

301378

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Proceedings
December 21, 2020
Part of
Public Record

Branch Line Railroad, Inc.

)
)

FD 36422

**VERIFIED NOTICES OF EXEMPTION
UNDER 49 C.F.R. § 1150.31**

By: David C. Dillon
Dillon & Nash, Ltd.
3100 Dundee Road, Suite 508
Northbrook, Illinois 60062
(847) 498-3000

Branch Line Railroad, Inc.

*Attorney for Applicant
in FD 36422*

Applicant in FD 36422

DATE FILED: December 16, 2020

FILED
December 21, 2020
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
December 21, 2020
SURFACE
TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Branch Line Railroad, Inc.

)
)

FD 36422

**VERIFIED NOTICE OF EXEMPTION
UNDER 49 C.F.R. § 1150.31**

Pursuant to 49 C.F.R. § 1150.31, *et. seq.* and 49 U.S.C. § 10502(a), Branch Line Railroad, Inc. (BLRR), hereby provides verified notice of exemption from 49 U.S.C. § 10901 for BLRR's acquisition by Lease from Northwoods Distribution Services, Inc. and operation pursuant to operating agreement between Branch Line Railroad, Inc. and Northwoods Distribution Services, Inc., of approximately 3,000 feet (0.567 miles) of existing railroad right-of-way and trackage and transloading facilities owned by Northwoods Distribution Services, Inc., in Rhinelander, Wisconsin ("Rhinelander Transload Facility trackage"). The Rhinelander Transload Facility trackage is more specifically described and depicted in Appendix 1-A (description) and Appendix 1-B (map) attached to this notice.

BRANCH LINE RAILROAD, INC. IS A LINE OF RAILROAD THAT QUALIFIES FOR THE CLASS EXEMPTION FROM 49 U.S.C. § 10901, RATHER THAN TRACK EXCEPTED FROM BOARD ACQUISITION AND OPERATION AUTHORITY UNDER § 10906

Northwoods Distribution Services, Inc. owns the Rhinelander Transload Facility trackage. The trackage is used in conjunction with interchanging with Canadian National Railroad, operating on trackage rights over Northwood Distribution Services track. Paper pulp and plastic products will be transloaded at the Rhinelander Transload Facility.

There is currently 3,000 linear feet of track located on the Rhinelander Transload Facility.

In this circumstance, the Rhinelander Transload Facility trackage is properly considered to be a line of railroad under 49 U.S.C. § 10901 pursuant to the Board's tenant-use test, rather than spur, switching or side tracks excepted from Board authority over their acquisition and operation by virtue of 49 U.S.C. § 10906. The tenant-use test is described in the Board's decision denying reconsideration in *Effingham Railroad Company - Petition for Declaratory Order - Construction at Effingham, IL*, STB Docket No. 41986 and embraced proceedings, 1998 STB LEXIS 253, decision served September 18, 1998; *aff'd sub nom. United Transp. Union v. Surface Transportation Board.*, 183 F.3d 606 (7th Cir. 1999).

In that case, as here pertinent, Agracel Corporation transloaded beer from rail to truck at a warehouse that it operated in an industrial park at Effingham, IL. Agracel owned approximately 206 feet of right-of-way and track that extended between its warehouse and trackage owned and operated by Conrail. Previously, Conrail had operated over the Agracel trackage to provide service to Agracel. It was proposed that Effingham Railroad Company (ERRC), a noncarrier, substitute for Conrail as provider of the rail service over the Agracel trackage. ERRC filed a notice of exemption under 49 C.F.R. § 1150.31 for its operation over that trackage. The United Transportation Union (UTU) contended that the Board lacked authority over the proposed operation because Agracel trackage is spur, switching or side track excepted from Board operation authority under 49 U.S.C. § 10906.

