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SERVICE DATE – AUGUST 15, 2019

DO

FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36288]

OmniTRAX Holdings Combined, Inc. and HGS Railway Holdings, Inc.—Continuance in Control Exemption—Cleveland & Cuyahoga Railway, LLC

OmniTRAX Holdings Combined, Inc. (OmniTRAX), and HGS Railway Holdings, Inc. (HGS), both noncarriers, (collectively, Applicants) have filed a verified notice of exemption under 49 C.F.R. § 1180.2(d)(2) to continue in control of Cleveland & Cuyahoga Railway, LLC (CCR) upon CCR's becoming a Class III rail carrier.

This transaction is related to a concurrently filed verified notice of exemption in Cleveland & Cuyahoga Railway—Change in Operator Exemption Containing Interchange Commitment—Cleveland Commercial Railroad, Docket No. FD 36287. In that proceeding, CCR seeks an exemption under 49 C.F.R. § 1150.31 to acquire by assignment from Cleveland Commercial Railroad Company, LLC (Cleveland Commercial): (1) a lease agreement between Wheeling & Lake Erie Railway Company and Cleveland Commercial; and (2) a lease agreement between Norfolk Southern Railway Company and Cleveland Commercial. Upon consummation, CCR will replace Cleveland Commercial as the lessee and operator of approximately 35.7 miles of railroad line as follows: (1) a 10.4-mile rail line located in Cuyahoga County, Ohio, between milepost 15.5 at Falls Junction in Glenwillow, and milepost 5.1 in Cleveland; and (2) a

25.3-mile rail line located in Cuyahoga and Portage Counties, Ohio, between milepost RH 2.2+/- in Cleveland, and milepost RH 27.5+/- in Aurora (collectively, the Lines).

The earliest this transaction may be consummated is August 30, 2019.<sup>1</sup>

Applicants will continue in control of CCR upon CCR's becoming a Class III rail carrier. According to Applicants, OmniTRAX currently controls 18 Class III railroads and HGS currently controls two Class III railroads, and the properties of the rail carriers controlled by OmniTRAX and HGS are located in the following states: Alabama, California, Colorado, Florida, Georgia, Illinois, Kansas, Nebraska, Ohio, Oklahoma, Texas, and Washington.<sup>2</sup>

Applicants state that: (1) the Lines to be operated by CCR do not connect with any other railroads operated by carriers controlled by OmniTRAX or HGS; (2) the

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<sup>1</sup> The verified notices in Docket Nos. FD 36287 and FD 36288 were initially submitted on April 1, 2019. On April 15, 2019, CCR requested that the Board hold both dockets in abeyance until it could complete negotiations regarding the NS Line, and the request was granted. On July 16, 2019, CCR notified the Board that it had completed its negotiations and requested that the Board process the verified notices in both dockets. On July 31, 2019, CCR filed a supplement in Docket No. FD 36287 clarifying that that proceeding should be a change in operator exemption and providing the most recent version of the lease agreement. In light of that supplement, July 31 is deemed the filing date of the change in operator exemption in Docket No. FD 36287, and its effective date is August 30, 2019. Because this continuance in control exemption is exercised only when the change in operator transaction is consummated, its effective date likewise will be August 30, 2019.

<sup>2</sup> Specifically, OmniTRAX currently controls: Alabama & Tennessee River Railway, LLC; Brownsville & Rio Grande International Railway, LLC; Chicago Rail Link, LLC; Fulton County Railway, LLC; Georgia & Florida Railway, LLC; Georgia Woodlands Railroad, LLC; Great Western Railway of Colorado, LLC; Illinois Railway, LLC; Kettle Falls International Railway, LLC; Manufacturers' Junction Railway, LLC; Nebraska, Kansas & Colorado Railway, LLC; Newburgh & South Shore Railroad, LLC; Northern Ohio & Western Railway, LLC; Panhandle Northern Railway, LLC; Peru Industrial Railroad, LLC; Sand Springs Railway Company; Stockton Terminal and Eastern Railroad; and Central Texas & Colorado River Railway LLC. HGS currently controls HGS-ATN, LLC and HGS-FCR, LLC.

continuance in control is not part of a series of anticipated transactions that would connect the Lines with any other railroads in the OmniTRAX or HGS corporate families; and (3) the transaction does not involve a Class I rail carrier. Therefore, the proposed transaction is exempt from the prior approval requirements of 49 U.S.C. § 11323. See 49 C.F.R. § 1180.2(d)(2).

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. However, 49 U.S.C. § 11326(c) does not provide for labor protection for transactions under 49 U.S.C. §§ 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 effectiveness of the exemption. Petitions to stay must be filed no later than August 23, 2019.

All pleadings, referring to Docket No. FD 36288, must be filed with the Surface Transportation Board either via e-filing or in writing addressed to 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Applicants' representative, Karl Morell, Karl Morell and Associates, 440 1st Street, N.W., Suite 440, Washington, DC 20001.

According to Applicants, this action is excluded from environmental review under 49 C.F.R. § 1105.6(c) and from historic preservation reporting requirements under 49 C.F.R. § 1105.8(b)(1).

Board decisions and notices are available at [www.stb.gov](http://www.stb.gov).

Decided: August 12, 2019.

By the Board, Allison C. Davis, Director, Office of Proceedings.