

Grenada Railroad, LLC; and Florida, Gulf & Atlantic Railroad, LLC. *See Macquarie Infrastructure Partners V GP, LLC—Control Exemption—Camp Chase Rail, LLC*, FD 36685 (STB served Apr. 7, 2023). G&A has also been authorized to directly control (and MIP GP, MIP V, and MIP Rail authorized to indirectly control) the Pioneer Valley Railroad Company. *See Macquarie Infrastructure Partners V GP, LLC—Control Exemption—Pioneer Valley R.R.*, FD 36720 (STB served Sept. 13, 2023).

Pursuant to a purchase agreement dated March 17, 2023, G&A has agreed to acquire 100% of the equity interests in NIRC. Upon consummation of this transaction, G&A would directly control NIRC, while MIP GP, MIP V, and MIP Rail would indirectly control NIRC. (Pet. 5.) According to the petition, NIRC owns 32.97 miles of rail line in Indiana, but has never conducted freight rail operations over the line. (*Id.* at 4.) CKIN (which is controlled by G&A) has leased and operated the NIRC line since 2004. (*Id.*) Currently, CKIN leases and operates 27.52 miles of line from NIRC because CKIN discontinued service over the remaining 5.45-mile segment in 2017. (*Id.*) Petitioners state that the 5.45-mile segment remains part of the national rail network, but there have not been any freight operations over that segment since at least 2015.<sup>2</sup>

In support of the petition, Petitioners assert that the transaction will bring G&A's financial strength and management expertise to NIRC, unite ownership and operation of the line in the same corporate family, and enhance NIRC's access to capital, thereby "facilitating future strategic investment decisions with respect to the line." (*Id.* at 7.) Petitioners state that the transaction will not affect operations or service to customers because CKIN already serves those customers under its lease agreement with NIRC.<sup>3</sup> (*Id.* at 11–12.)

<sup>2</sup> Petitioners note that pursuant to an agreement with the Town of North Judson, the Hoosier Valley Railroad Museum operates excursion trains on the 5.45-mile segment over which freight rail service has been discontinued. (*Id.* at 4 n.10.) Petitioners further state that the Museum will continue to have the right to provide excursion passenger service on that segment. (*Id.* at 12 n.15.)

<sup>3</sup> Petitioners explain that the proposed transaction does not qualify for the class exemption under 49 CFR 1180.2(d)(2) because the class exemption is unavailable when one or more railroads in an existing corporate family would connect with the railroad being acquired. (*Id.* at 4.) Here, because CKIN's leasehold interest does not overlap entirely with the line owned by NIRC, Petitioners have concluded that there is a point of connection. (*Id.* at 4–5.)

## Discussion and Conclusions

The acquisition of control of a rail carrier by a person that is not a rail carrier but that controls any number of rail carriers requires prior approval from the Board under 49 U.S.C. 11323(a)(5). Under 49 U.S.C. 10502(a), however, the Board shall, to the maximum extent possible, exempt a transaction or service from regulation upon finding that (1) the regulation is not necessary to carry out the rail transportation policy (RTP) under 49 U.S.C. 10101 and (2) either the transaction or service is of limited scope, or regulation is not needed to protect shippers from the abuse of market power.

In this case, an exemption from the prior approval requirements of 49 U.S.C. 11323–25 is consistent with the standards of 49 U.S.C. 10502. Detailed scrutiny of the proposed transaction through an application for review and approval under sections 11323–25 is not necessary to carry out the RTP. An exemption would promote the RTP by minimizing the need for federal regulatory control over the transaction, 49 U.S.C. 10101(2), and providing for the expeditious resolution of this proceeding, 49 U.S.C. 10101(15). Further, Petitioners assert that consolidated ownership and operation of the line within the same corporate family will improve operating economies and the financial viability of the line. (Pet. 7.) Therefore, an exemption would promote the RTP by promoting a safe and efficient rail transportation system, 49 U.S.C. 10101(3); ensuring the development and continuation of a sound rail transportation system that would continue to meet the needs of the public, 49 U.S.C. 10101(4); and fostering sound economic conditions in transportation, 49 U.S.C. 10101(5). Other aspects of the RTP would not be adversely affected.

Regulation of the transaction is not needed to protect shippers from abuse of market power.<sup>4</sup> The record indicates that NIRC does not conduct freight rail operations, and most of its line is currently operated by CKIN pursuant to a lease. (Pet. 4.) Petitioners state that "th[e] leasehold operations will continue without change." (*Id.* at 13.) Thus, the proposed transaction will not result in any material changes to the rates and services available to shippers along NIRC's line. Moreover, no shipper or other entity has objected to the proposed transaction.

<sup>4</sup> Given this finding, the Board need not determine whether the transaction is limited in scope. *See* 49 U.S.C. 10502(a).

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 carriers. Therefore, because all of the carriers involved in the transaction are Class III carriers, the Board may not impose labor protective conditions.

Under 49 CFR 1105.6(c)(1), this action, which will not result in significant changes in carrier operations, is categorically excluded from environmental review. Similarly, under 49 CFR 1105.8(b)(1), no historic report is required because the subject transaction is for continued rail service; Petitioners have indicated no plans to alter railroad properties 50 years old or older; and any future abandonment of the Line would be subject to Board jurisdiction.

### *It is ordered:*

1. Under 49 U.S.C. 10502, the Board exempts the above transaction from the prior approval requirements of 49 U.S.C. 11323–25.

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

3. This decision will be effective on January 21, 2024. Petitions for stay must be filed by January 2, 2024. Petitions to reopen must be filed by January 11, 2024.

Decided: December 21, 2023.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.

**Jeffrey Herzig,**  
*Clearance Clerk.*

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## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket No. MARAD–2023–0229]

### Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: White Lightning (Motor); Invitation for Public Comments

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this

notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before January 29, 2024.

**ADDRESSES:** You may submit comments identified by DOT Docket Number MARAD-2023-0229 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <https://www.regulations.gov>. Search MARAD-2023-0229 and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD-2023-0229, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

*Note:* If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

*Instructions:* All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at [www.regulations.gov](http://www.regulations.gov), including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

**FOR FURTHER INFORMATION CONTACT:** Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-461, Washington, DC 20590. Telephone: (202) 366-0903. Email [patricia.hagerty@dot.gov](mailto:patricia.hagerty@dot.gov).

**SUPPLEMENTARY INFORMATION:** As described in the application, the intended service of the vessel White Lightning is:

*Intended Commercial Use of Vessel:* Requester intends to use the boat for passenger vessel charters.

*Geographic Region Including Base of Operations:* Alaska, California, Washington. Base of Operations: Mercer Island, WA.

*Vessel Length and Type:* 85' Catamaran.

The complete application is available for review identified in the DOT docket as MARAD 2023-0229 at <https://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

#### Public Participation

##### *How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

##### *Where do I go to read public comments, and find supporting information?*

Go to the docket online at <https://www.regulations.gov>, keyword search MARAD-2023-0229 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

##### *Will my comments be made available to the public?*

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

##### *May I submit comments confidentially?*

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to [SmallVessels@dot.gov](mailto:SmallVessels@dot.gov). Include in the email subject heading "Contains Confidential Commercial Information" or "Contains

CCI" and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

#### Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit <https://www.transportation.gov/privacy>.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

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## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket No. MARAD-2023-0227]

#### Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: ODIN (Motor); Invitation for Public Comments

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice.

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**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.