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SERVICE DATE - DECEMBER 17, 2021

DO

FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36526]

Cape May Seashore Lines, Inc.—Trackage Rights Exemption—New Jersey Transit Corporation

Cape May Seashore Lines, Inc. (CMSL), a Class III rail carrier, has filed a verified notice of exemption under 49 C.F.R. § 1180.2(d)(7) for acquisition of local trackage rights over a rail line owned by New Jersey Transit Corporation (NJ Transit), a noncarrier, that is comprised of a section of the Cape May Branch between milepost 27.02± at Winslow Junction, N.J., and milepost 53.0± at Tuckahoe, N.J., and a section of the Ocean City Branch between milepost 53.0± at Tuckahoe and milepost 58.7± at Palermo, N.J., a total distance of approximately 31.68 miles (the Line).

Pursuant to a written trackage rights agreement (Agreement),¹ NJ Transit has agreed to grant local trackage rights to CMSL over the Line. CMSL states that NJ Transit acquired the Line from Consolidated Rail Corporation (Conrail) but does not have a common carrier obligation with respect to the Line. According to CMSL, Conrail retains an easement to operate freight service on the Line, but NJ Transit has the right to grant access to other parties. CMSL states that under the Agreement, CMSL will provide local freight service over the Line, in lieu of and with the consent of Conrail, with Conrail retaining limited overhead trackage and interchange rights.

¹ A copy of the Agreement was filed with CMSL's verified notice of exemption.

The transaction may be consummated on or after December 31, 2021, the effective date of the exemption (30 days after the verified notice was filed).

Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. However, 49 U.S.C. § 11326(c) does not provide for labor protection for transactions under 49 U.S.C. §§ 11324 and 11325 that involve only Class III carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

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 by December 23, 2021 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36526, 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 CMSL's representative, Eric M. Hocky, Clark Hill PLC, Two Commerce Square, 2001 Market Street, Suite 2620, Philadelphia, PA 19103.

According to CMSL, 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).

Board decisions and notices are available at www.stb.gov.

Decided: December 14, 2021.

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