In finding that the Agracel trackage was a line of railroad under 49 U.S.C. § 10901, the Board said (1998 STB LEXIS 253, at 8-9 (emphasis in original)):

...(I)n those cases where a tenant railroad's intended use of a track segment is different from the use made by the railroad owning the track, we have determined that the tenant's use, rather than the character of the trackage itself, is controlling with regard to its own operations, subject to consideration of the purpose and effect of the construction under *Texas & Pacific* (citations omitted).

In the initial notice, even under its new approach, ERRC became the operator of a line of track connecting Conrail to the site of the industrial park. Conrail clearly had operated this short track segment as an exempt siding or spur. However, because it was ERRC's initial railroad operation, this track segment became ERRC's entire line of railroad and was not, as to ERRC, a siding or spur. This small piece of trackage initiated ERRC's service from a connection or interchange point with Conrail to a shipper's facility within the industrial park. Thus ERRC's becoming the operator was the proper subject of the initial notice of exemption and was not statutorily exempt under section 10906.

It is apparent from the Board's decision in that case that the tenant-use test also applies when a new rail carrier is using trackage pursuant to an operating agreement rather than a lease, and when the prior use of the track was by a third-party carrier rather than by the shipper-owner of the trackage. In upholding the Board's decision in that case, the reviewing court held that it was reasonable for the Board to classify the trackage by virtue of the tenant's use. *United Transp. Union vs. Surface Transportation Bd.*, *supra*. 193 F.3d at 614. *Accord: Rhinelander Rail Link LLC - Lease & Oper. - Union Pacific R.R. Co.*, 2 S.T.B. 534 (1997), *aff'd sub nom. United Transp. Union - Illinois v. Surface Transp.*, 169 F.3d 474 (7th Cir. 1999).

Inasmuch as the subject transaction will be BLRR's initial railroad acquisition, and the Rhinelander Transload Facility trackage will constitute the entire line of railroad of BLRR, it follows that the Rhinelander Transload Facility trackage is a line of railroad under 49 U.S.C. § 10901, rather than spur, switching or side tracks excepted from Board acquisition and operation authority by virtue of 49 U.S.C. § 10906.

INFORMATION REQUIRED BY 49 C.F.R. § 1150.33

(a) The full name and address of the applicant;

The full name and address of the applicant in FD 36422 is Branch Line Railroad, Inc., 4973 Willow Dam Road, Hazelhurst, Wisconsin, 54531.

(b) The name, address, and telephone number of the representative of the applicant who should receive correspondence;

BLRR representative is David C. Dillon, Dillon & Nash, Ltd., 3100 Dundee Road, Suite 508, Northbrook, Illinois, 60062.

(c) A statement that an agreement has been reached or details when an agreement will be reached;

A Lease between Northwoods Distribution Services, Inc. and Branch Line Railroad, Inc., concerning the Rhinelander Transload Facility trackage will be reached within thirty (30) days, and an agreement in principle has been reached. A copy of draft of the Lease is provided herewith.

(d) The operator of the property;

BLRR will be the operator of the property.

(e) A brief summary of the proposed transaction, including:

(1) The name and address of the railroad transferring the subject property,

The entity transferring the subject property is Northwoods Distribution Services, Inc., a non-railroad entity, 3200 North Rifle Road, Rhinelander, Illinois, 60633.

(2) The proposed time schedule for consummation of the transaction,

Branch Line Railroad, Inc. will enter into a Lease with Northwoods Distribution Services, Inc. within the next 30 days. Operations are proposed to be consummated on or about January 1, 2021.

(3) *The mile-posts of the subject property, including any branch lines, and*

The Rhinelander Transload Facility trackage is not described by milepost numbers.

The trackage is described and depicted in Appendices 1-A and 1-B attached to this Notice.

(4) *The total route miles being acquired;*

A total of approximately 3,000 feet/0.56 mile of trackage is to be operated by BLRR.

(f) *A map that clearly indicates the area to be served, including origins, termini, stations, cities, counties, and States:*

The required map is attached to this Notice as Appendix 1-B.

