

DO

FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36097]

Nebraska Northwestern Railroad, Inc. and Nebkota Railway, Inc.—Intra-Corporate
Family Transaction Exemption

Nebraska Northwestern Railroad, Inc. (NNW) and Nebkota Railway, Inc. (NRI) (collectively, the Parties) have jointly filed a verified notice of exemption under 49 C.F.R. § 1180.2(d)(3) for an intra-corporate family transaction. NNW and NRI, both Class III rail carriers, are controlled by John D. Nielsen (Mr. Nielsen), an individual.¹

Under the proposed transaction, NRI will be merged with and into NNW with NNW being the surviving corporate entity. The Parties state that the purpose of the transaction is to streamline administration, enhance the financial conditions of the two rail carriers that are already largely integrated, and consolidate the two into a single company. According to the Parties, the proposed merger would eliminate the preparation of separate tax returns and the need to maintain separate corporate records. In addition, there would be certain operational and other record-keeping advantages that would be gained from the merger.

The Parties state that the proposed merger agreement between NNW and NRI contains no provision or agreement that would limit NNW's interchange with a third-

¹ See John D. Nielsen—Control Exemption—Nebkota Ry., FD 35759 (STB served Nov. 25, 2013). According to the Parties, Mr. Nielsen does not have a controlling interest in any common carriers other than NNW and NRI.

party connecting carrier.²

Unless stayed, the exemption will be effective on May 3, 2017 (30 days after the verified notice was filed). The Parties state that they intend to consummate the proposed transaction on or after that date.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 C.F.R. § 1180.2(d)(3). The Parties state that the transaction will not result in adverse changes in service levels, significant operational changes, or any change in the competitive balance with carriers outside the corporate family.

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 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

² An unexecuted draft copy of the agreement was filed with the notice of exemption.

exemption. Petitions for stay must be filed no later than April 26, 2017 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36097, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on Audrey L. Brodrick, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606.

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

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

Decided: April 11, 2017.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.