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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35168]

Progressive Rail Inc.–Intra-Corporate Family Transaction Exemption–Airlake Terminal
Railway Company, LLC

Progressive Rail Inc. (PGR), a Class III rail common carrier, has filed a verified notice of exemption under 49 CFR 1180.2(d)(3) for a transaction within a corporate family. The transaction allows PGR to remain in control of Airlake Terminal Railway Company, LLC (ATRC), also a Class III rail carrier.¹ PGR acknowledges that its authority to remain in control of ATRC should have been sought at the time ATRC obtained acquisition authority from the Board. PGR also controls Central Midland Railway Company, a Class III rail carrier, and has Board authority to control Montgomery Short Line LLC upon its becoming a Class III rail carrier.²

The transaction is expected to be consummated on December 12, 2008, the effective date of this exemption (30 days after the exemption was filed).

¹ See Airlake Terminal Railway Company–Acquisition and Operation Exemption–Rail Line of Empire Builder Investments Incorporated and Progressive Rail, Incorporated, STB Finance Docket No. 34295 (STB served Dec. 27, 2002).

² See Progressive Rail Inc.–Acquisition of Control Exemption–Central Midland Railway Company, STB Finance Docket No. 35051 (STB served July 5, 2007), and Progressive Rail Inc.–Continuance in Control Exemption–Montgomery Short Line LLC, STB Finance Docket No. 35092 (STB served Nov. 9, 2007).

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). According to PGR, the transaction will not result in adverse changes in service levels, significant operational changes, or changes 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 sections 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 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 transaction. Petitions for stay must be filed no later than December 5, 2008 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35168, 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 Michael J. Barron, Jr., Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606.

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“WWW.STB.DOT.GOV.”

Decided: November 20, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan

Acting Secretary