

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36612

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

**VERIFIED RESPONSE TO NOTICE OF EXEMPTION
AND REQUEST FOR HOUSEKEEPING STAY**

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Department of Environmental
Conservation*

Joshua M. Tallent
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Of Counsel

On April 20, 2022, noncarrier Revolution Rail Holding Company, LLC (Revolution) filed a verified notice of exemption to acquire a 30-mile section of railroad commonly known as the Tahawus Line (Line). The Line is the subject of an unresolved third-party abandonment application filed by the New York State Department of Environmental Conservation (DEC).¹ Because DEC and Revolution are finalizing an agreement that will, when signed, lead to the withdrawal of DEC's application, DEC respectfully requests that the Board maintain the status quo by staying the effective date of Revolution's notice of exemption pending completion of negotiations.

BACKGROUND

As explained in prior filings, the Line is located in New York's ecologically sensitive and constitutionally protected Adirondack Park.² When current owner Saratoga and North Creek Railway (SNCR) began storing out-of-service tank cars on the Line in 2018, DEC filed an application for adverse abandonment. Some 18 months later and without having opposed DEC's application on the merits, SNCR filed for bankruptcy protection in the United States Bankruptcy Court for the District of Colorado. After requesting and receiving a series of abeyances, the bankruptcy trustee moved to dismiss the abandonment

¹ See *New York State Department of Environmental Conservation – Adverse Abandonment – Saratoga and North Creek Railway in Town of Johnsburg, NY*, AB 1261 (filed Sept. 10, 2018).

² See *id.* at 4–5, 13–18.

application. DEC opposed and the Board denied the trustee's motion.³ In its decision, the Board suggested the outcome of the bankruptcy proceedings "may well be relevant to [its] consideration of the adverse abandonment application."⁴

As Revolution explains in its recent notice of exemption, SNCR's confirmed chapter 11 plan contemplated that the trustee would sell SNCR's assets at auction.⁵ That auction took place in March 2022.⁶ Following the winning bidder's failure to perform, the trustee entered into an amended asset purchase agreement with Revolution under which SNCR agreed to sell and Revolution agreed to purchase the Line.⁷ Revolution now represents to the Board that it will contract with a third-party carrier to provide common carrier service on the Line upon reasonable request and that it will agree with DEC not to use the Line for railcar storage.⁸

ARGUMENT

A HOUSEKEEPING STAY IS WARRANTED UNDER THE UNIQUE CIRCUMSTANCES OF THIS PROCEEDING

³ See *New York State Department of Environmental Conservation – Adverse Abandonment – Saratoga and North Creek Railway in Town of Johnsburg, NY*, AB 1261 (STB served Jan. 11, 2022).

⁴ *Id.*, slip op. at 3.

⁵ See *Revolution Rail Holding Company, LLC – Acquisition Exemption – Saratoga and North Creek Railway, LLC*, FD 36612, at 4 (filed Apr. 20, 2022).

⁶ See *id.*

⁷ See *id.* at 5.

⁸ See *id.* at 3 n.1, 4 n.2, 7.

The Board has granted housekeeping stays where, among other things, a stay would allow interested parties or the Board time to resolve issues raised in related proceedings.⁹ Here, a brief housekeeping stay would allow DEC and Revolution to finalize a railcar storage agreement that, once executed, would lead to the withdrawal of DEC's related abandonment application and the amicable resolution of that proceeding.

As noted above, DEC filed its abandonment application to prevent SNCR from using the Line as a storage area for out-of-service railcars. Because Revolution is willing to agree *not* to store cars on the Line when not necessary as part of its common carrier obligation, DEC in exchange is willing to withdraw the pending abandonment application. In furtherance of this agreement in principle, DEC and Revolution are currently drafting a railcar storage agreement. DEC is optimistic that the parties will conclude their negotiations in the near term and that DEC will be able to resolve proceeding AB 1261 by withdrawing its application without prejudice.

A brief stay is also warranted in view of the Board's caselaw on the appropriate use of class exemption procedures. Typically, class exemptions like the acquisition exemption Revolution seeks here "are reserved for transactions

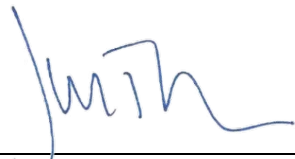
⁹ See, e.g., *Pro-Go Corp. – Operation Exemption – In Suffolk County, NY*, FD 35126 (STB served Apr. 16, 2008).

involving routine, uncomplicated, and non-controversial matters.”¹⁰ But as the Board recently recognized, the very existence of the pending abandonment application may render Revolution’s proposed acquisition insufficiently routine to qualify for a class exemption.¹¹ By allowing DEC and Revolution time to complete their negotiations, the Board will in effect be removing any impediment to Revolution’s use of the class exemption procedures.

CONCLUSION

For the foregoing reasons, pursuant to 49 C.F.R. § 1117.1, DEC respectfully requests that the Board stay the effective date of Revolution’s verified notice of exemption until such time as DEC and Revolution complete their negotiations and execute the car storage agreement described above. In the alternative, DEC requests that the Board stay the effective date of the verified notice for 30 days.

Dated: May 13, 2022
Albany, New York



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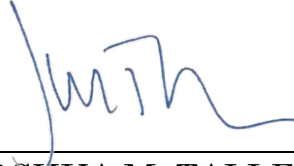
¹⁰ *Revolution Rail Holding Company, LLC – Acquisition Exemption – Saratoga and North Creek Railway, LLC*, FD 36535, slip op. at 2 (STB served Sept. 10, 2021).

¹¹ *See Revolution Rail Holding Company, LLC – Acquisition Exemption – Saratoga and North Creek Railway, LLC*, FD 36535, slip op. at 3 (STB served Sept. 10, 2021).

(518) 776-2456

CERTIFICATE OF SERVICE

Pursuant to 49 C.F.R. § 1104.12(a), I certify that on May 13, 2022, I caused a copy of this Verified Response to Notice of Exemption and Request for Housekeeping Stay to be served either by electronic or first class mail on Revolution Rail and all parties of record in this proceeding.



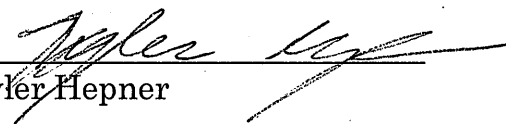
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VERIFICATION

I, Tyler Hepner, Senior Attorney at the New York State Department of Environmental Conservation, declare under penalty of perjury that I have read the foregoing Verified Response to Notice of Exemption and Request for House-keeping Stay and that the facts stated therein are true and correct to the best of my knowledge, information, and belief.

I further certify that I am qualified and authorized to make this verification.

Dated: May 12, 2022
Albany, New York


Tyler Hepner