

is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on June 5, 2012, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,<sup>1</sup> formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),<sup>2</sup> and trail use/rail banking requests under 49 CFR 1152.29 must be filed by May 14, 2012. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by May 24, 2012, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423-0001.

A copy of any petition filed with the Board should be sent to BNSF's representative: Karl Morell, Ball Janik LLP, Suite 225, 655 Fifteenth Street NW., Washington, DC 20005.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

BNSF has filed a combined environmental and historic report that addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by May 11, 2012. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation

Board, Washington, DC 20423-0001) or by calling OEA at (202) 245-0305. Assistance for the hearing impaired is available through the Federal Information Relay Service at 1-800-877-8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by BNSF's filing of a notice of consummation by May 4, 2013, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at "[www.stb.dot.gov](http://www.stb.dot.gov)."

Decided: April 30, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**Jeffrey Herzig,**  
Clearance Clerk.

[FR Doc. 2012-10814 Filed 5-3-12; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[Docket No. FD 35616]

#### Central Midland Railway Company and Progressive Rail Inc.—Intra-Corporate Family Transaction Exemption

Central Midland Railway Company (CMR) and Progressive Rail Inc. (PGR), both Class III rail carriers, have jointly filed a verified notice of exemption under 49 CFR 1180.2(d)(3) and 1180.2(d)(6) for an intra-corporate family transaction and for reincorporation in a different State, pursuant to which PGR will remain in control of CMR after CMR reincorporates from an Indiana corporation to a Minnesota corporation.

According to applicants, CMR leases and operates certain rail lines within the State of Missouri, but it is incorporated in the State of Indiana. Applicants state that CMR, which currently is in administrative dissolution, seeks to become a Minnesota corporation in lieu of continuing as an Indiana corporation, and that PGR wishes to remain in control of CMR after CMR's reincorporation in Minnesota. PGR,

which operates certain rail lines within the States of Minnesota and Wisconsin, acquired control of CMR in 2007.<sup>1</sup> PGR also controls Airlake Terminal Railway Company, LLC, a Class III rail carrier that operates within the State of Minnesota.<sup>2</sup> In addition, PGR has obtained an exemption to continue in control of Montgomery Short Line LLC (MSL) upon MSL's becoming a Class III rail carrier. MSL is a wholly owned subsidiary of PGR.<sup>3</sup>

Applicants state that all the assets and liabilities of the Indiana corporation, known as Central Midland Railway Company, will be transferred to a Minnesota corporation of the same name. Once the transaction is completed, that corporation will be a wholly owned subsidiary of PGR.

Applicants anticipate consummating the proposed transaction on or after May 18, 2012, the effective date of the exemption (30 days after the exemption was filed).

The transaction will allow CMR to reincorporate in Minnesota, and allow PGR to remain in control of CMR. In addition, the transaction will facilitate CMR's return to good corporate standing and the efficient administration of these railroads, as the headquarters for both railroads is in Minnesota.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). Applicants state that the transaction will not result in adverse changes in service levels, significant operational changes, or any change in the competitive balance with carriers outside the corporate family. And the reincorporation of CMR is the type of transaction specifically exempted from prior review and approval under 49 CFR 1180.2(d)(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, does not provide for labor protection for transactions under 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 rail carriers.

<sup>1</sup> See *Progressive Rail Inc.—Acquis. of Control Exemption—Cent. Midland Ry.*, FD 35051 (STB served July 5, 2007).

<sup>2</sup> See *Progressive Rail Inc.—Intra-Corporate Family Transaction Exemption—Airlake Terminal Ry.*, FD 35168 (STB served Nov. 28, 2008).

<sup>3</sup> See *Progressive Rail Inc.—Continuance in Control Exemption—Montgomery Short Line LLC*, FD 35092, (STB served Nov. 9, 2007).

<sup>1</sup> The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Serv. Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

<sup>2</sup> Each OFA must be accompanied by the filing fee, which is currently set at \$1,500. See 49 CFR 1002.2(f)(25).

If the 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 May 11, 2012 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35616, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423-0001. In addition one copy of each pleading must be served on Michael J. Barron, Jr., Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606.

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

By the Board, Rachel D. Campbell,  
Director, Office of Proceedings.

Decided: April 30, 2012.

