

DO

FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36529]

SMS Rail Service, Inc.—Change in Operator Exemption Including Acquisition by Lease—Salem Branch Line in Salem and Gloucester Counties, N.J.

SMS Rail Service, Inc. (SMS), a Class III rail carrier, has filed a verified notice of exemption¹ pursuant to 49 C.F.R. § 1150.41 to assume operations over approximately 19.4 miles of rail line extending from milepost 11.0 in Swedesboro, N.J., to milepost 28.4 in the Salem Rail Yard in Salem City, N.J., including the Glass House Branch Spur extending from milepost 0.0 to milepost 1.2 in Salem City, N.J. (the Line), which is owned by Salem County, N.J. (the County).² Currently, U S Rail Corporation (U S Rail) and JP Rail, Inc. d/b/a Southern Railroad Company of New Jersey (JP Rail), both Class III rail carriers, possess Board authority to operate the Line.³

¹ SMS submitted its verified notice of exemption on June 10, 2022, and filed a supplement on June 29, 2022. In light of the supplement, June 29, 2022, is deemed the filing date of the verified notice.

² According to the verified notice, the trackage to be leased also includes approximately 0.8 miles of “sidings, passing and yard tracks.”

³ JP Rail acquired authority to operate the Line in 1995. See JP Rail, Inc. d/b/a S. R.R. of N.J.—Notice of Exemption—Operation of Salem Branch Rail Line in Salem Cnty., N.J., FD 32700 (ICC served Oct. 10, 1995). U S Rail acquired authority to operate the Line in 2009. See U S Rail Corp.—Operation Exemption—U S Rail Corp. of N.J., FD 35317 (STB served Nov. 27, 2009); see also U S Rail Corp. of N.J.—Lease Exemption—Cnty. of Salem, N.J., FD 35310 (STB served Nov. 27, 2009). Neither rail carrier has sought Board authority to discontinue operations over the Line. See JP Rail, Inc. d/b/a S. R.R. of N.J.—Operation Exemption—Rail Line in Salem Cnty., N.J., FD 35596, slip op. at 1-2 n.1 (STB served Feb. 29, 2012).

According to the verified notice, SMS has entered into an agreement with the County to provide exclusive rail service over the Line, and JP Rail has consented to the proposed change in operators and discontinuance of its operating authority.⁴

As required under 49 C.F.R. § 1150.43(h), SMS certifies that the proposed transaction does not involve a provision or agreement that may limit future interchange with a third-party connecting carrier.

SMS certifies that its projected revenues as a result of the transaction will not result in the creation of a Class I or Class II rail carrier but also states that its annual revenues will exceed \$5 million following the transaction. Pursuant to 49 C.F.R. § 1150.42(e), if a carrier's projected revenues will exceed \$5 million, it must, at least 60 days before the exemption becomes effective, post a notice of its intent to undertake the proposed transaction at the workplace of the employees on the affected lines, serve a copy of the notice on the national offices of the labor unions with employees on the affected lines, and certify to the Board that it has done so. SMS states that it complied with the advance notice posting requirements of 49 C.F.R. § 1150.42(e) on June 29, 2022, and that SMS has been advised that no labor union represents JP Rail employees.

⁴ According to the verified notice, SMS has attempted to contact U S Rail but the company is unreachable. Additionally, SMS states that it cannot confirm whether U S Rail currently operates in the region where the Line is located. However, an attachment to the verified notice shows that the Ohio Secretary of State website lists U S Rail as an active corporation. Because U S Rail has not consented to the discontinuance of its operating authority, this notice of exemption does not apply to U S Rail, and U S Rail retains its authority to operate the Line. However, U S Rail may seek Board authority to discontinue operations over the Line, or a third party may request that the Board authorize an "adverse" discontinuance of U S Rail's operating authority.

Under 49 C.F.R. § 1150.42(b), a change in operator exemption requires that notice be given to shippers. SMS certifies that it has provided notice of the proposed change in operator to the sole shipper on the Line.

The transaction may be consummated on or after August 28, 2022, the effective date of the exemption (60 days after SMS's certification under 49 C.F.R. § 1150.42(e)).

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 no later than August 19, 2022 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36529, must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on SMS's representative, Robert A. Klein, Berkowitz Klein, LLP, 629 B Swedesford Road, Swedesford Corporate Center, Malvern, PA 19355-1530.

According to SMS, 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: July 12, 2022.

By the Board, Mai T. Dinh, Director, Office of Proceedings.