

trading activity and auction volume for such ETP. This structure is designed to reward the issuer of an ETP for such additional revenue brought to the Exchange as CADV increases, which the Exchange believes creates a more equitable and appropriate fee structure for issuers based on the revenue and expenses associated with listing ETPs on the Exchange. With this in mind, the Exchange believes that that it is reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and other charges to charge lower fees for ETPs with a higher CADV.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. With respect to the proposed elimination of Auction Fee Listings for ETPs, the Exchange does not believe that the changes burden competition, but instead, enhance competition, as it is intended to increase the revenue of the Exchange's listing program in order to better compete. Further, the standard fees that will apply on a going forward basis are directly related to the amount of revenue that the Exchange receives from ETPs listed on the Exchange. As such, the proposal is a competitive proposal designed to enhance pricing competition among listing venues and implement pricing for listings that better reflects the revenue and expenses associated with listing ETPs on the Exchange.

The Exchange does not believe the proposed amendments would burden intramarket competition as they would be available to all issuers uniformly.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>16</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>17</sup> At any time within 60 days of the filing of the proposed rule

change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CboeBZX-2020-082 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-CboeBZX-2020-082. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from

comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBZX-2020-082 and should be submitted on or before December 3, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2020-24965 Filed 11-10-20; 8:45 am]

**BILLING CODE 8011-01-P**

## **SURFACE TRANSPORTATION BOARD**

[Docket No. FD 36434]

### **The Elk River Railroad, Inc.—Merger Exemption—The Buffalo Creek Railroad Company**

On August 27, 2020, The Elk River Railroad, Inc. (TERRI), a Class III rail carrier, filed a petition under 49 U.S.C. 10502 seeking an exemption from the prior approval requirements of 49 U.S.C. 11323-25 to authorize the merger of The Buffalo Creek Railroad Company (BCR), a Class III rail carrier, with and into TERRI, which is the surviving corporation. Because the merger took place in 1995, TERRI is seeking after-the-fact authority and asks that the requested exemption be granted with retroactive effect. For the reasons discussed below, the Board will grant TERRI's petition for an exemption authorizing its merger with BCR but will deny the request to make the exemption retroactive.

### **Background**

According to the petition, William T. Bright (Bright) is the sole owner of TERRI, a West Virginia corporation that acquired a rail line previously owned and operated by CSX Transportation, Inc.<sup>1</sup> (Pet. 1-3.) In 1992, BCR, at that time a noncarrier also owned by Bright, acquired the rail line of the Buffalo Creek and Gauley Railroad Company (BC&G) pursuant to authority granted by the Board's predecessor, the Interstate Commerce Commission (ICC),<sup>2</sup> and

<sup>18</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> See *Elk River R.R.—Lease, Operation & Acquis. Exemption—Line of CSX Transp., Inc.*, FD 31497 (ICC served July 26, 1989) (authorizing TERRI to acquire a line of railroad between milepost 6.2, at or near Gilmer, and milepost 67.2, at or near Hartland, in Gilmer, Braxton, and Clay Counties, W. Va.).

<sup>2</sup> See *Buffalo Creek R.R.—Acquis. & Operation Exemption—Buffalo Creek & Gauley R.R.*, FD 31968 (ICC served Feb. 11, 1992) (authorizing BCR to acquire from BC&G an 18.6-mile rail line extending from a junction point at Dundon (milepost 62.2 on

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>17</sup> 17 CFR 240.19b-4(f).

Bright obtained authority to control BCR as a rail carrier.<sup>3</sup> (Pet. 3–4.)

TERRI states that in December 1995, “[d]ue to an inadvertent oversight and lack of knowledge that additional agency approval was necessary,” BCR was merged with and into TERRI, the surviving corporation, without prior agency authorization as required under 49 U.S.C. 11323–25. (Pet. 4–5.) TERRI explains that, had it “been aware of its obligation to obtain additional agency authorization, it would have timely filed a verified notice of exemption under 49 CFR 1180.2(d)(3) prior to consummating the merger.” (*Id.* at 5.) In its petition, TERRI disclaims any intention “to flout the law,” as it “only became aware of the need for such authorization as part of current Counsel’s due diligence relating to the imminent and expected sale” of BC&G to the State of West Virginia. (*Id.*) To address this oversight, TERRI seeks expedited consideration of its petition under 49 U.S.C. 10502 for an exemption from the prior approval requirements of 49 U.S.C. 11323–25 to authorize its 1995 merger with BCR and seeks retroactive effect.

#### Discussion and Conclusions

Under 49 U.S.C. 11323(a)(1), the merger of two rail carriers into one corporation for the ownership, management, or operation of the previously separately owned properties requires prior approval of the Board. When a transaction does not involve the merger or control of at least two Class I railroads, it is governed by 49 U.S.C. 11324(d). However, under 49 U.S.C. 10502(a), the Board must exempt a transaction or service from regulation upon finding that: (1) Regulation is not necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

Here, an exemption from the prior approval requirements of sections 11323–25 is consistent with section 10502(a). Detailed scrutiny of this transaction is not necessary to carry out the RTP here. An exemption from the application process would promote a fair and expeditious regulatory decision-

making process, minimize the need for Federal regulatory control, encourage honest and efficient management of railroads, and result in the expeditious handling of this proceeding. *See* 49 U.S.C. 10101(2), (9), (15). Other aspects of the RTP would not be adversely affected.

