

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 36429

ENTERED
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October 2, 2020
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Public Record

R. J. CORMAN RAILROAD COMPANY/LUZERNE & SUSQUEHANNA LINE, LLC –
CHANGE OPERATORS, LEASE AND OPERATION EXEMPTION –
LUZERNE AND SUSQUEHANNA RAILWAY COMPANY AND
LUZERNE COUNTY RAIL CORPORATION

FINANCE DOCKET NO. 36431

R. J. CORMAN RAILROAD COMPANY, LLC – CONTINUANCE IN CONTROL
EXEMPTION – R. J. CORMAN RAILROAD COMPANY/LEHIGH LINE, LLC, R. J.
CORMAN RAILROAD COMPANY/OWEGO & HARFORD LINE, LLC, AND R. J.
CORMAN RAILROAD COMPANY/LUZERNE & SUSQUEHANNA LINE, LLC

APPLICANTS' RESPONSE TO REQUEST FOR INFORMATION

For their response to the request for information set forth in the Board's September 17, 2020 decision, R. J. Corman Railroad Company, LLC ("RJCR") and R. J. Corman Railroad Company/Luzerne & Susquehanna Line, LLC ("LS"), hereby states as follows:

A. Information Requested of LS

1. LS confirms that the sixth line segment should read "(6) between Milepost 0.0, at Ashley, and milepost 0.5, at Hanover Industrial Track, a distance of 0.5 miles." For further clarification, please see paragraph 2(d) below.

2. The Board identified discrepancies in four of the line segments described in LS's Notice of Exemption, Financial Docket No. 36431 ("NOE"). LS has conferred with the current operator, Luzerne and Susquehanna Railway Company ("LSX") and obtained clarification

regarding the current operations over the rail line segments in question. In response, LS requests its NOE be amended and/or state as follows:

- a) The segment identified as No. (1) in the NOE should be replaced in its entirety with: “The Dunmore Secondary Track, between milepost 6.5, at Avoca, and milepost 8.6, at Rocky Glen, a distance of 2.1 miles.”
- b) The segment identified as No. (2) in the NOE should be as originally stated: “The Avoca Industrial Track, between milepost 4, at Rock Street, and milepost 6.5, at Avoca, a distance of 2.5 miles, including the connection with the track of Conrail, between “LB” Junction and the switch of the Dunmore Secondary Track, a distance of 0.123 miles, and the Langcliff Connecting Track, between milepost 0.0, at Duryea, and the connection with the Delaware & Hudson (DH) in the middle of York Avenue, at milepost 0.867, a distance of 0.867 miles.”

As further clarification, the 1994 Board decision¹ providing the Luzerne and Susquehanna Railway Company authority to operate on the Avoca Industrial Track, included an additional segment of track between milepost 1.7, at Junction 7, and milepost 4, at Rock Street. However, LS is not seeking authority to operate between milepost 1.7, at Junction 7, and milepost 4, at Rock Street. LS understands that there are no shippers located on that section of track; nor is that section of track necessary to provide carrier service to the shippers in the Avoca Industrial Track area.

- c) The line segment identified as No. (3) “The West Pittston Running Track, between milepost 0.0, at West Pittston, and milepost 3.0, at Harding, a distance of 3.0 miles, and between milepost 186.4, at West Pittston, and milepost 194.4, in Kingston, a distance of 8.0 miles” should be deleted in its entirety from LS’s NOE.
- d) The line segment identified as No. (6) in the NOE should be replaced in its entirety with, “Between milepost 0.0, at Ashley, and milepost .5, at Hanover Industrial Track, a distance of 0.5 miles.”

As further clarification, LSX currently operates over a segment of track from milepost 0.5 to milepost 2.0 in the Hanover Industrial Track area in order to provide freight services to two active shippers. LSX has been serving these two shippers since the mid to late 1990s when the

¹ *Luzerne and Susquehanna Railway Company – Lease and Operation Exemption – Certain Lines of Luzerne County Rail Corporation, F & L Realty, Inc., and Pocono Northeast Railway, Inc.*, Finance Docket No. 32563 (STB served September 23, 1994).

track was built² by LSX on land owned by the Wilkes-Barre Chamber of Commerce and Luzerne County Rail Corporation.

LS has identified no STB authority addressing this 1.5-mile segment of track that runs between milepost 0.5 and 2.0. The 1.5-mile segment of track expanded service to the Hanover Industrial area to allow for freight service for two shipper facilities, where it dead ends. The rail line is only accessible by LSX and is currently maintained by LSX.