(g) *A certificate that applicant's projected revenues do not exceed those that would qualify it as a Class III carrier.*

The required certificate is attached to this Notice as Appendix 2.

CAPTION SUMMARY

A caption summary required by 49 C.F.R. § 1150.34 for Finance Docket Number FD36422 is attached to this Notice as Appendix 3.

ENVIRONMENTAL AND HISTORIC REPORT

The proposed acquisition and operation do not require environmental and historic reporting.

See 49 C.F.R. § 1105.6(c)(2)(i) and 49 C.F.R. § 1105.8(b)(1).

LABOR PROTECTION

Pursuant to 49 U.S.C. § 10901(c), labor protection requirements do not apply to this transaction.

VERIFICATION

The verification is attached to this Notice as Appendix 4.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, within 30 days of the filing of this Notice, the Director of the Board's Office of Proceedings should publish notices in the Federal Register of the filing of notices of exemption in FD 36422. See 49 C.F.R. § 1150.32(b).

Respectfully submitted,


Branch Line Railroad, Inc.

By: David C. Dillon
Dillon & Nash, Ltd.
3100 Dundee Road, Suite 508
Northbrook, Illinois 60062
(847) 498-3000

*Attorney for Applicant
in FD 36422*

Applicant in Finance Docket No. FD 36422

DATE FILED: December 16, 2020

FD 36422

Appendix 1-A

LENGTH OF BRANCH LINE RAILROAD, INC.
RHINELANDER TRANSLOAD FACILITY

Total Track: 3,000 linear feet = 0.56 mile of track

Red line - Canadian National Railroad
Blue Line - Northwoods Distribution Services
Orange and Yellow Lines - Track to be acquired by Branch Line Railroad
Green Lines - Future expansion



Google Earth

CERTIFICATION UNDER 49 C.F.R. § 1150.33(g)

Branch Line Railroad, Inc. hereby certifies under 49 C.F.R. § 1150.33(g), that the projected revenues from the acquisition and operation proposed in this matter do not exceed those that would qualify it as a Class III rail carrier, and will not exceed Five Million Dollars (\$5,000,000).



David C. Dillon
*Authorized Representative of
Branch Line Railroad, Inc.*

SUBSCRIBED AND SWORN TO before
me this 16th of December, 2020.


Notary Public

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

Notice of Exemption

FINANCE DOCKET NO. FD 36422

BRANCH LINE RAILROAD, INC.

- ACQUISITION EXEMPTION -

RAIL LINE OF NORTHWOODS DISTRIBUTION SERVICES, INC.

AT RHINELANDER TRANSLOAD FACILITY, RHINELANDER, WISCONSIN

Branch Line Railroad, Inc. (BLRR), has filed a Notice of Exemption to acquire and operate from Northwoods Distribution Services, Inc., a non-carrier, approximately 3,000 feet (0.56 mile) of right-of-way and trackage at Great Lakes Reloading, LLC's Rhinelander Transload Facility in Rhinelander, Wisconsin. Comments must be filed with the Board and be served on BLRR's representative, David C. Dillon, Dillon & Nash, Ltd., 3100 Dundee Road, Suite 508, Northbrook, Illinois, 60062, (847) 498-3000.

This Notice is filed under 49 C.F.R. § 1150.31. 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.

By the Board

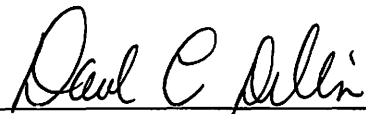
(Seal)

Chief, Section of Administration
Office of Proceedings
Surface Transportation Board

VERIFICATION

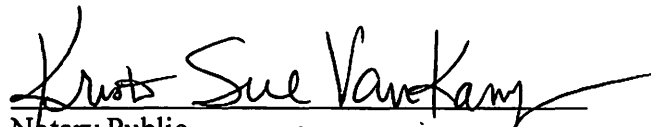
STATE OF ILLINOIS)
)
COUNTY OF COOK)

David C. Dillon, being duly sworn, states that he is an attorney for Branch Line Railroad, Inc.; that he is familiar with the factual allegations made in the foregoing Notice of Exemption on behalf of BLRR; and that such allegations are true as stated.



