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May 14, 2021

302342

VIA E-FILING

Cynthia T. Brown
Chief, Section of Administration
Office of Proceeding
Surface Transportation Board
395 E Street, SW
Washington, DC 20024

ENTERED
Office of Proceedings
May 14, 2021
Part of
Public Record

Re: STB FD No. ~~35616~~ **FD 36516**
Reading Blue Mountain & Northern Railroad Company -
Acquisition Exemption - Carbon County, Pennsylvania

Dear Ms. Brown:

Enclosed for filing in the above-referenced docket is a Notice of Exemption of Reading Blue Mountain & Northern Railroad Company. The filing fee has been paid via pay.gov.

If there are any questions related to this filing, please contact me.

Respectfully,

CLARK HILL, PLC

s/ Eric M. Hocky

Eric M. Hocky

EMH:e
Enclosure

FILED
May 14, 2021
SURFACE TRANSPORTATION
BOARD

FEE RECEIVED
May 14, 2021
SURFACE TRANSPORTATION
BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. FD ~~35616~~ 36516

**READING BLUE MOUNTAIN & NORTHERN RAILROAD COMPANY
-- ACQUISITION EXEMPTION--
CARBON COUNTY, PENNSYLVANIA**

**VERIFIED NOTICE OF EXEMPTION
Pursuant to 49 U.S.C. § 10902 and 49 C.F.R. § 1150.41**

(includes color images)

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*Attorneys for Reading Blue Mountain &
Northern Railroad Company*

Dated: May 14, 2021

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. FD ~~35616~~ 36516

**READING BLUE MOUNTAIN & NORTHERN RAILROAD COMPANY
-- ACQUISITION EXEMPTION--
CARBON COUNTY, PENNSYLVANIA**

**VERIFIED NOTICE OF EXEMPTION
Pursuant to 49 U.S.C. § 10902 and 49 C.F.R. § 1150.41**

Reading Blue Mountain & Northern Railroad Company (“RBMN”), an existing Class III railroad, files this Notice of Exemption under 49 C.F.R. Part 1150, Subpart D - Exempt Transactions, to permit it to acquire an approximately 19.5-mile line of railroad owned by Carbon County, Pennsylvania (“County”). The line is located between milepost 19.5 near Tamenend, Schuylkill County, PA, and milepost 0.0± at Packerton Jct., Carbon County, PA (the “Rail Line”).¹ RBMN will initially be acquiring the residual common carrier authority for the Rail Line. The Rail Line is currently leased by the County (through the Carbon County Railroad Commission) to and operated by C&S Railroad Corporation (“C&S”). At the time of RBMN’s acquisition, C&S’s lease with the County will be terminated and RBMN will enter into a new lease with C&S to allow C&S to continue to lease and operate the Rail Line.² RBMN has overhead trackage rights from C&S over a portion of the Rail Line between milepost 0.0 and

¹ The portion of the Rail Line between milepost 18 ± at Mauch Chunk Jct. and the end of the line at milepost 19.5 has been out of service and unused for many years.

² C&S is filing a separate notice with the Board with respect to the new RBMN lease. *C&S Railroad Corporation – Lease and Operation Exemption – Reading Blue Mountain & Northern Railroad Company*, STB Docket No. FD 35617.

milepost 18 ± that it will continue to exercise after the acquisition.³ The Rail Line is shown on the map attached as Exhibit A.

Notice

In accordance with the requirements of 49 C.F.R. § 1150.43, RBMN hereby provides the following information:

(a) Full name and address of Applicant:

Reading Blue Mountain & Northern Railroad Company
PO Box 218
Port Clinton, PA 19549

(b) Applicant's Representative:

Eric M. Hocky
Clark Hill PLC
Two Commerce Square
2001 Market St., Suite 2620
Philadelphia, PA 19103
(215) 640-8523

(c) Statement of Agreement:

RBMN entered into a Purchase and Sale Agreement dated May 6, 2021, with the County to acquire the Rail Line.

(d) The operator of the property:

C&S is the current operator of the Rail Line, and will continue to operate the Rail Line following the RBMN acquisition. RBMN has overhead trackage rights over a portion of the Rail Line which it will continue to operate.

³ *Reading Blue Mountain & Northern Railroad Company—Acquisition of Trackage Rights Exemption—C & S Railroad Corporation*, STB Finance Docket No. 33020 (served August 30, 1996).

(e) Summary of proposed transaction:

RBMN is an existing Class III common carrier railroad that holds authority from the Board to operate adjacent rail lines in Pennsylvania, and to operate overhead trackage rights over a portion of the Rail Line. RBMN is acquiring the Rail Line in order to obtain ownership of the Rail Line and to justify improvements to the Rail Line for the benefit of the current operator C&S, and well as for the benefit of RBMN's trackage rights.

(1) The name and address of the entity transferring the Rail Line:

Carbon County Board of Commissioners
Carbon County Administration Building
PO Box 129
Jim Thorpe, PA 18229-1238

(2) RBMN and the County have entered into a Purchase and Sale Agreement dated May 6, 2021.

(3) Mileposts:

The Rail Line is located between milepost 19.5 near Tamenend , Schuylkill County, PA, and milepost 0.0± at Packerton Jct., Carbon County, PA. The portion of the Rail Line between milepost 18 ± at Mauch Chunk Jct. and the end of the line at milepost 19.5 has been out of service and unused for many years.

(4) The total route miles to be acquired and operated are approximately 19.5 miles.

(f) Map:

A map of the Rail Lines is attached as Exhibit A.

