

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Proceedings
August 11, 2021
Part of
Public Record

DOCKET NO. FD 36535

**REVOLUTION RAIL HOLDING COMPANY, LLC
– ACQUISITION EXEMPTION –
SARATOGA AND NORTH CREEK RAILWAY, LLC**

VERIFIED NOTICE OF EXEMPTION PURSUANT TO 49 C.F.R. § 1150.31, ET SEQ.

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*Attorney for Revolution Rail Holding
Company, LLC*

August 11, 2021
FILED
August 11, 2021
**SURFACE
TRANSPORTATION BOARD**

**FEE RECEIVED
August 11, 2021
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– ACQUISITION EXEMPTION –
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VERIFIED NOTICE OF EXEMPTION PURSUANT TO 49 C.F.R. § 1150.31, ET SEQ.

Pursuant to 49 C.F.R. § 1150.31 *et seq.*, Revolution Rail Holding Company, LLC (“RRHC”), a non-carrier, hereby files this Verified Notice of Exemption to acquire the railroad operating assets of the Saratoga and North Creek Railroad (“SNCR”), which consists of a certain series of easements or railroad rights of way extending from the terminal connection of the former Delaware and Hudson Railroad at North Creek, New York, to mines of the former NL Chemicals, Inc. at Sanford Lake, Tahawus, New York, traversing a distance of 29.71 miles of main track and 2.97 miles, more or less, of passing tracks and siding and includes any structures, tracks, sidings, ties, bridges and culverts, telephone and telegraph lines that may be located thereon.

On September 10, 2018, the New York State Department of Environmental Conservation (the “Department”) filed an application at the Surface Transportation Board (“STB” or “Board”) under 49 U.S.C. § 10903 requesting a third-party, or “adverse,” abandonment of the SNCR over this 29.71 miles of the SNCR rail line between milepost NC 0.0 at North Creek, N.Y., and its terminus at milepost NC 29.71 near the former Tahawus Mine (the “Line”). *New York State Dep’t*

of Environmental Conservation – Adverse Abandonment – Saratoga and North Creek Ry in Town of Johnsbury, N.Y., STB Docket No. AB-1261 (“Adverse Abandonment”).¹

On March 30, 2020, a voluntary petition was filed by the SNCR (the “Saratoga Chapter 11 Case”) under Chapter 11 of Title 11 of the United States Code, filed as Case No. 20-12313-TBM in the United States Bankruptcy Court for the District of Colorado (the “Bankruptcy Court”). On December 14, 2020, the Trustee for the Saratoga Chapter 11 Case filed a letter at the STB stating he is opposed to the Department’s adverse abandonment application and requested that the Board continue holding the proceeding in abeyance. The Trustee stated he wanted to explore whether the SNCR could be sold. On March 5, 2021, the Department stated that it opposed any request for further abeyance and urged the Board to promptly resolve the proceeding. The Trustee responded on April 30, 2021, requesting that the proceeding be placed in abeyance until September 30, 2021, as he continued to discuss the sale of SNCR with potential bidders. By order of the STB on June 21, 2021, the proceeding was held in abeyance until further order of the STB.

RRHC intends to enter into an Asset Purchase Agreement with the Trustee of SNCR to purchase the assets of the SNCR as a so-called “stalking horse” bidder. Pursuant to the bidding procedures established by the Trustee and the Bankruptcy Court, the Agreement will be subject to higher and better offers by interested parties. RRHC is filing now before knowing that it will be the winning bidder in order to ensure the passage of the 30-day period before this Verified Notice becomes effective to allow it to close the transaction within the timetable to be imposed by the Bankruptcy Court and the bidding procedures. Otherwise, RRHC might not have sufficient time to file a Verified Notice after being selected as the winning bidder.

¹ A major concern of the Department was the storage of rail tank cars on the Line in the state park. RRHC has verbally agreed to the Department not to store rail cars on the Line unless it must do so to comply with its common carrier obligation.

