carlsbad, and Loving, N.M. Southwestern recently petitioned for an exemption to discontinue service over the Carlsbad Division. See Sw. R.R.—Discontinuance of Serv. Exemption—in Curry, Roosevelt, Chaves & Eddy Ctys., N.M., AB 1251X (filed Jan. 17, 2017).

³ In Docket No. FD 36084, West Branch and Continental have invoked the class exemption at 49 C.F.R. § 1180.2(d)(2) for West Branch to acquire control and for Continental to manage the following Class III rail carriers: Cimarron Valley Railroad, L.C., Clarksdale Arizona Central Railroad, L.C., and Wyoming and Colorado Railroad Company, Inc.

NMCR states that the notice was not served on the national offices of labor unions with employees who work on the affected lines because there are no unionized employees employed by Southwestern.

The earliest the transaction could be consummated is February 16, 2017, and the parties expect to consummate the transaction at that time.

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 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.

According to NMCR, this action is categorically excluded from environmental review under 49 C.F.R. § 1105.6(c).

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Decided: January 30, 2017.

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