Regulation of this transaction is not needed to protect shippers from the abuse of market power.<sup>4</sup> At the time of the 1995 merger, TERRI and BCR already were commonly controlled by Bright, and indeed, as TERRI points out, the transaction likely would have qualified for the class exemption for transactions within a corporate family under 49 CFR 1180.2(d)(3) had it been timely sought. Moreover, the record indicates there has been no loss of rail competition, no adverse change in the competitive balance in the transportation market, and no change in the level of service to any shippers because, as TERRI explains in its petition, the BC&G rail line does not connect with another rail line other than TERRI’s at Dundon, W. Va., and has not carried any traffic in over twenty years. (Pet. 6.)

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, precludes the Board from imposing labor protection for Class III rail carriers receiving authority under sections 11324–25. Accordingly, the Board may not impose labor protective conditions here because TERRI and BCR were both Class III carriers at the time of the merger.

This transaction is categorically excluded from environmental review under 49 CFR 1105.6(c)(1) and from the historic reporting requirements under 49 CFR 1105.8(b).

As stated above, TERRI seeks an exemption with retroactive effect, arguing that its failure to obtain prior approval or an exemption for its merger with BCR was “an inadvertent oversight” and “was in no way intended to flout the law[.]” (Pet. 5.) Although the Board on occasion has granted authority retroactively,<sup>5</sup> it generally disfavors

retroactive grants of authority.<sup>6</sup> As TERRI provides no explanation as to why retroactive authority is needed, the Board declines to grant retroactive authority here.

*It is ordered:*

1. Under 49 U.S.C. 10502, the Board exempts from the prior approval requirements of 49 U.S.C. 11323–25 BCR’s merger with and into TERRI.

2. Notice of the exemption will be published in the **Federal Register**.

3. The exemption will be effective on the service date of this decision.

Decided: November 5, 2020.

By the Board, Board Members Begeman, Fuchs, and Oberman.

**Tammy Lowery**,  
Clearance Clerk.

[FR Doc. 2020–25016 Filed 11–10–20; 8:45 am]

**BILLING CODE 4915–01–P**

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## SUSQUEHANNA RIVER BASIN COMMISSION

### Grandfathering (GF) Registration Notice

**AGENCY:** Susquehanna River Basin Commission.

**ACTION:** Notice.

**SUMMARY:** This notice lists Grandfathering Registration for projects by the Susquehanna River Basin Commission during the period set forth in **DATES**.

**DATES:** October 1–31, 2020.

**ADDRESSES:** Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

**FOR FURTHER INFORMATION CONTACT:** Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: [joyler@srbc.net](mailto:joyler@srbc.net). Regular mail inquiries may be sent to the above address.

**SUPPLEMENTARY INFORMATION:** This notice lists GF Registration for projects, described below, pursuant to 18 CFR 806, subpart E for the time period specified above:

#### Grandfathering Registration Under 18 CFR Part 806, Subpart E

1. Danville Borough Municipal Authority—Public Water Supply System, GF Certificate No. GF–202010119, Danville Borough, Montour County, Pa.; Susquehanna River; Issue Date: October 13, 2020.

<sup>6</sup> *See, e.g., Ark.-Okla. R.R.—Acquis. & Operation Exemption—Okla.*, FD 36323, slip op. at 3 (STB served Sept. 19, 2019) (declining a request for retroactive authority and stating that the Board “generally disfavors retroactive grants of authority”).

the TERRI line; milepost 0 on the BC&G line) to Widen (milepost 18.6 on the BC&G line) in Clay County, W. Va.).

<sup>3</sup> *See Bright—Control Exemption—Buffalo Creek R.R.*, FD 31969, slip op. at 3 (ICC served Mar. 9, 1992) (granting an exemption for Bright to control BCR). Bright placed the stock of BCR in an independent voting trust before BCR acquired the BC&G line in order to avoid controlling BCR as a rail carrier before obtaining his ICC authority to do so. *See id.* at 1; (Pet. 3–4).

<sup>4</sup> Because the Board concludes that regulation is not needed to protect shippers from the abuse of market power, it is unnecessary to determine whether the proposed transaction is limited in scope. *See* 49 U.S.C. 10502(a).

<sup>5</sup> *See, e.g., Grand Elk R.R.—Acquis. of Incidental Trackage Rights Exemption—Norfolk S. Ry.*, FD 35187 (Sub-No. 1) et al., slip op. at 4 (STB served Nov. 20, 2017) (after having previously denied a request for retroactive authority, reopening the proceeding to make exemption retroactive in light of changed circumstances).