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SERVICE DATE – SEPTEMBER 27, 2023

DO

FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36716]

OmniTRAX Holdings Combined, Inc., and HGS Railway Holdings, Inc.—Continuance in Control Exemption—OmniTRAX SBVR, LLC d/b/a South Branch Valley Railroad

OmniTRAX Holdings Combined, Inc. (OmniTRAX), and HGS Railway Holdings, Inc. (HGS) (collectively, Omni-HGS), both noncarriers, have filed a verified notice of exemption under 49 C.F.R. § 1180.2(d)(2) to continue in control of OmniTRAX SBVR, LLC d/b/a South Branch Valley Railroad (OSL), a non-carrier entity controlled by OmniTRAX, upon OSL's becoming a Class III rail carrier.

This transaction is related to a verified notice of exemption filed in OmniTRAX SBVR, LLC—Operation Exemption—Railroad Line of West Virginia State Rail Authority in Hampshire, Hardy, & Grant Counties, W. Va., Docket No. FD 36717, in which OSL seeks to operate an approximately 52.4-mile rail line (the Line) extending from milepost 0.0 at Green Spring, W. Va., to milepost 52.4 at Petersburg, W. Va., owned by the West Virginia Rail Authority.

Omni-HGS states that it will continue in control of OSL upon OSL's becoming a railroad common carrier. According to the verified notice, OmniTRAX and HGS are under joint managerial and operational control. OmniTRAX currently controls 22 Class III rail carriers: Alabama & Tennessee River Railway, LLC; Brownsville & Rio Grande International Railway, LLC; Central Texas & Colorado River Railway, LLC; Chicago

Rail Link, L.L.C.; Cleveland & Cuyahoga Railway, LLC; Fulton County Railway, LLC; Georgia & Florida Railway, LLC; Georgia Woodlands Railroad, L.L.C.; Great Western Railway of Colorado, L.L.C.; Illinois Railway, LLC; Kettle Falls International Railway, LLC; Manufacturers' Junction Railway, L.L.C.; Nebraska, Kansas and Colorado Railway, LLC; The Newburgh & South Shore Railroad, LLC; Northern Ohio & Western Railway, L.L.C.; Omni River Ridge, LLC d/b/a River Ridge Railroad; Panhandle Northern Railroad, L.L.C.; Peru Industrial Railroad, LLC; Sand Springs Railway Company; Savannah Industrial Transportation, LLC (SIT);¹ Stockton Terminal and Eastern Railroad; and The Winchester and Western Railroad Company. HGS controls two Class III railroads: HGS-ATN, LLC; and HGS-FCR, LLC.

Omni-HGS represents that: (1) the rail line to be operated by OSL does not connect with the rail lines of any of the rail carriers controlled by Omni-HGS; (2) the transaction is not part of a series of anticipated transactions that would result in such a connection; and (3) the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. § 11323. See 49 C.F.R. § 1180.2(d)(2).

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. However, 49 U.S.C. § 11326(c) does not provide for labor protection for transactions under 49 U.S.C. §§ 11324 and 11325 that involve only Class III rail carriers.

¹ Omni-HGS notes that SIT has limited and provisional authority to operate pursuant to Savannah Industrial Transportation, LLC—Operation Exemption—in Effingham County, Ga., FD 36489, slip op. at 6-7 (STB served Aug. 1, 2023).

Accordingly, because this transaction involves Class III rail carriers only, the Board may not impose labor protective conditions here.

The effective date of this exemption is October 11, 2023.² 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 effectiveness of the exemption. Petitions for stay must be filed no later than [October 4, 2023 (at least seven days before the exemption becomes effective)].

All pleadings, referring to Docket No. FD 36716, must be filed with the Surface Transportation Board via e-filing on the Board's website or in writing addressed to 395 E Street, S.W., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on Omni-HGS's representative, Robert A. Wimbish, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606-3208.

According to Omni-HGS, this action is categorically excluded from environmental review under 49 C.F.R. § 1105.6(c) and from historic reporting requirements under 49 C.F.R. § 1105.8(b).

Board decisions and notices are available at www.stb.gov.

Decided: September 21, 2023.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

² By order served September 8, 2023, the effective dates of the exemptions in this docket and in the related Docket No. FD 36717 were postponed pending further Board order to allow for further briefing and consideration of certain issues. On September 13, 2023, OSL filed an amended verified notice of exemption in Docket No. FD 36717 addressing the issues raised in the September 8 order.