

SERVICE DATE — SEPTEMBER 10, 2021

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36535

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

Decided: September 10, 2021

On August 11, 2021, Revolution Rail Holding Company, LLC (RRHC), a noncarrier, filed a verified notice of exemption under 49 C.F.R. § 1150.31 to acquire from Saratoga and North Creek Railroad (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, and approximately 2.97 miles of passing tracks and siding (the Line). (Verified Notice 1, 5.)

Previously, on September 10, 2018, the New York State Department of Environmental Conservation (the Department) filed an application under 49 U.S.C. § 10903 requesting a third-party, or “adverse,” abandonment of the Line by SNCR. See N.Y. State Dep’t of Env’t Conservation—Adverse Aban.—Saratoga & N. Creek Ry. in Town of Johnsburg, N.Y. (June 2021 Decision), AB 1261, slip op. at 1 (STB served June 21, 2021). Subsequently, on March 30, 2020, SNCR filed a Chapter 11 (voluntary) bankruptcy petition in the U.S. Bankruptcy Court for the District of Colorado (the Bankruptcy Court). Id.; see also In re Saratoga & N. Creek Ry., Case No. 20-12313-TBM (Bankr. D. Colo.).

On December 14, 2020, William A. Brandt, as Chapter 11 trustee for SNCR (the Trustee), filed a letter in opposition to the Department’s adverse abandonment application and requested that the abandonment proceeding be held in abeyance while he determined whether SNCR could be sold as an operating railway. June 2021 Decision, AB 1261, slip op. at 2; see also N.Y. State Dep’t of Env’t Conservation—Adverse Aban.—Saratoga & N. Creek Ry. in Town of Johnsburg, N.Y., AB 1261, slip op. at 2 (STB served May 19, 2020). The abandonment proceeding was held in abeyance until further order of the Board and the Trustee was ordered, in the Board’s most recent extension of the abeyance, to file a status report by September 30, 2021, and promptly notify the Board if a sale of SNCR occurred prior to that date. June 2021 Decision, AB 1261, slip op. at 2.

RRHC states that it intends to acquire the Line through an Asset Purchase Agreement (the Agreement) with the Trustee. (Verified Notice 2.) According to the verified notice, RRHC is the “stalking horse bidder” and, accordingly, the Agreement will be subject to higher and better offers by interested parties pursuant to the procedures established by the Bankruptcy Court and the Trustee. (Id.) RRHC states that it filed a verified notice before knowing whether it will

be the successful bidder, in order to comply with the timetable that RRHC anticipates will be imposed by the Bankruptcy Court and the Trustee. (Id.)

RRHC notes that the Line is not currently in service, there has been essentially no rail service on the Line since 1989, and there are no active shippers on the Line. (Id. at 3-4.) RRHC also indicates that it does not have plans to restore the Line to active freight service, although it plans to “open discussions with third parties about the possibility of intrastate tourism trains.” (Id. at 4.) RRHC states that, if the Board grants the Department’s application for adverse abandonment, RRHC would railbank the Line and “allow the existing rail bike operation on a portion of the Line to continue.”<sup>1</sup> (Id.) If, on the other hand, the Board denies the adverse abandonment application, RRHC states that it would “provide rail service upon reasonable request in accordance with its common carrier obligation” via contract with a third-party operator and maintain the rail bike operation on the Line “to the extent it does not interfere with its common carrier obligation.” (Id.)

## DISCUSSION AND CONCLUSIONS

The verified notice of exemption was submitted under the class exemption procedures found at 49 C.F.R. § 1150.31, which provide an expedited process for obtaining authority under 49 U.S.C. § 10901. The Board has explained that these streamlined class exemption procedures are reserved for transactions involving routine, uncomplicated, and non-controversial matters. Burlington N. & Santa Fe Ry.—Acquis. & Operation Exemption—South Dakota, FD 34645, slip op. at 2-3 (STB served Jan. 14, 2005); Saratoga & N. Creek Ry.—Operation Exemption—Tahawus Line, FD 35559, slip op. at 5 (STB served May 14, 2012) (citations omitted). A notice that raises unresolved issues or questions that require considerable scrutiny may be rejected. Saratoga & N. Creek Ry., FD 35559, slip op. at 5.

Here, the proposed acquisition does not qualify as a routine matter appropriate for the class exemption procedures. At the outset, there is uncertainty here because RRHC does not already have an agreement with the Trustee to acquire the Line, and RRHC does not know whether it will be the successful bidder. In Jon Delli Priscoli—Acquisition of Control Exemption—Massachusetts Coastal Railroad (Massachusetts Coastal Railroad), FD 36409 (STB served June 18, 2020), a notice of exemption was issued before the parties knew whether they would be the successful bidders in a bankruptcy proceeding because a schedule had been established that would likely not allow sufficient time for the parties to file a verified notice after the successful bid was selected. However, the same time constraints do not exist here because, unlike in Massachusetts Coastal Railroad, there is no indication in this record that a schedule for the bidding process has been established in the bankruptcy proceeding.

Furthermore, unlike in Massachusetts Coastal Railroad, it is not clear here that RRHC is interested in providing freight rail service rather than solely rail biking. As noted above, RRHC states that it does not intend to restore the Line to active freight service. While RRHC claims that it would provide common carrier service upon reasonable request, Revolution Rail

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<sup>1</sup> Revolution Rail, LLC, an entity related to RRHC, already leases a portion of the Line from SNCR for its rail bike operations. (Verified Notice 4.)

Company, whose co-owner is also RRHC's manager, has filed multiple times in the abandonment docket in furtherance of continued rail biking on the Line, an activity seemingly at odds with operating trains. Cf. Denver & Rio Grande Ry. Hist. Found.—Adverse Aban.—in Min. Cnty., Colo., AB 1014, slip op. at 18 (STB served May 23, 2008) (granting an adverse abandonment application because the carrier was not likely to reinstate freight rail service over the line and its planned passenger service was “dubious and speculative”). In addition, while RRHC has claimed an interest in possibly establishing intrastate tourist trains, the Board has held that wholly intrastate passenger excursion operations are not within the Board's jurisdiction under 49 U.S.C. § 10501. See Denver & Rio Grande Ry. Hist. Found.—Pet. for Declaratory Order, FD 35496, slip op. at 9-10 (STB served Aug. 18, 2014) (finding that entirely intrastate movement of passengers and recreational rafts was outside the Board's jurisdiction), recons. denied Denver & Rio Grande Ry. Hist. Found.—Pet. for Declaratory Order, FD 35496 (STB served Mar. 24, 2015). Moreover, it is unclear what effect, if any, RRHC's acquisition exemption would have on the pending adverse abandonment proceeding.

In light of the above concerns, the verified notice of exemption will be rejected.

It is ordered:

1. The verified notice of exemption is rejected, as discussed above.
2. This decision is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.