*4. What Extraordinary Circumstances Warrant Assessment of Less Than the Maximum Penalty?*

Requests to reduce the penalty based on extraordinary circumstances will be considered on a case-by-case basis. Section 222 of MCSIA does not define the term ''extraordinary circumstances,'' but expressly provides that extraordinary circumstances meriting a reduction in the maximum penalty may be found to exist if we determine and document that repetition of the violation does not demonstrate a failure to take appropriate remedial action. Although the statute does not limit application of the extraordinary circumstances factor, we do not believe it is appropriate to attempt to define all possible potential extraordinary circumstances, except as indicated in the next section. The respondent carries the burden to demonstrate that extraordinary circumstances merit a reduction in the maximum penalty in response to the NOC and during the adjudication of the case.

*5. What Type of Notice Will Be Required Before Assessing the Maximum Penalty?*

Although section 222 of MCSIA does not specifically require prior notice to offenders that future violations may result in the imposition of maximum penalties, the September 8, 2000, policy statement provided that offenders should be given such notice as part of the close-out of the second CR. This guidance is now modified and the agency may assess maximum penalties in all appropriate cases. To address this issue, we (1) modified our standard NOC to advise respondents of the requirements of section 222 of MCSIA, and (2) published this amended policy statement in the **Federal Register** and posted it on FMCSA's Web site at *http://www.fmcsa.dot.gov.* No additional notice requirements are necessary.

*6. Do FMCSA Service Centers Have Authority To Settle Cases Subject to Section 222 for Less Than the Maximum Penalty?*

Section 222(a) of MCSIA provides that the Secretary ''should ensure that motor carriers operate safely by *imposing* civil penalties at a level calculated to ensure prompt and sustained compliance with Federal motor carrier safety and commercial driver's license laws'' (emphasis added). Section 222(b)(2) requires the Secretary to *assess* the maximum penalty in appropriate circumstances. A question was raised on whether Service Centers may settle cases subject to section 222 for less than the maximum penalty, provided the maximum penalty is assessed in the NOC.

Civil Penalties are ''assessed'' in the NOC and are ''imposed'' in an agency Order or settlement agreement. Since the literal language of the statute requires that maximum penalties be assessed (but not necessarily imposed) in section 222 cases, this would arguably permit settlement of cases below the maximum penalty, provided the negotiated penalty (the penalty actually imposed) is calculated to ensure prompt and sustained compliance with the Federal Motor Carrier Safety Regulations. To ensure uniformity in implementing section 222, FMCSA Service Centers will not, at this time, be permitted to settle section 222 cases for less than the maximum penalty assessed. However, settlement agreements establishing terms of payment will be permitted. As the agency gains more experience in applying section 222, this settlement limitation will be evaluated.

the date the settlement agreement is accepted by the decisionmaker.

Issued on: December 16, 2004.

**Annette M. Sandberg,**

*Administrator.*

[FR Doc. 04–28343 Filed 12–27–04; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 34617]**

### Patrick D. Broe and OmniTRAX, Inc.—Continuance in Control Exemption—Kettle Falls International Railway, LLC

Patrick D. Broe (Mr. Broe) and OmniTRAX, Inc. (OmniTRAX) (collectively, applicants) have filed a verified notice of exemption to continue in control of Kettle Falls International Railway, LLC (KFR), upon KFR's becoming a Class III rail carrier.

The transaction was scheduled to be consummated on or shortly after December 10, 2004.

This transaction is related to a concurrently filed verified notice of exemption in STB Finance Docket No. 34616, *Kettle Falls International Railway, LLC—Acquisition Exemption—The Burlington Northern and Santa Fe Railway Company*, wherein KFR seeks to acquire by purchase and lease from The Burlington Northern and Santa Fe Railway Company (BNSF) rail lines in the State of Washington. The rail lines being purchased are between: (1) milepost 4.7, near West Kettle Falls, WA, and milepost 34.375, at the United States-Canadian border; and (2) milepost 48.79, at the United States-Canadian border, and milepost 77.14, at San Poil, WA.[1] The rail lines being leased are between: (1) milepost 0.0, near Kettle Falls, WA, and milepost 4.7, near West Kettle Falls; and (2) milepost 61.0 near Chewelah, WA, and milepost 139.71, at the United States-Canadian border.[2] In addition, KFR will acquire incidental overhead trackage rights over the rail line between milepost 0.0 near Kettle Falls, and milepost 4.7, near West Kettle Falls. While KFR is leasing that 4.7-mile line, KFR is acquiring the incidental trackage rights to ensure continued access to BNSF for interchange at Kettle Falls from the rail line KFR is purchasing, in the event the lease of the line between Kettle Falls and West Kettle Falls expires or is terminated.

Mr. Broe is a noncarrier individual who directly controls OmniTRAX, a noncarrier company. OmniTRAX currently controls ten Class III rail carriers: Chicago Rail Link, 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); Panhandle Northern Railroad, LLC (PNR); Alliance Terminal Railroad, LLC (ATR); and Fulton County Railway, LLC (FCR).[3]

Mr. Broe and OmniTRAX also recently filed a notice of exemption to continue in control of Alabama & Tennessee River Railway, LLC (ATN), a noncarrier, upon ATN's becoming a

[1] The rail line that KFR is purchasing is located between milepost 4.7, near West Kettle Falls, and milepost 77.14, at San Poil. While the termini of this line are located in the State of Washington, the segment of the line between milepost 34.375 and milepost 48.79 is located in British Columbia, Canada. Consequently, the Board has jurisdiction only over the acquisition of the two segments in the United States described above.