David C. Dillon, Attorney for
Branch Line Railroad, Inc.

SUBSCRIBED AND SWORN to before
me this 16th day of December, 2020.



Notary Public



BRANCH LINE RAILROAD COMPANY
4973 Willow Dam Road
Hazelhurst, WI 54531

LEASE AGREEMENT

This Lease, made in duplicate this 11th day of Dec, 2020 by and between the Branch Line Rail Company, a Wisconsin railroad corporation, (hereinafter called "Lessee"), and Northwoods Distribution Services, a Wisconsin corporation, located at 3200 N. Rifle Road, Rhinelander, Wisconsin 54501 (hereinafter called the "Owner/Lessor", with words referring to the Sub-Lessee to be taken of such number and gender as shall be appropriate), witnesseth that:

1. This Lease Agreement shall supersede and replace all existing leases between Branch Line RR Sub-Lessor and Sub-Lessee.
2. By this Lease Agreement, Lessor agrees to lease to the Lessee a length of railroad track located in Owner/Lessor's Yard, sufficient to contain Fifty (50) railroad cars of up to 70 feet in length, coupler-to-coupler.
3. The Branch Line RR, as Lessee, will provide to the Sub-Lessee(s) rail car storage spots located at the Northwoods Distributing Services, in its Rhinelander, Wisconsin facilities, located on the property of Northwoods Distribution Services, for the storage of loaded and empty freight cars delivered on Sub-Lessee's behalf to that location. In consideration of the Agreements between Lessee and the Sub-Lessee herein contained, Lessor does by these presents demise and lease unto the Lessee/Sub-Lessor, a rail car storage track, in the City of Rhinelander in the County of Oneida, State of Wisconsin described as follows, to-wit: Storage tracks located on the property of Northwoods Distribution Services to Lessee, Branch Line Railroad Company to have and to hold the same from the 1st day of June 2020 until the 31 of Dec, ~~2020~~ 2021
4. The Sub-Lessee agrees to pay the Lessee/Sub-Lessor, Branch Line RR, as rent the sum of \$ _____ Dollars per day, per car for up to 50 car spots for cars, 70 feet long or less, coupler-to-coupler, whether used or not, for all loaded or empty rail cars containing or last containing STCC _____ and STCC _____, and to also pay a switching charge of \$175.00 per car switched in and \$175.00 per car switched out. Branch Line RR to be paid in the manner following, to-wit: payment 30 Days Net.
5. When the Lessee/Sub-Lessor places cars on said track for the Sub-Lessee, for storage, the cars are then to be considered in the sole possession of the Lessee/Sub-Lessor until the Sub-Lessee orders movement of such cars as a part of a movement governed by tariff, or, while Branch Line RR is moving the same cars temporarily to accommodate its own business.

