



FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35691]

Western Carolina Railway Service Corporation, Steven C. Hawkins and Cheryl R. Hawkins—Continuance in Control Exemption—Aiken Railway Company, LLC

Western Carolina Railway Service Corporation (WCRS) and Steven C. Hawkins and Cheryl R. Hawkins (the Hawkins) (collectively, Applicants) have filed a verified notice of exemption pursuant to 49 CFR 1180.2(d)(2) to continue in control of noncarrier Aiken Railway Company, LLC (AIKR), upon AIKR's becoming a Class III rail carrier.

This transaction is related to a notice of exemption filed on October 31, 2012, in which AIKR seeks to lease from Norfolk Southern Railway Company and to operate two segments of rail line as follows: (1) the SA Line extending 12.45 miles between milepost SA 63.45 at or near Warrentonville, S.C., and milepost SA 51.0 at or near Oakwood, S.C.; and (2) the AB Line extending 6.45 miles between milepost AB 23.75 at or near Aiken, S.C., and milepost AB 17.3 at or near Seclay, S.C. Aiken Ry.—Lease and Operation Exemption—Lines of Norfolk S. Ry. in Aiken Cnty., S.C., Docket No. FD 35665.

The Hawkins, noncarrier individuals, own a controlling share of voting stock in WCRS, a noncarrier corporation. In turn, WCRS wholly owns Greenville & Western Railway Company, LLC, a Class III rail carrier.

The transaction may be consummated on or after December 5, 2012 (30 days after the notice of exemption was filed).¹ The effective date of the related lease and operation exemption in Docket No. FD 35665 is November 30, 2012. WCRS and the Hawkins are reminded that they are not authorized to control AIKR until the continuance in control exemption becomes effective.

Applicants represent that: (1) the lines to be acquired by AIKR do not connect with any railroads in the corporate family; (2) the transaction is not part of a series of anticipated transactions that would connect the lines with other railroads in the corporate family; and (3) the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 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. 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 of 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

¹ Applicants requested that the Board expedite this transaction by making the effective date of the exemption December 1, 2012, to coincide with AIKR's proposed date to commence operations. Applicants have not, however, justified moving the effective date up four days.

at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed no later than November 28, 2012 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35691, 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 J. Marshall Lawson, 4840 Forest Drive, Suite 6B, PMB-295, Columbia, SC 29206-4810.

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Decided: November 16, 2012.

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

Derrick A. Gardner

Clearance Clerk

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