**Jeffrey Herzig,**  
Clearance Clerk.

[FR Doc. 2012-10820 Filed 5-3-12; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[Docket No. FD 35617]

#### Progressive Rail, Incorporated—Lease and Operation Exemption—Rail Line of Union Pacific Railroad Company

Under 49 CFR 1011.7(a)(2)(x)(A), the Director of the Office of Proceedings (Director) is delegated the authority to determine whether to issue notices of exemption under 49 U.S.C. 10502 for lease and operation transactions under 49 U.S.C. 10902. However, the Board reserves to itself the consideration and disposition of all matters involving issues of general transportation importance. 49 CFR 1011.2(a)(6). Accordingly, the Board revokes the delegation to the Director with respect to issuance of the notice of exemption for lease and operation of the rail line at issue in this case. The Board determines that this notice of exemption should be issued, and does so here.

Progressive Rail, Incorporated (PGR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease from Union Pacific Railroad Company (UP) and operate a 37.3-mile line of railroad between milepost 49.00 at or near Cameron and milepost 11.70 at or near Norma, in Barron and Chippewa Counties, Wis. (the Line). According to PGR, PGR and

UP have entered into a new Lease Agreement (Agreement) for PGR to lease the Line from UP.<sup>1</sup> The term of the lease is 30 years.

As required at 49 CFR 1150.43(h), PGR has disclosed that the Agreement contains an interchange commitment in the form of an adjustment in the amount of rent payable in each year, depending on the percentage of total traffic transported over the Line that is interchanged with UP in that year.<sup>2</sup> Attached to PGR's notice of exemption is the verified statement of David Fellon, President of PGR. PGR states that a relatively high percentage of traffic interchanged with UP would result in a relatively low amount of rent, and *vice versa*. According to PGR, it believes that it can substantially grow its outbound traffic if it is able to make significant improvements to the Line. PGR states that the interchange commitment will enable it to make “major renewals of main tracks, sidetracks, and bridges, and to construct a number of new sidings and yard tracks to enable staging of railcars for loading and to achieve efficiencies in railcar switching,” to the benefit of the shipping public. PGR also states that (1) although there is a Canadian National Railway Company (CN) line at Cameron, the CN line is officially out of service and would require extensive rehabilitation to be made operable, and (2) there is a CN line at Chippewa Falls, but the Line does not extend to Chippewa Falls.

PGR certifies that its projected annual revenues as a result of this transaction will not result in PGR becoming a Class I or Class II rail carrier. PGR further certifies that its projected annual revenues will not exceed \$5 million.

The earliest the transaction can be consummated is May 18, 2012, the effective date of the exemption (30 days after the exemption was filed).

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. Stay petitions must be filed no later than May 11, 2012 (at least

<sup>1</sup> PGR previously obtained an exemption in 2004 to lease and operate the Line. See *Progressive Rail, Inc.—Lease & Operation Exemption—Rail Line of Union Pac. R.R.*, FD 34597 (STB served Oct. 29, 2004). The new lease for which an exemption is sought in this proceeding will replace the lease for which the prior exemption was obtained.

<sup>2</sup> Concurrently with its verified notice of exemption, PGR has filed under seal, pursuant to 49 CFR 1150.43(h)(1)(ii), a confidential, complete version of the Agreement.

7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35617, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604-1112.

Board decisions and notices are available on our Web site at “[www.stb.dot.gov](http://www.stb.dot.gov).”

*It is ordered:*

1. The delegation of authority to the Director of the Office of Proceedings under 49 CFR 1011.7(a)(2)(x)(A) to determine whether to issue a notice of exemption in this proceeding is revoked.

2. This decision is effective on the date of service.

Decided: May 1, 2012.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Begeman. Vice Chairman Mulvey dissented with a separate expression. Vice Chairman Mulvey, dissenting:

I disagree with the Board's decision to allow a transaction containing a significant interchange commitment to be processed under the Board's class exemption procedures at 49 CFR part 1150. In general, the Board should be carefully scrutinizing transactions that include interchange commitments before deciding whether to permit them to go into effect.

The notice in this particular case does not allow me to conclude summarily—without any examination—that the lease is consistent with the public interest. 49 U.S.C. 10902(c). The notice asserts that there really are no competitive interchange options for PGR because the CN line that connects to the Line is not operational. Yet, disregarding this claimed reality, the lease nonetheless contains an interchange commitment with substantial economic rewards for PGR if it interchanges with UP. One has to wonder why such an economic incentive is necessary if there is little chance that PGR would interchange with CN in any event. The lease term is 30 years, which is far longer than some other recent transactions involving paper barriers. See *e.g.*, *Middletown & New Jersey R.R.—Lease & Operation Exemption—Norfolk S. Ry.*, FD 35412 (STB served Sept. 23, 2011) (10-year lease term). Moreover, we do not know how many shippers will be affected, what volume of traffic will be affected, or whether CN has plans to rehabilitate its connecting line. Nor do we know whether the 2004 lease that PGR and UP