In accordance with the requirements of 49 C.F.R. § 1150.33, RRHC submits the following information:

Name and address of applicant: 49 C.F.R. § 1150.33(a)

Revolution Rail Holding Company, LLC
3 Railroad Place
North Creek, NY 12853

Applicant's Representative: 49 C.F.R. § 1150.33(b)

Daniel R. Elliott
GKG Law, P.C.
1050 Thomas Jefferson St., NW, Suite 500
Washington, DC 20007
(202) 342-5248
delliott@gkglaw.com

Statement that an agreement has been reached or details about when an agreement will be reached: 49 C.F.R. § 1150.33(c)

As noted, RRHC intends to enter into an Asset Purchase Agreement with the Trustee of SNCR to purchase the assets of the SNCR as a so-called “stalking horse” bidder. Pursuant to the bidding procedures established by the Trustee and the Bankruptcy Court, the Agreement will be subject to higher and better offers by interested parties. RRHC is filing now before knowing that it will be the winning bidder in order to ensure the passage of the 30-day period before this Verified Notice becomes effective to allow it to close the transaction within the timetable imposed by the Bankruptcy Court and the bidding procedures. Otherwise, RRHC might not have sufficient time to file a Verified Notice after being selected as the winning bidder. This would avoid the potential forfeiture of its deposit submitted to the Trustee in accordance with the bidding procedures.

Operator of Property: 49 C.F.R. § 1150.33(d)

The Line is not currently in service as described in great detail in the Adverse

Abandonment proceeding, and RRHC does not presently have plans to restore the Line to active freight service although it has plans to open discussions with third parties about the possibility of intrastate tourism trains. There has essentially been no rail service on the Line since 1989. Also, there are no active rail shippers on the Line. Moreover, the Adverse Abandonment proceeding remains pending before the STB and could result in an abandonment ruling at some point in the future.

In the event the Adverse Abandonment application is granted by the STB, RRHC would enter into a trails-use agreement and rail bank the Line. This would preserve the possibility that rail service could be reactivated at some future date if the opportunity arises. RRHC would acquire the residual common carrier status in this instance. RRHC would also allow the existing rail bike operation on a portion of the Line to continue. The rail bike operator, Revolution Rail, LLC (“RR”), a related entity to RRHC, presently has a lease to operate its rail bikes on a portion of the Line with SNCR for the remainder of the season.

In the event the Adverse Abandonment application is denied, RRHC would provide rail service upon reasonable request in accordance with its common carrier obligation.² It would also maintain the present and highest use of the Line which is a rail bike operation on a portion of the Line by RR to the extent it does not interfere with its common carrier obligation.

This acquisition would allow the Trustee to maximize the value to the bankruptcy estate, maintain the possibility of future rail service on the Line, and permit the present, rail bike use to continue.

² RRHC would contract with a third-party operator to provide rail service in the event there is a need for rail service on the Line.

Summary of the proposed transaction: 49 C.F.R. § 1150.33(e)

As described above, RRHC will be participating in the submission of a bid as a “stalking horse” bidder under the auspices of the Bankruptcy Court and the Trustee. The bidding procedures require the submission of a purchase agreement, which will be filed with the Bankruptcy Court upon consummation. At this time, there is no final, executed agreement that can be submitted with this Verified Notice.

RRHC is a newly formed entity that is a non-carrier. Upon consummation of the transaction, RRHC would become a Class III carrier. SNCR is a Class III carrier, but there are presently no rail operations or active rail shippers on the Line. Pursuant to the Asset Purchase Agreement, RRHC will purchase from SNCR all of SNCR’s right, title and interest in and to its assets, including the Line.

Name and address of transferring carrier: 49 C.F.R. § 1150.33(e)(1)

Saratoga and North Creek Railway, LLC
c/o William Brandt, Trustee
Development Specialists, Inc.
10 South LaSalle St., 60603
Chicago, IL 60603

Consummation schedule: 49 C.F.R. § 1150.33(e)(2)

RRHC intends to consummate the transaction to acquire the assets of SNCR shortly after the expiration of 30 days from the date of this Verified Notice. This will occur in accordance with the Bankruptcy Court and the bidding procedures.

