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SERVICE DATE – LATE RELEASE APRIL 13, 2018

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36180

HGS RAILWAY HOLDINGS, INC.—CONTINUANCE IN CONTROL EXEMPTION—HGS-FCR, LLC AND HGS-ATN, LLC

Docket No. FD 36173

ALABAMA & TENNESSEE RIVER RAILWAY—LEASE & OPERATION EXEMPTION—HGS-ATN, LLC

Docket No. FD 36174

FULTON COUNTY RAILWAY, LLC—LEASE & OPERATION EXEMPTION—HGS-FCR, LLC

Docket No. FD 36175

HGS-ATN, LLC—ACQUISITION EXEMPTION—CSX TRANSPORTATION, INC.

Docket No. FD 36176¹

HGS-FCN, LLC—ACQUISITION EXEMPTION—CSX TRANSPORTATION, INC.

Decided: April 13, 2018

On April 4, 2018, HGS Railway Holdings, Inc. (HGS Holdings), filed a verified notice of exemption in Docket No. FD 36180 pursuant to 49 C.F.R. § 1180.2(d)(2) to continue in control of HGS-ATN, LLC (HGS-ATN), and HGS-FCR, LLC (HGS-FCR) (collectively, the LLCs), both non-carriers, upon HGS-ATN and HGS-FCR becoming Class III railroads. HGS Holdings states that the LLCs were formed for the purpose of acquiring certain rail lines from CSX Transportation, Inc. (CSXT). On March 29, 2018, the LLCs individually filed for authority to acquire rail lines from CSXT: HGS-ATN for approximately 121 miles of rail line located in Alabama, and HGS-FCR for approximately 55 miles of rail line located in Georgia. See HGS-ATN Verified Notice, HGS-ATN, LLC—Acquis. Exemption—CSX Transp., Inc., FD 36175;

¹ These proceedings are not consolidated but are being addressed in the same decision for administrative convenience.

HGS-FCR Verified Notice, HGS-FCR, LLC—Acquis. Exemption—CSX Transp., Inc., FD 36176. The LLCs would become Class III carriers upon consummation of the acquisition from CSXT. In two additional related notices of exemption, filed on March 22, 2018, Alabama and Tennessee River Railway (ATN) and Fulton County Railway, LLC (FCR), sought authority to lease and operate over the Alabama and Georgia lines, respectively. ATN and FCR each state that they entered into an agreement with CSXT in 2004 for the lease of their respective rail line. As part of the LLCs' acquisitions of the rail lines from CSXT, CSXT plans to assign the ATN and FCR 2004 leases to HGS-ATN and HGS-FCR, respectively. ATN and FCR would continue to operate over the Alabama and Georgia lines, respectively. See Ala. & Tenn. River Ry. Verified Notice, Ala. & Tenn. River Ry.—Lease & Operation Exemption—HGS-ATN, LLC, FD 36173; Fulton Cty. Ry. Verified Notice, Fulton Cty. Ry.—Lease & Operation Exemption—HGS-FCR, LLC, FD 36174.²

HGS Holdings' notice of exemption for continuance in control raises questions about the overall series of related transactions that must be addressed before the Board can properly evaluate the record and take further action in these matters. The Board's regulations state that a transaction is exempt if it falls into one of several categories. The relevant category here is found at 49 C.F.R. § 1180.2(d)(2):

Acquisition or continuance in control of a nonconnecting carrier or one of its lines where (i) the railroads would not connect with each other or any railroads in their corporate family, (ii) the acquisition or continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family. . .