Based on the information provided, no regulatory approval to operate on the Line was sought or received relating to the 1.5 miles of track. Based on the characteristics of the line, described above, it is apparent that LSX considered the line to be spur track or track that is excepted track and not subject to STB jurisdiction. For example, in *Tri-City Railroad Company, LLC – Petition for Declaratory Order*, Finance Docket No. 36037 (STB serviced June 1, 2017), the STB described factors that demonstrate excepted track. This includes, length of track; whether it serves more than one shipper, whether it is stub-needed; whether it was built to penetrate new markets; whether the shipper is located at the end of the track; whether there is regularly scheduled service; traffic volume; who owns and maintains the track; what the track is used for (e.g., switching, loading and unloading); and whether there are stations on the track. *Id.* at 4. In the instant case, the track at issue is 1.5-miles³ and serves only two shippers. The track was built on non-carrier land by LSX to service two shippers in an industrial area where LSX already had STB authority to operate.

² According to LSX, there may have been track where the new track was built, thus it could be more accurate to say “rebuilt”. However, LS’s efforts to identify the existence of prior track, or who operated that track. from STB or ICC decisions has not been successful.

³ *ParkSierra Corp. – Lease and Operation Exemption – S. Pac. Transp. Co.*, PD 34126 et al., slip op. at 6 (STB served Dec. 26, 2001)(finding that 1.7-mile track is ancillary).

Given the foregoing, LS has amended its NOE to only seek authority to provide carrier service between milepost 0.0, at Ashley, and milepost 0.5, at Hanover Industrial Track, a distance of 0.5 miles. This authority from the STB would permit LS to physically access the 1.5-mile spur so that LS could ultimately, upon the closing of the transaction with LSX purchasing its material assets, provide without interruption, freight service to the two shippers in question.

In the alternative, to the extent that the Board considers the spur to be mainline carrier track, and at the same time, does not believe it is appropriate to grant LS authority to operate over the entire 2.0 miles of track at issue in this proceeding, then LS will make the necessary filing seeking authority to operate the line segment between 0.5 and 2.0 at the Hanover Industrial Track.

3. LSX currently operates the Line pursuant to a Lease and Operating Agreement, as amended (“Lease and Operating Agreement”) from the Luzerne County Rail Corporation (“LCRC”) dated July 16, 2002. LS and LCRC have reached an agreement in principle to enter into two agreements: (1) a Consent and Estoppel Agreement and (2) an Amendment to the Lease and Operating Agreement (“Amendment”). The Consent and Estoppel Agreement provides LCRC’s consent to LSX’s assignment of the Lease and Operating Agreement to LS. The Amendment clarifies existing terms of the Lease and Operating Agreement. Neither the proposed Consent and Estoppel Agreement nor the Amendment contain any provision or agreement that would limit future interchange on the Line.

B. Information Requested of RCJR

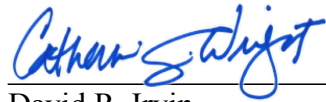
In April of 2014, R. J. Corman Railroad Group, LLC (“RJC Group”), a non-carrier holding company, created a wholly owned subsidiary, RJCR, to preserve and clarify its mere ownership of the separate entity that owns and controls all rail carriers indirectly under RJC Group’s ownership

umbrella. All operations of those rail carriers are controlled by RJCR through its own executives and management.

In previous filings, as pointed out by the Board, RJCR sought permission to continue in control of specific Class III carriers along with RJC Group and such permission has been granted by the Board. According to 49 U.S.C.A. § 10102 (3), “‘control’, when referring to a relationship between persons, includes actual control, legal control, and the power to exercise control, through or by (A) common directors, officers, stockholders, a voting trust, or a holding or investment company, or (B) any other means.” “Control of a carrier for which 11323 authorization is required embraces the power or authority to manage, direct, superintend, restrict, regulate, govern, administer or oversee the day-to-day affairs of that carrier.” *Soo Line Railroad Company – Petition for Declaratory Order* (STB served Feb. 4, 1998).

The instant continuation in control filing identified RJCR as the only applicant in recognition of the fact that RJC Group is a holding company that exercises indirect ownership of the Class III rail carriers and does not have actual control of day-to-day affairs of the Class III rail carriers. RJCR is, however, a wholly owned subsidiary of RJC Group and for purposes of the continuation in control filing and Section 11323 authorization, and until an intra-corporate family transaction can be filed, RJCR requests that RJC Group be added as an Applicant in Finance Docket No. 36431.

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