[2] The rail segment that KFR is leasing is located between milepost 61.0, near Chewelah, and milepost 144.0, near Columbia Gardens, British Columbia, Canada. The segment of the Chewelah-Columbia Gardens line between mileposts 139.71 and 144.0 is located in British Columbia. Consequently, the Board has jurisdiction only over the lease of the line segment in the United States described here. BNSF is retaining restricted trackage rights over the segment of the line KFR is leasing between milepost 61.0, near Chewelah, and milepost 96.0, near Kettle Falls.

[3] 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; PNR's line is located in Texas; ATR's lines are located in Texas; and FCR's lines are located in Georgia.

Class III railroad. *See Patrick D. Broe and OmniTRAX, Inc.—Continuance in Control Exemption—Alabama & Tennessee River Railway, LLC,* STB Finance Docket No. 34615 (STB served Dec. 17, 2004). In a transaction scheduled to occur on or after December 31, 2004, ATN will lease and operate certain rail lines in Alabama.[4]

Applicants state that: (1) the rail lines operated by CRL, GWRC, GWR, CBGR, MJ, NSR, NOW, PNR, ATR, and FCR do not connect with the rail lines being purchased or leased by KFR; (2) the continuance in control is not part of a series of anticipated transactions that would connect the rail lines being acquired by KFR with any railroad in the OmniTRAX corporate family; and (3) neither KFR nor any of the carriers controlled by OmniTRAX are Class I rail carriers. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2). The purpose of the transaction is to reduce overhead expenses, coordinate billing, maintenance, mechanical and personnel policies and practices of its rail carrier subsidiaries and thereby improve the overall efficiency of rail service provided by the 11 railroads.

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 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. 34617, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, Of Counsel, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

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

Decided: December 20, 2004.

[4] The rail lines being leased by ATN will not connect with the rail lines being acquired by KFR.

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

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 04–28333 Filed 12–27–04; 8:45 am]

BILLING CODE 4915–01–P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 34616]**

### Kettle Falls International Railway, LLC—Acquisition Exemption—The Burlington Northern and Santa Fe Railway Company

Kettle Falls International Railway, LLC (KFR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire by purchase and lease from The Burlington Northern and Santa Fe Railway Company (BNSF) rail lines in the State of Washington. The rail lines being purchased are between: (1) milepost 4.7, near West Kettle Falls, WA, and milepost 34.375, at the United States-Canadian border; and (2) milepost 48.79, at the United States-Canadian border, and milepost 77.14, at San Poil, WA.[1] The rail lines being leased are between: (1) milepost 0.0, near Kettle Falls, and milepost 4.7, near West Kettle Falls; and (2) milepost 61.0 near Chewelah, WA, and milepost 139.71, at the United States-Canadian border.[2] In addition, KFR will acquire incidental overhead trackage rights over the rail line between milepost 0.0 near Kettle Falls, and milepost 4.7, near West Kettle Falls. While KFR is leasing that 4.7-mile line, KFR is acquiring the incidental trackage rights to ensure continued access to BNSF for interchange at Kettle Falls from the rail line KFR is purchasing in the event the lease of the line between Kettle Falls and West Kettle Falls expires or is terminated.

[1] The rail line that KFR is purchasing is located between milepost 4.7, near West Kettle Falls, and milepost 77.14, at San Poil. While the termini of this line are located in the State of Washington, the segment of the line between milepost 34.375 and milepost 48.79 is located in British Columbia, Canada. Consequently, the Board has jurisdiction only over the acquisition of the two segments in the United States described above.

[2] The rail segment that KFR is leasing is located between milepost 61.0, near Chewelah, and milepost 144.0, near Columbia Gardens, British Columbia, Canada. The segment of the Chewelah-Columbia Gardens line between milepost 139.71 and milepost 144.0 is located in British Columbia. Consequently, the Board has jurisdiction only over the lease of the line segment in the United States described here. BNSF is retaining restricted trackage rights over the segment of the line KFR is leasing between milepost 61.0, near Chewelah, and milepost 96.0, near Kettle Falls.

The transaction is related to STB Finance Docket No. 34617, *Patrick D. Broe and OmniTRAX, Inc.—Continuance in Control Exemption—Kettle Falls International Railway, LLC*, wherein Patrick D. Broe and OmniTRAX, Inc., have concurrently filed a verified notice of exemption to continue in control of KFR upon KFR's becoming a Class III rail carrier.

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

The transaction was expected to be consummated on or shortly after December 10, 2004.

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 transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34616, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, Of Counsel, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

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

Decided: December 20, 2004.

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

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 04–28334 Filed 12–27–04; 8:45 am]

BILLING CODE 4915–01–P

## DEPARTMENT OF THE TREASURY

### Fiscal Service

### Financial Management Service; Proposed Collection of Information: List of Data (A) and List of Data (B)

**AGENCY:** Financial Management Service, Fiscal Service, Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Financial management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. By this notice, the Financial Management