

34999

SERVICE DATE - SEPTEMBER 16, 2004

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34538]

Patrick D. Broe and OmniTRAX, Inc.–Continuance in Control Exemption–Alliance Terminal Railroad, LLC

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

The transaction was expected to be consummated on August 24, 2004, the effective date of the exemption.

This transaction is related to the concurrently filed verified notice of exemption in STB Finance Docket No. 34537, Alliance Terminal Railroad, LLC–Lease and Operation Exemption–Quality Terminal Services, LLC, wherein ATR seeks to sublease from Quality Terminal Services, LLC, in Haslet, TX, and operate approximately 12.9 miles of rail line owned by The Burlington Northern and Santa Fe Railway Company (BNSF), and to acquire overhead incidental trackage rights over 11 miles of BNSF's main line located between milepost 359.0, at Haslet, and milepost 370.0, at Saginaw, TX.

Mr. Broe is a noncarrier individual who directly controls OmniTRAX, Inc., a non-carrier company. OmniTRAX currently controls eight Class III railroads operating in six states: Chicago Rail Line, 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), and Panhandle Northern Railroad, LLC (PNR).<sup>1</sup>

The rail lines operated by CRL, GWRC, GWR, CBGR, MJ, NSR, NOW, and PNR do not connect with the rail lines being subleased by ATR. PNR's rail line, which is located in Broger, TX, is a substantial distance from the line being subleased by ATR.

Under 49 CFR 1180.2(d)(2), a continuance in control transaction is exempt if:

- (i) the railroads do not connect with each other or any railroad in their corporate family;
- (ii) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and
- (iii) the transaction does not involve a Class I carrier. There are no Class I carriers involved in this transaction and applicants state that the railroads do not connect with each other and there are no plans to acquire additional rail lines for the purpose of making such a connection. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323.

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.

---

<sup>1</sup> CRL'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; and PNR's line is located in Texas.

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. 34538, must be filed with the Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Karl Morell, 1455 F Street, N.W., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our website at  
“[WWW.STB.DOT.GOV](http://WWW.STB.DOT.GOV).”

Decided: September 10, 2004.

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

Vernon A. Williams.

Secretary