Mileposts and route miles: 49 C.F.R. § 1150.33(e)(3) and (4)

The Line consists of approximately 29.71 miles of rail line between milepost NC 0.0 at North Creek, N.Y., and its terminus at milepost NC 29.71 near the former Tahawus Mine. There are no branch lines.

Map: 49 C.F.R. § 1150.33(f)

A map showing the Line and surrounding area is attached as Exhibit A to this Notice.

Certificate of compliance: 49 C.F.R. § 1150.33(g)

Certification of compliance with the provisions of 49 C.F.R. 1150.33(g) is attached as Exhibit B to this Notice.

Interchange Commitments: 49 C.F.R. § 1150.33(h)

The proposed acquisition of SNCR will not involve any provision or agreement between RRHC and SNCR that would limit future interchange with a third-party connecting carrier. Accordingly, the interchange commitment disclosure requirements of section 1150.33(h) are not applicable.

Advance notice (posting): 49 C.F.R. § 1150.32(e)

The proposed transaction will not result in the creation of a carrier with projected annual operating revenues exceeding \$5 million, and, accordingly, the advance notice requirements of 49 C.F.R. § 1150.32(e) are not applicable to this transaction. *See* Exhibit B.

Environmental and historic preservation data: 49 C.F.R. § 1105

Under 49 C.F.R. § 1105.6(c)(1), the proposed transaction is exempt from environmental reporting requirements. The proposed transaction will not result in significant changes in carrier operations and will not result in any changes that exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5). Under 49 C.F.R. § 1105.8(b)(1), the proposed transaction is exempt from historic preservation requirements. The proposed transaction will not change the level of maintenance of rail property. Furthermore, Board approval is required to discontinue or abandon service, and there are no plans to dispose of or alter property subject to Board jurisdiction that are over 50 years old or older.

Caption summary: 49 C.F.R. § 1150.34

A caption summary in appropriate form is attached as Exhibit C to this Verified Notice.

Respectfully submitted,

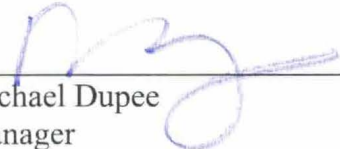
/s/ Daniel R. Elliott
Daniel R. Elliott
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Washington, DC 20007
(202) 342-5248
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*Attorney for Revolution Rail Holding
Company, LLC*

August 11, 2021

VERIFICATION

Pursuant to 28 U.S.C. § 1746, I declare under the penalty of perjury under the laws of the United States that I am authorized to make this verification on behalf of Revolution Rail Holding Company, LLC, and that the foregoing Notice of Exemption is true and correct to the best of my knowledge and belief.



