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SERVICE DATE - NOVEMBER 24, 1999

SURFACE TRANSPORTATION BOARD

DECISION

Ex Parte No. 282 (Sub-No. 15)  
49 CFR Part 1180

RAILROAD CONSOLIDATION PROCEDURES: CLASS EXEMPTION FOR  
TRANSACTIONS SUBJECT TO THE STATUTORY CONSOLIDATION PROVISION

AGENCY: Surface Transportation Board.

ACTION: Proposed rule, withdrawal.

SUMMARY: The Surface Transportation Board (Board) is withdrawing the proposed rule and discontinuing the Ex Parte No. 282 (Sub-No. 15) rulemaking proceeding relating to a class exemption for railroad transactions subject to the statutory consolidation provisions.

DATES: The proposed rule is withdrawn and the rulemaking proceeding is discontinued on November 24, 1999.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565-1600. [TDD for the hearing impaired: (202) 565-1695.]

SUPPLEMENTARY INFORMATION:

In a notice of proposed rulemaking (NPR) served July 13, 1992 (published in the Federal Register on July 14, 1992, at 57 FR 31165), the Interstate Commerce Commission (Commission) proposed to expand the scope of its 49 CFR 1180.2(d)(2) class exemption. That exemption, as it existed in 1992 and as it continues to exist today, exempts from the otherwise applicable prior approval requirements the acquisition or continuance in control of a nonconnecting railroad or one of its lines where (i) the railroads would not connect with each other or any railroads in their corporate family, (ii) the acquisition or 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 railroad. In the NPR, the Commission proposed to expand the 49 CFR 1180.2(d)(2) exemption so that it would embrace any transaction that required approval and authorization under former 49 U.S.C. 11343, provided that the transaction did not involve (i) the merger or control of at least two Class I railroads, (ii) a reduction in the number of noncommonly-controlled railroads conducting operations between any

two points, or (iii) a reduction from three to two in the number of noncommonly-controlled railroads serving any interchange point.

The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (ICCTA), which was signed into law by President Clinton on December 29, 1995, abolished the Commission, established the Board, reenacted (with certain changes not presently of consequence) the relevant statutory provision, and transferred to the Board responsibility for the performance of functions respecting that statutory provision. See ICCTA § 101 (abolition of the Commission); new 49 U.S.C. 701(a), as enacted by ICCTA § 201(a) (establishment of the Board); new 49 U.S.C. 11323, as enacted by ICCTA § 102(a) (this is the post-1995 version, as respects railroads, of what had been 49 U.S.C. 11343); new 49 U.S.C. 702, as enacted by ICCTA § 201(a) (except as otherwise provided, the functions previously performed by the Commission shall henceforth be performed by the Board); ICCTA § 204(b)(1) (any proceeding pending before the Commission at the time of the enactment of ICCTA shall be transferred to the Board, insofar as that proceeding concerns functions transferred to the Board). In accordance with the mandate of ICCTA § 204(b)(1), the Ex Parte No. 282 (Sub-No. 15) rulemaking proceeding, which had been instituted by the Commission in the 1992 NPR, was transferred to the Board.

We have decided to withdraw the rule proposed by the Commission in the 1992 NPR and to discontinue the Ex Parte No. 282 (Sub-No. 15) rulemaking proceeding. Our experience with the administration of cases handled under new 49 U.S.C. 11323 has led us to conclude that there is no pressing necessity for the expansion of the 49 CFR 1180.2(d)(2) class exemption. Any 49 U.S.C. 11323 transaction that is not embraced by any of the existing 49 CFR 1180.2(d) class exemptions but that would be embraced by the expanded 49 CFR 1180.2(d)(2) class exemption proposed by the Commission can be handled under the individualized exemption procedures now codified at 49 CFR part 1121, and appropriate determinations can be made on a case-by-case basis.

#### SMALL ENTITIES

The Board certifies that the action taken in this proceeding will not have a significant economic impact on a substantial number of small entities.

#### ENVIRONMENTAL AND ENERGY CONSIDERATIONS

The action taken in this proceeding will not significantly affect either the quality of the human environment or the conservation of energy resources.

Ex Parte No. 282 (Sub-No. 15)

BOARD RELEASES AVAILABLE VIA THE INTERNET

Decisions and notices of the Board, including this notice, are available on the Board's website at "WWW.STB.DOT.GOV."

Decided: November 17, 1999.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams  
Secretary