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FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36429]

R. J. Corman Railroad Company/Luzerne & Susquehanna Line, LLC—Change in Operators, Lease and Operation Exemption—Luzerne and Susquehanna Railway Co. and Luzerne County Rail Corporation

R. J. Corman Railroad Company/Luzerne & Susquehanna Line, LLC (RJLS), a noncarrier, has filed a verified notice of exemption pursuant to 49 C.F.R. § 1150.31 to change operators and assume the lease and operation of approximately 41.19 miles of rail line in Luzerne and Lackawanna Counties, Pa. (the Line).¹ The Line currently is operated by Luzerne and Susquehanna Railway Company (LSX) pursuant to a lease and operating agreement with the Luzerne County Rail Corporation (LCRC), a political subdivision and non-operating Class III rail carrier.

¹ In the verified notice, RJLS initially stated that the total mileage at issue was approximately 55.09 miles. In a letter filed on August 26, 2020, RJLS amended its verified notice to remove the assumption of certain trackage rights from its description of the proposed transaction. By decision served on September 17, 2020, the Board requested additional information relating to this transaction and a related transaction, including an explanation of certain apparent discrepancies in the mileage and/or descriptions of the line segments RJLS seeks to operate and clarification of RJLS's description of the agreement. In a reply filed on October 2, 2020, RJLS amended its descriptions of two line segments and removed another altogether, clarified the nature of the agreement in principle that has been reached, and provided additional information. On October 9, 2020, RJLS provided further correction and explanation regarding one of the line segments. Although RJLS did not provide a revised total mileage in any of its supplements, it appears, based on the revised line descriptions submitted, that the total mileage is approximately 41.19 miles.

As amended and supplemented, the verified notice states that the Line consists of: (1) the Dunmore Secondary Track, between milepost 6.5, at Avoca, and milepost 8.6, at Rocky Glen, a distance of 2.1 miles; (2) 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 Consolidated Rail Corporation 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 Delaware & Hudson (D&H) in the middle of York Avenue, at milepost 0.867, a distance of 0.867 miles;² (3) the Suscon Industrial Track, between milepost 154.5, at Suscon, and milepost 158.7, at Hillside, a distance of 4.2 miles; (4) the Wilkes-Barre Secondary, between milepost 169.2, at Ashley, and milepost 185.5, at Pittston, a distance of 16.3 miles; (5) between milepost 0.0, at Ashley, and milepost 0.5, at Hanover Industrial Track, a distance of 0.5 miles;³ (6) the Brownsville Industrial Track, between milepost 0.0, at Hillside, and milepost 1.0, at Brownsville, a distance of 1.0 miles; (7) the Wilkes Barre

² In the October 2, 2020 filing, RJLS states that, although LSX also has authority to operate on an additional segment of track between milepost 1.7, at Junction 7, and milepost 4, at Rock Street, RJLS is not seeking authority to operate that segment.

³ In its October 9, 2020 supplement, RJLS explains that LSX also operates over a track segment from milepost 0.5 to the end of the track at approximately milepost 3.82. RJLS states that it has identified no Board authority addressing the track beyond milepost 0.5 and that it believes LSX operates the portion beyond milepost 0.5 as a spur. RJLS states that it seeks approval only for the portion between milepost 0.0 and milepost 0.5, but also indicates that it would operate over some or all of the track from milepost 0.5 to the end of the line at approximately milepost 3.82. This notice does not decide the status of the track segment beyond milepost 0.5. If RJLS believes that the 3.32-mile segment is rail line rather than spur, RJLS should request appropriate authority from the Board.

Industrial Track, between milepost 59.9, at Ferry Street, and milepost 62.9, at Wilkes Barre, a distance of 3.0 miles; (8) the Kingston Industrial Track, between milepost 142.7, at Pittston Junction, and Railroad Station 8594+58, a distance of 8.1 miles; and (9) the D&H Wilkes-Barre Connector, from milepost A-208.08, Hudson Yard, to Conyngham Avenue, City of Wilkes-Barre, a distance of 2.5 miles.

According to RJLS, this transaction is part of a larger transaction in which noncarrier holding company R. J. Corman Railroad Company, LLC (RJCR), through RJLS and two other newly formed noncarrier subsidiaries, has entered into an agreement to purchase the material assets of LSX and two other carriers under the ownership and control of Stephen C. May and operate those respective rail lines. Accordingly, this transaction is related to a concurrently filed verified notice of exemption in R. J. Corman Railroad Company, LLC & R. J. Corman Railroad Group, LLC—Continuance in Control Exemption—R. J. Corman Railroad Company/Lehigh Line, LLC, R. J. Corman Railroad Company/Owego & Harford Line, Inc., and R. J. Corman Railroad Company/Luzerne & Susquehanna Line, LLC, Docket No. FD 36431,⁴ in which RJCR and RJRG seek to continue in control of RJLS and the other two newly formed subsidiaries upon their becoming Class III rail carriers, while remaining in control of 15 other Class III rail carriers.

⁴ In the October 2, 2020 filing noted above, RJCR requested that R. J. Corman Railroad Group, LLC (RJRG) be added as an applicant in this docket.

According to RJLS's October 2, 2020 filing, LSX currently operates the Line pursuant to a Lease and Operating Agreement, as amended (Lease and Operating Agreement) with LCRC dated July 16, 2002. RJLS states that it 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). RJLS states that the Consent and Estoppel Agreement provides LCRC's consent to LSX's assignment of the Lease and Operating Agreement to RJLS and that the Amendment clarifies existing terms of the Lease and Operating Agreement. According to RJLS, neither the proposed Consent and Estoppel Agreement nor the Amendment contains any provision or agreement that would limit future interchange on the Line.

Further, RJLS certifies that its projected annual revenues as a result of this transaction will not result in RJLS becoming a Class I or II rail carrier and will not exceed \$5 million. Under 49 C.F.R. § 1150.32(b), a change in operator requires that notice be given to shippers. RJLS certifies that a copy of its verified notice of exemption was served on all known shippers on the Line on August 19, 2020.

The earliest this transaction may be consummated is November 20, 2020, the effective date of the exemption.

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 November 13, 2020 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36429, should be filed with the Surface Transportation Board via e-filing on the Board's website. In addition, a copy of each pleading must be served on RJLS's representative, David R. Irvin, Irvin Rigsby PLC, 110 North Main Street, Nicholasville, KY 40356.

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

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Decided: November 2, 2020.

By the Board, Allison C. Davis, Director, Office of Proceedings.