HGS Holdings states that "the involved transaction is not part of a series of anticipated transactions that would connect the rail lines to be owned by HGS-ATN and HGS-FCR." HGS Ry. Holdings Verified Notice at 4, HGS Ry. Holdings, Inc.—Continuance in Control Exemption—HGS-FCR, LLC & HGS-ATN, LLC, FD 36180. However, it is not clear from the record whether this statement includes the entire HGS Holdings corporate family. There appears to be some relationship between HGS Holdings and OmniTRAX Holdings Combined, Inc. (OmniTRAX), a non-carrier holding company that controls approximately 18 Class III rail carrier subsidiaries. See OmniTRAX Holdings Combined, Inc.—Acquis. of Control Exemption—Ala. & Tenn. River Ry., FD 36032, slip op. at 1 (STB served July 14, 2016). Not only do the two companies (and the LLCs, ATN, and FCR) share an address, but it also appears that Kevin Shuba is the president/chief executive officer of HGS Holdings and OmniTRAX. Compare OmniTRAX Verified Notice at 33, OmniTRAX Holdings Combined, Inc.—Continuance in Control Exemption—Central Tex. & Colo. River Ry., FD 36019, with HGS Ry. Holdings Verified Notice at 10, HGS Ry. Holdings, Inc.—Continuance in Control Exemption—HGS-FCR, LLC & HGS-ATN, LLC, FD 36180; see also Leadership: The Engine of Our

² On March 22, 2018, ATN and FCR each petitioned the Board for a waiver from the requirements of 49 C.F.R. § 1150.42(e). The requests for waiver will be addressed in a separate decision. In addition, on March 28, 2018, ATN and FCR each filed a supplement to the record in its respective docket addressing interchange commitments.

Company, OmniTRAX, <http://omnitrax.com/our-company/leadership/> (last visited April 10, 2018). Based on this record, the Board cannot determine if HGS Holdings, OmniTRAX, or OmniTRAX's corporate owners, is the appropriate entity to seek the exemption.³

When a notice raises issues of concern to the Board, that proceeding may be held in abeyance to allow the applicant to provide an explanation through the filing of supplemental information. N. Shore R.R.—Acquis. & Operation Exemption—PPL Susquehanna, LLC, FD 35377, slip op. at 1 (STB served June 3, 2010); Cent. Gulf Acquis. Co.—Acquis. & Operation Exemption—CG Ry., FD 36007, slip op. at 2 (STB served May 3, 2016). Here, HGS Holdings' verified notice of exemption to continue in control of the LLCs will be held in abeyance pending clarification of the issues surrounding the HGS Holdings corporate family, as well as the relationship between HGS Holdings and OmniTRAX, and whether that relationship is direct or through some common corporate parent or parents. HGS Holdings will be directed to provide supplemental information in Docket No. FD 36180: (1) to better define the HGS Holdings corporate family;⁴ and (2) based on that definition of the HGS Holdings corporate family, explain whether HGS Holdings' continuance in control exemption fully complies with all of the requirements at 49 C.F.R. § 1180(d)(2)(i) and (ii).

Until these issues are resolved, the four related notices of exemption to acquire and operate over the lines of railroad in Georgia and Alabama in Docket Nos. FD 36173, FD 36174, FD 36175, and FD 36176 will similarly be held in abeyance. The four dockets concern transactions that depend, to some extent, on the continuation of control authority sought in Docket No. FD 36180. The authority sought would not be appropriate unless and until the proper party receives Board authority to continue in control of the LLCs. See Anthony Macrie—Continuance in Control Exemption—N.J. Seashore Lines, Inc., FD 35296 et al., slip op. at 2 (STB served Sept. 25, 2009).

It is ordered:

1. The Notice in Docket No. FD 36180 is held in abeyance pending further decision of the Board, and HGS Holdings is directed to file supplemental information as described above.

2. The Notices in Docket Nos. FD 36173, FD 36174, FD 36175, and FD 36176 are held in abeyance pending resolution of the outstanding issues in Docket No. 36180 and further decision of the Board.

³ As described in the July 2016 OmniTRAX Holdings decision, OmniTRAX states that it "is owned by three separate and independent corporations, none of which possess a controlling interest in OmniTRAX." OmniTRAX Holdings, FD 36032, slip op. at 2, n.4.

⁴ See 49 U.S.C. § 11323(b)(2), (c) (a transaction by a "person affiliated with a rail carrier" that has the effect of putting the person and rail carrier in control of another rail carrier requires the approval and authorization of the Board).

3. This decision is effective on its date of service.

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