

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Issued on: October 6, 2004.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 04-23078 Filed 10-13-04; 8:45 am]

BILLING CODE 4910-59-C

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34543]

Patrick D. Broe and OmniTRAX, Inc.—Continuance in Control Exemption—Fulton County Railway, LLC

Patrick D. Broe (Mr. Broe) and OmniTRAX, Inc. (OmniTRAX) (collectively, applicants) have filed a verified notice of exemption to continue in control of Fulton County Railway, LLC (FCR), upon FCR's becoming a Class III rail carrier.

The transaction is scheduled to be consummated on or shortly after October 15, 2004.

This transaction is related to a concurrently filed verified notice of exemption in STB Finance Docket No. 34542, *Fulton County Railway, LLC—Lease and Operation Exemption—CSX Transportation, Inc.*, wherein FCR¹ seeks to lease from CSX Transportation, Inc. (CSXT), and operate approximately 55 miles of rail lines that extend from: (1) milepost ANO 855.06, V.S. 3+30, at Fulco Junction, westerly to milepost ANO 858.72, V.S. 196+31; (2) milepost ANO 858.72, V.S. 196+31 northeasterly to milepost ANO 860.75, V.S. 304+70, at the northeast end of the line; and (3) V.S. 196+31 = V.S. 0+00 southwesterly to V.S. 208+94, at the southwest end of the line, through the Fulco Industrial Park, including the track in the Fulco Yard, and the appurtenant sidings, and industrial tracks, in Atlanta, GA.

Mr. Broe is a noncarrier individual who directly controls OmniTRAX, a noncarrier company. OmniTRAX currently controls nine Class III rail carriers operating in seven states: Chicago Rail Link, LLC (CRL); Georgia Woodlands Railroad, LLC (GWRC); Great Western Railway of Colorado, LLC (GWR); Great Western Railway of Iowa LLC (CBGR); Manufacturers' Junction Railway, LLC (MJ); Newburgh & South Shore Railroad Limited (NSR); Northern Ohio & Western Railway, LLC (NOW); Panhandle Northern Railroad, LLC

¹FCR, a Colorado Limited Liability Company, was formed for the purpose of leasing and operating certain rail lines owned by CSXT in Atlanta, GA.

(PNR); and Alliance Terminal Railroad, LLC (ATR).²

Applicants state that: (1) The rail lines operated by CRL, GWRC, GWR, CBGR, MJ, NSR, NOW, PNR and ATR do not connect with the rail lines being leased by FCR; (2) the continuance in control is not part of a series of anticipated transactions that would connect the rail lines being leased by FCR with any railroad in the OmniTRAX corporate family; and (3) neither FCR nor any of the carriers controlled by OmniTRAX are Class I rail carriers. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2). The purpose of the transaction is to reduce overhead expenses, coordinate billing, maintenance, mechanical and personnel policies and practices of its rail carrier subsidiaries and thereby improve the overall efficiency of rail service provided by the ten railroads.

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 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 transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34543, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Karl Morell, Of Counsel, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at www.stb.dot.gov.

Decided: October 7, 2004.

²CRL's lines are located in Illinois; GWRC's line is located in Georgia; GWR's lines are located in Colorado; CBGR's lines are located in Iowa; MJ's lines are located in Illinois; NSR's lines are located in Ohio; NOW's line is located in Ohio; PNR's line is located in Texas; and ATR's lines are located in Texas.

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

Vernon A. Williams,

Secretary.

[FR Doc. 04-23049 Filed 10-13-04; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34542]

Fulton County Railway, LLC—Lease and Operation Exemption—CSX Transportation, Inc.

Fulton County Railway, LLC (FCR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease from CSX Transportation, Inc. (CSXT), and operate approximately 55 miles of rail lines located in Atlanta, GA. The rail lines extend from: (1) Milepost ANO 855.06, V.S. 3+30, at Fulco Junction, westerly to milepost ANO 858.72, V.S. 196+31; (2) milepost ANO 858.72, V.S. 196+31 northeasterly to milepost ANO 860.75, V.S. 304+70, at the northeast end of the line; and (3) V.S. 196+31 = V.S. 0+00 southwesterly to V.S. 208+94, at the southwest end of the line, through the Fulco Industrial Park, including the track in the Fulco Yard, and the appurtenant sidings, and industrial tracks.

This transaction is related to STB Finance Docket No. 34543, *Patrick D. Broe and OmniTRAX, Inc.—Continuance in Control Exemption—Fulton County Railway, LLC.*, wherein Patrick D. Broe and OmniTRAX, Inc., have filed a notice of exemption to continue in control of FCR upon its becoming a Class III rail carrier.

FCR certifies that its projected revenues as a result of this transaction will not result in FCR's becoming a Class II or Class I rail carrier, and further certifies that its projected annual revenues will not exceed \$5 million.

The transaction is expected to be consummated on or shortly after October 15, 2004.

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. 34542, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Karl Morell, Of Counsel, Ball Janik LLP, 1455 F