

DEPARTMENT OF TRANSPORTATION**Surface Transportation Board**

[STB Finance Docket No. 33965]

Kern W. Schumacher and Morris H. Kulmer—Continuance in Control Exemption—V and S Railway, Inc.

Kern W. Schumacher and Morris H. Kulmer, individuals (collectively applicants), have filed a verified notice of exemption to continue in control of the V and S Railway, Inc. (V&S), upon V&S's becoming a Class III railroad.

The transaction was scheduled to be consummated on or after November 28, 2000.

This transaction is related to STB Finance Docket No. 33964, *V and S Railway, Inc.—Acquisition and Operation Exemption—Central Kansas Railway, L.L.C.*, wherein V&S seeks to acquire a line of railroad approximately 41 miles long in Harper and Barber Counties, KS.

Applicants currently indirectly control two existing Class III railroads: Tulare Valley Railroad Company, operating in the State of California; and Kern Valley Railroad Company, operating in the State of Colorado.¹

¹ Kern Valley Railroad Company's acquisition and operation of a line of railroad in Colorado was

Applicants state that (i) the rail line of V&S will not connect with any other lines of railroads under their control or within their corporate family, (ii) the transaction is not part of a series of transactions that would connect the railroads with each other or any railroad in applicants' corporate family, and (iii) the transaction does not involve a Class I 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 sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction

previously exempted by the Board in *Kern Valley Railroad Company—Acquisition and Operation Exemption—Trinidad Railway, Inc.*, STB Finance Docket No. 33956 (STB served Nov. 21, 2000). That line of railroad is the subject of a notice of exemption for abandonment in *Trinidad Railway, Inc.—Abandonment Exemption—in Las Animas County, CO*, STB Docket No. AB-573X (STB served Sept. 21, 2000). On November 28, 2000, the Rails to Trails Conservancy filed a petition to revoke the exemption in STB Finance Docket No. 33956 and in the alternative a petition to dismiss the notice of exemption in STB Docket No. AB-573X.

involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

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.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33965, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Fritz R. Kahn, Esq., 1920 N Street, NW., 8th Floor, Washington, DC 20036-1601.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: November 29, 2000.

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

Vernon A. Williams,

Secretary.

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