6. Lessee/Sub-Lessor and the Sub-Lessee shall not interfere with or obstruct drainage ditches or drain pipes on or below the surface of the ground as the same may now exist upon the leased premises, nor shall Lessee put or permit any contaminous matter to enter onto the railroad tracks or land of any drainage ditch or drain pipe on the leased premises.
7. The Sub-Lessee further agrees that at all times during the continuance of said tenancy the Sub-Lessee will indemnify Owner/Lessor, Northwoods Distribution Services, and Lessee/Sub-Lessor, Branch Line RR, against loss or liability for fire or theft to the railroad cars on said demised premises and their contents (and any damage to track, structures or other vehicles of any kind), unless such fire or theft is the result of Owner/Lessor Northwood's, or the Lessee/Sub-Lessor Branch Line RR's actions or negligence. In addition, the Sub-Lessee agrees to indemnify and hold harmless the Owner/Lessor for any and all claims against Sub-Lessee, the Lessor and Branch Line RR, and any other entity, and for any injury to any person that is an employee or agent of the Lessee/Sub-Lessor, or the Owner/Lessor and any other party authorized to be on the subject site, located in the City of Rhineland, Wisconsin.
8. Sub-Lessee further agrees that it will hold and keep Owner/Lessor or Lessee/Sub-Lessor Branch Line RR, its employees and agents, harmless and will indemnify Lessor from any and all liability or claim for damages on account of destruction, loss or damage to any property belonging to Lessor or legitimate occupant of the property, or any injury to any person that is an employee of Lessor or Branch Line RR, or a legitimate occupant of the premises. The Sub-Lessee shall not be responsible for loss or damage to Lessor or Branch Line RR caused by the Lessee/Sub-Lessor Branch Line RR's negligence or reckless conduct.
9. It is further agreed by the Lessee/Sub-Lessor, not to grant or attempt to grant any sublease or license to occupy the said premises, or any part thereof, or assign this Lease, without the written consent of the Owner/Lessor, first had and obtained.
10. The demised property is situated in the State of Wisconsin, this lease is made subject to the approval of the Wisconsin Commerce Commission, and subject to the rights of said Commission to terminate the same at any time when in the opinion of said Commission the public interest or convenience requires it.
11. Owner/Lessor shall be permitted to terminate this lease and the tenancy hereby created at any time by giving the Lessee/Sub-Lessor, and Sub-Lessee, sixty days' notice of such intention. Termination of this Sublease by the Sub-Lessee or Lessee/Sub-Lessor shall require sixty (60) days' notice to the Lessor.
12. The Sublease shall be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto, and may be extended by mutual agreement of the Parties, evidenced by execution of a Lease Extension at least Thirty (30) days prior to Lease expiration.

13. The provisions of this Lease may be extended by mutual agreement of the Owner/Lessor and Lessee/Sub-Lessor, Branch Line RR.
14. Sub-Lessee, in addition to contract rent, shall pay Lessee/Sub-Lessor Branch Line RR at the rate of \$200 per car switched in, \$200 per car out for switching movements and agrees to comply with all Federal and State requirements for the storage of hazmat cars. This requires that Branch Line RR lease a specific track to Lessee for the specific use placarded hazmat cars being stored.
15. Sub-Lessee agrees that cars are stored last in first out and that no cherry picking of specific cars is allowed under this agreement without mutual agreement and amendment of this agreement.
16. Lessee/Sub-Lessor shall provide to Owner/Lessor a Certificate of Insurance in the amount of Five Million Dollars (\$5,000,000.00) covering all risks arising out of Lessee's cars being on Lessor's property, naming the Lessor and the City of Rhinelander as Additional Insured Parties. The Lessor shall also provide a Certificate of Insurance in the amount of Five Million Dollars (\$5,000,000.00), naming the Lessee and the City of Rhinelander as additional insured parties.
17. This Lease shall have a term of Ninety (90) days from the date of signing by both Owner/Lessor and is renewable for additional Ninety (90) day periods, by both Parties signing a Lease Extension Agreement providing for such extension.
18. In the event of any dispute between the Parties, any legal action shall be taken in Oneida County, Wisconsin Circuit Court and the laws of the State of Wisconsin will be applicable.

IN WITNESS WHEREOF, the parties to this Lease have hereunto set their hands or caused the same to be signed by their authorized officers or agents, the day and year first above written.

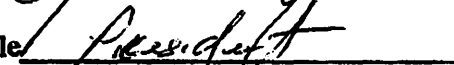
Owner/Lessor:

NORTHWOODS DISTRIBUTION
SERVICES

By

Title

Date:



12/11/2020

Lessee and Sub-Lessor

BRANCH LINE RAILROAD COMPANY

By: _____

Title: _____

Date: _____

Sub-Lessee

[name and business address]

By: _____
Name

Title: _____

Business Address

Date: _____