(g) Certification of Projected Revenue:

RBMN certifies that its projected revenues as a result of the transaction will not result in the creation of a Class II or Class I rail carrier.

(h) Interchange Commitment:

RBMN certifies that the Purchase and Sale Agreement does not impose or include an interchange commitment.

Labor Notice Certification

In addition to the information set forth above, RBMN certifies that its revenues currently exceed \$5,000,000. However, since C&S will continue to be the operator of the Rail Line both before and after the transaction, RBMN is requesting a waiver of the labor notice requirements under 49 C.F.R. §1150.42(e). *See* request for waiver set forth below.

Labor Protection

RBMN is a Class III carrier, and pursuant to 49 U.S.C. §10902(d), exemption of this transaction may not be subjected to labor protection conditions.

Environmental and Historic Reports

This is a transaction for continued rail operations that will not result in changes in carrier operations that will exceed the thresholds established in 49 C.F.R. §1105.7(e)(4) or (5). Further Board approval is required for RBMN to abandon service, or for RBMN to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older. Accordingly, no environmental or historic documentation is required. *See* 49 C.F.R. §1105.6(c)(1); 49 C.F.R. §1105.8(b)(1).

Caption Summary

Attached hereto as Exhibit B is the caption summary required by 49 C.F.R. §1150.44.

**Request for Waiver of Notice Requirements
of 49 C.F.R. §1150.42(e)**

As noted above, RBMN's total revenues exceed \$5,000,000. Under the Board's regulations at 49 C.F.R. §1150.42(e), RBMN would be required to give sixty days' notice to employees working on the Rail Line (and the national offices of their collective bargaining representatives, if any⁴). However, the Board has held: "The purpose of 49 CFR 1150.42(e) is to ensure that rail labor unions and employees who would be affected by the transfer of a line are given sufficient notice of the transaction before consummation." *Louisiana & Delta Railroad, Inc. – Lease Amendment and Operation Exemption – Union Pacific Railroad Company*, STB Finance Docket No. 36379, slip op. at 2 (served Mar. 4, 2020). *See also Acquisition of Leased Lines under 49 USC 10901 and 10902 – Advance Notice of Proposed Transactions* ("Advanced Notice of proposed Transactions"), 2 STB 592 (1997). In adopting the notice requirement, the Board specifically recognized that "exceptional situations may occur necessitating acquirer requests for waiver of the 60-day notice provision ..." *Advanced Notice of Proposed Transactions, supra* at 601.

In this instance, RBMN should not be required to comply with the requirements of Section 1150.42(e) because there will be no changes with respect to the operation of the Rail Line. RBMN is only acquiring the residual common carrier authority for the Rail Line; C&S will continue to be the operating lessee; and RBMN will continue to operate its overhead trackage rights. The County which is selling the Rail Line, does not have any employees that work, or have ever worked, on the Rail Line. Posting notices on the Rail Line would not provide notice to any County employees since none work on the Rail Line. Further, there will be no

⁴ In this case, there are no unionized employees that work on the Rail Line.

operational changes, and no employees will be adversely affected. Thus, under the circumstances of this transaction, compliance with the notice requirements will not further the purposes of the rule and should be waived. Granting RBMN a waiver would be consistent with other circumstances in which the Board has granted waivers from the labor notice requirements when there will be no change in operators on the subject line, and the owner has not had employees working on the line. *See North Carolina & Virginia Railroad Company, LLC, Chesapeake & Albemarle Railroad Division – Lease Amendment Exemption – Norfolk Southern Railway Company*, STB Docket No. FD 35564 (Sub-No. 1) (served December 23, 2011). *See also Louisiana Southern Railroad, LLC – Lease Exemption containing Interchange Commitment – The Kansas City Southern Railway Company*, STB Docket No. FD 35983 (served February 18, 2016).

RBMN asks that the waiver of the labor notice requirements be granted expeditiously so that this Notice of Exemption can become effective as scheduled 30 days after it is filed.

Conclusion

Accordingly, RBMN requests that the Board issue a notice permitting RBMN to acquire the Rail Line at any time after 30 days from the filing of this Notice of Exemption.

Respectfully submitted,

s/ Eric M. Hocky

Eric M. Hocky
Clark Hill PLC
Two Commerce Square
2001 Market St., Suite 2620
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(215) 640-8523
ehocky@clarkhill.com

*Attorneys for Reading Blue Mountain &
Northern Railroad Company*

Dated: May 14, 2021

VERIFICATION

I hereby verify on behalf of Reading Blue Mountain & Northern Railroad Company, under penalty of perjury, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verification.

Executed on May 14, 2021.



Tyler Glass
EVP Operations

EXHIBIT A

MAP



EXHIBIT B

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

STB DOCKET NO. FD ~~35616~~ 36516

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-- ACQUISITION EXEMPTION--
CARBON COUNTY, PENNSYLVANIA**

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RBMN has certified that as a result of the transaction it will not become a Class I or Class II carrier, but that its projected annual revenues will exceed \$5 million annually. RBMN has requested a waiver of the 60-day advance notice requirement since C&S will remain as the lessee and operator of the line.

Comments must be filed with the Board and served on RBMN's representative, Eric M. Hocky, Esquire, Clark Hill PLC, Two Commerce Square, 2001 Market Street, Suite 2620, Philadelphia, PA 19103; (215) 640-8523; ehocky@clarkhill.com.

The Notice is filed under 49 C.F.R. §1150.41. If the Notice contains false or misleading information, the exemption is void *ab initio*. The filing of a petition to revoke will not automatically stay the transaction.

Decided: _____, 2021.

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