Michael Dupee
Manager
Revolution Rail Holding Company, LLC

August 10, 2021

Exhibit A



Tahawus Branch Railroad Corridor

Key

Wild, Scenic, and Recreational Rivers
Source: DEC

Railroad
Source: DEC, Bureau of Real Property

Mile Posts
Source: DEC, Bureau of Real Property

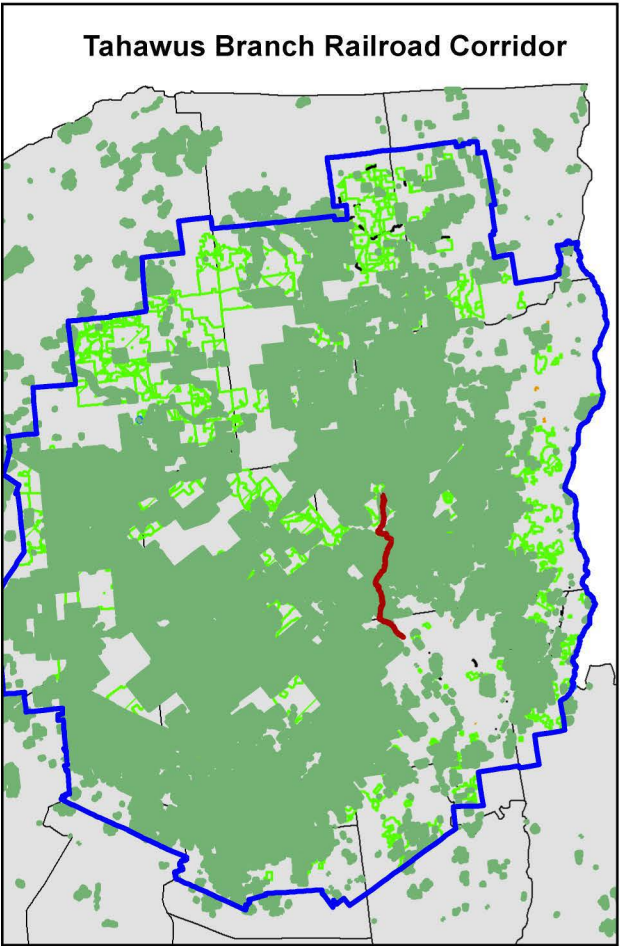
Private Land Classification

- Hamlet
- Moderate Intensity Use
- Low Intensity Use
- Rural Use
- Resource Management
- Industrial Use

State Land Classification

- Wilderness
- Primitive
- Wild Forest
- Intensive Use
- State Administrative

Source: Adirondack Park Agency, 2018 Land Use and Development Plan Map



NEW YORK
STATE OF OPPORTUNITY

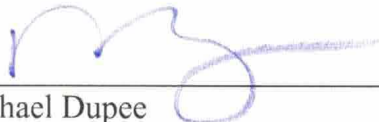
Department of Environmental Conservation

This map was compiled from publicly available GIS data and real property land records. Created by the Division of Lands and Forest, Bureau of Real Property. Compiled on Date: 5/24/2018

Exhibit B

CERTIFICATION

I, Michael Dupee, as Manager of Revolution Rail Holdings Company, LLC hereby certifies that the Revolution Rail Holdings Company, LLC's projected annual rail revenues resulting from the consummation of the proposed transaction will not exceed \$5 million annually, and will not result in Revolution Rail Holdings Company, LLC becoming a Class I or Class II carrier under the provisions of 49 C.F.R. § 1201(1-1).



Michael Dupee
Manager
Revolution Rail Holding Company, LLC

August 10, 2021

Exhibit C

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Revolution Rail Holding Company, LLC (“RRHC”), a newly formed non-carrier entity, has filed a Verified Notice of Exemption under 49 C.F.R. § 1150.31, *et seq.*, to acquire from the Saratoga and North Creek Railway, LLC (“SNCR”) approximately 29.71 miles of rail line between milepost NC 0.0 at North Creek, N.Y., and its terminus at milepost NC 29.71 near the former Tahawus Mine (“Line”).

RRHC will also acquire all other railroad operating assets from the SNCR, including 2.97 miles, more or less, of passing tracks and siding and any structures, tracks, ties, bridges and culverts, telephone and telegraph lines that may be located on the Line.

RRHC expects to consummate its acquisition of the assets of SNCR shortly after the expiration of 30 days from the date of the filing of this Verified Notice of Exemption. As SNCR is presently an asset in a bankruptcy proceeding under Chapter 11 of Title 11 of the United States Code, filed as Case No. 20-12313-TBM in the United States Bankruptcy Court for the District of Colorado, the consummation is subject to the Bankruptcy Court and bidding procedures.

Comments must be filed with the Surface Transportation Board and served on:

Daniel R. Elliott
GKG Law, P.C.
1055 Thomas Jefferson Street, N.W.
Suite 500
Washington, DC 20007
(202) 342-5248
delliott@gkglaw.com

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.

Dated: August __, 2021

By the Board

CERTIFICATE OF SERVICE

I hereby certify that, on this 11th day of August 2021, a copy of the foregoing was served by email or first-class mail on the following persons:

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/s/ Daniel R. Elliott
Daniel R. Elliott