

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

Jeffrey Herzig,
Clearance Clerk.

[FR Doc. 2012-3944 Filed 2-21-12; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35594]

Eric Temple—Control Exemption— Portland Vancouver Junction Railroad, LLC

Eric Temple (applicant), a noncarrier individual, has filed a verified notice of exemption to acquire direct control of Portland Vancouver Junction Railroad, LLC (PVJR), a wholly owned subsidiary of Columbia Basin Railroad Company, Inc. (CBRW), upon his acquiring 100% of the membership interest in PVJR.

The transaction is expected to be consummated on or after March 7, 2012.

Applicant and Nicholas B. Temple directly control CBRW and Central Washington Railroad Company (CWA), and they indirectly control PVJR.¹ CBRW, CWA and PVJR are all Class III rail carriers that lease and operate rail lines between specified points within the State of Washington.²

Applicant states that: (1) PVJR does not connect with any rail lines of CBRW or CWA; (2) the transaction is not part of a series of anticipated transactions that would connect these rail lines with each other; 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 CFR 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. 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 carriers.

If the notice contains false or misleading information, the exemption

¹ Applicant states that Nicholas B. Temple and he each have a 50% ownership interest in CBRW and a 45% ownership interest in CWA.

² See *Nicholas B. Temple, Eric Temple, Columbia Basin R.R., Cent. Wash. R.R. and Portland Vancouver Junction R.R.—Corporate Family Transaction Exemption*, FD 35210 (STB served Jan. 16, 2009); and *Nicholas B. Temple and Eric Temple—Control Exemption—Cent. Wash. R.R.*, FD 34641 (STB served Jan. 21, 2005).

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 February 29, 2012 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35594, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Rose-Michele Nardi., Weiner Brodsky Sidman Kider PC, 1300 19th St. NW., Fifth Floor, Washington, DC 20036-1609.

Board decisions and notices are available on our Web site at www.stb.dot.gov.

Decided: February 13, 2012.

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

Jeffrey Herzig,
Clearance Clerk.

[FR Doc. 2012-3941 Filed 2-21-12; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 33506]

Western Coal Traffic League—Petition for Declaratory Order

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of public hearing.

SUMMARY: The Surface Transportation Board (Board) instituted a declaratory order proceeding on September 28, 2011, *Western Coal Traffic League—Petition for Declaratory Order*, FD 35506 (STB served Sept. 28, 2011), and will hold a public hearing to explore the effect of the price that Berkshire Hathaway, Inc. (Berkshire) paid to acquire BNSF Railway Company (BNSF) in 2010 on the Board's annual Uniform Rail Costing System (URCS) and revenue adequacy determinations, with respect to BNSF.

DATES: The hearing will begin at 9:30 a.m., on Thursday, March 22, 2012, in the Board's hearing room at the Board's headquarters located at 395 E Street SW., Washington, DC. The hearing will be open for public observation. Anyone wishing to participate at the hearing shall file with the Board a notice of intent to participate (identifying the party, the proposed speaker, and the time requested), and a summary of the

intended testimony (not to exceed 3 pages), no later than Tuesday, March 6, 2012. All witnesses are encouraged to use their hearing time to call attention to the points they believe are particularly important. Witnesses should present a short oral statement of their comments and be prepared to answer questions from the Board.

ADDRESSES: All filings may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the "E-FILING" link on the Board's www.stb.dot.gov Web site. Any person submitting a filing in the traditional paper format should send an original and 10 copies of the filing to: Surface Transportation Board, Attn: Docket No. FD 35506, 395 E Street SW., Washington, DC 20423-0001.

Copies of written submissions will be posted to the Board's Web site and will be available for viewing and self-copying in the Board's public docket room, Suite 131. Copies of the submissions will also be available (for a fee) by contacting the Board's Chief Records Officer at (202) 245-0238 or 395 E Street SW., Washington, DC 20423-0001.

FOR FURTHER INFORMATION CONTACT:

Valerie Quinn at (202) 245-0382. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877-8339.

SUPPLEMENTARY INFORMATION: In this proceeding, the Western Coal Traffic League (WCTL), and other parties,¹ argue that the Class I Railroad Annual Report submitted by BNSF to the Board for the year ending December 31, 2010 (2010 R-1), produces a write-up in BNSF's net investment base for URCS costing purposes equal to \$8.1 billion² and a decrease in BNSF's 2010 annual depreciation calculations by \$128 million, both based on the \$43 billion that Berkshire paid to acquire BNSF. WCTL also argues that the \$8.1 billion write-up increases BNSF's variable costs, and raises the quantitative jurisdictional threshold for rate reasonableness proceedings, thus decreasing the number of shippers that could pursue rate cases before the Board, as well as decreasing the

¹ For convenience, in this decision we will refer to the arguments made by WCTL, and other supporting parties, largely within the context of WCTL's pleadings.

² In its opening evidence filed on October 28, 2011, WCTL states that it initially calculated the acquisition premium as \$7.625 billion, but based on new information received from BNSF, WCTL has revised this figure to \$8.1 billion. See WCTL Opening 2 n.1.

maximum rate relief that shippers could be awarded. In addition, WCTL claims that the inclusion of the acquisition premium in the calculation of BNSF's rate of return on its 2010 net investment moves BNSF further away from a Board determination that the carrier is revenue adequate, thus making it less likely for captive shippers to obtain relief in BNSF rate cases. WCTL further argues that the Board's financial accounting rules and Generally Accepted Accounting Principles (GAAP) do not govern regulatory rulemaking, and that the Board is not required to follow GAAP in determining the scope of its regulatory jurisdiction. WCTL therefore suggests that the Board should exercise its authority under 49 U.S.C. 10707(d)(1)(B) to adjust BNSF's URCS costs starting in 2010, by removing the \$8.1 billion write-up from BNSF's 2010 R-1, and by making the appropriate corresponding adjustments to annual depreciation.

BNSF counters WCTL's claims by arguing that the Board's precedent on

this subject is well-settled, as the Board, the Interstate Commerce Commission (the Board's predecessor agency), the Railroad Accounting Principles Board, and the courts have determined that acquisition cost is an economically accurate measure of current market value. BNSF argues that the issue of the acquisition premium raised by WCTL has been litigated and resolved in favor of GAAP accounting. BNSF further claims that WCTL has presented no evidence or argument that merits revisiting the use of the Berkshire acquisition cost for URCS costing or any other regulatory purpose. *Board Releases and Live Video Streaming Available Via The Internet:* Decisions and notices of the Board, including this notice, are available on the Board's Web site at www.stb.dot.gov. This hearing will be available on the Board's Web site by live video streaming. To access the hearing, click on the "Live Video" link under "Information Center" at the left side of the home page beginning at 9 a.m. on March 22, 2012.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. A public hearing in this proceeding will be held on Thursday, March 22, 2012, at 9:30 a.m., in the Surface Transportation Board Hearing Room, at 395 E Street SW., Washington, DC, as described above.

2. By Tuesday, March 6, 2012, anyone wishing to participate at the hearing shall file with the Board a notice of intent to participate (identifying the party, the proposed speaker, and the time requested), and a summary of the intended testimony (not to exceed 3 pages).

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

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

Jeffrey Herzig,
Clearance Clerk.

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