



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
ENVIRONMENTAL PROTECTION BUREAU

July 19, 2022

305013

Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
Office of Proceedings
395 E Street, SW
Washington, DC 20423

ENTERED
Office of Proceedings
July 19, 2022
Part of
Public Record

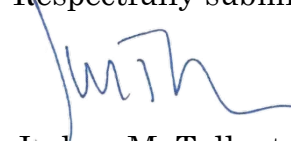
Re: *Revolution Rail Holding Company, LLC – Acquisition
Exemption – Saratoga and North Creek Railway, LLC*
STB Docket No. FD 36612

Dear Ms. Brown:

As you know, this office represents the New York State Department of Environmental Conservation (DEC). On April 20, 2022, Revolution Rail Holding Company, LLC (Revolution) filed a verified notice of exemption to acquire approximately 30 miles of rail line between milepost NC 0.0 at North Creek, New York and milepost NC 29.71 near the former Tahawus Mine. At DEC's request and for the reasons described in its May 19, 2022 order, the Board stayed the effective date of the exemption.

DEC and Revolution wish to notify the Board that they have entered into a mutually acceptable railcar storage agreement. A true and accurate copy of the fully executed agreement is attached to this letter. In accordance with Article III of the agreement, DEC will withdraw the third-party abandonment application that is the subject of Docket No. AB 1261 without prejudice no later than fifteen days after Revolution closes on the Line and has received operating authority from the Board. Accordingly, DEC has no opposition to the Board lifting the stay and allowing Revolution's requested exemption to take effect.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'JMT', with a stylized flourish at the end.

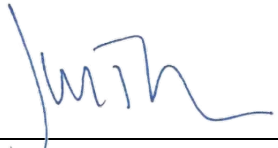
Joshua M. Tallent
Assistant Attorney General
Environmental Protection Bureau
(518) 776-2456
Joshua.Tallent@ag.ny.gov

cc: service list

CERTIFICATE OF SERVICE

In accordance with 49 C.F.R. § 1104.12(a), I certify that I served a copy of the foregoing letter upon all parties of record in this proceeding. Where parties of record provided an email address, service was by electronic mail; where no email address was provided, service was by first class mail.

Dated: July 19, 2022
Albany, New York



JOSHUA M. TALLENT
Assistant Attorney General
Environmental Protection Bureau
(518) 776-2456
Joshua.Tallent@ag.ny.gov

AGREEMENT

between

The NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION and REVOLUTION RAIL HOLDING COMPANY, LLC

Restricting Railcar Storage on the Tahawus Line

This Agreement is between the New York State Department of Environmental Conservation (DEC), having offices at 625 Broadway, Albany, NY 12233 and Revolution Rail Holding Company, LLC (Revolution), a limited liability company organized under the laws of the State of New York with a service address at 3 Railroad Place, North Creek, NY 12853.

Witnesseth

WHEREAS, article 3, section 0301 of the New York State Environmental Conservation Law (ECL), authorizes DEC to enter into binding agreements necessary and appropriate to carry out the functions, powers, and duties of DEC; and

WHEREAS, under article 9 of the ECL, DEC is the state executive agency charged with exercising care, custody, and control of the forest preserve as defined in that article, including forest preserve lands within the Adirondack Park; and

WHEREAS, Revolution will be the owner of the Tahawus Line (Line) upon consummation of an amended asset purchase agreement with Saratoga and North Creek Railway (SNCR) and a rail carrier as defined in the Interstate Commerce Commission Termination Act, 49 U.S.C. § 10101 *et seq.*, upon authorization under said Act; and

WHEREAS, the Line is a roughly 30-mile section of railroad located entirely within the Adirondack Park and stretching from North Creek, New York to the site of the former Tahawus Mine in Newcomb, New York; and

WHEREAS, on September 10, 2018, in response to an attempt by SNCR to store out-of-service railcars on the Line, DEC filed a third-party abandonment application (Application) with the Surface Transportation Board (STB); and

WHEREAS, that Application remains pending; and

WHEREAS, on March 30, 2020, SNCR filed for bankruptcy protection under title 11 of the United States Code; and

WHEREAS, on January 13, 2022, the bankruptcy court confirmed SNCR's plan of reorganization, which plan contemplated that SNCR's assets, including the Line, would be liquidated; and

WHEREAS, on April 8, 2022, Revolution entered into an amended asset purchase agreement with SNCR under which SNCR agreed to sell and Revolution agreed to purchase the Line; and

WHEREAS, on April 20, 2022, Revolution filed a verified notice of exemption with the STB to acquire the Line; and

WHEREAS, Revolution will enter into an agreement with SMS Rail Service, Inc. (SMS) under which SMS will provide railroad common carrier service over the Line on an as-needed basis; and

WHEREAS, the parties have willingly negotiated this Agreement to prohibit the long-term storage of railcars on the Line;

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the parties agree to the following binding and enforceable terms and conditions:

ARTICLE I. Definitions

1. Tahawus Line or Line. A roughly 30-mile section of railroad including an easement, sidings, and/or passing tracks running between milepost NC 0.0 at North Creek, New York and its terminus near the former Tahawus Mine in Newcomb, New York at milepost NC 29.71, passing through Warren, Hamilton, and Essex Counties. The easement is more particularly defined in the materials attached as exhibit C to the Application.
2. Railcar. A railroad freight car designed to carry freight or railroad personnel as defined at 49 C.F.R. § 215.5(c) as that regulation may be amended or replaced, or similar rail transportation equipment or vehicles. For purposes of this Agreement, "railcar" shall also include "passenger car" as that term is defined at 49 C.F.R. § 223.5 as that regulation may be amended or replaced.
3. Customer. Any shipper, customer, facility, originator or receiver of freight cargo, or rail patron served by Revolution or its successors, assigns, agents, lessees, or licensees under private contract or through common carriage on the Line.

4. Operational necessity. Either (a) a temporary suspension of service required when weather conditions make the loading and unloading of railcars impractical, or (b) a suspension of service required due to a customer's business flow.

ARTICLE II. Term

This Agreement will commence on the date it is fully executed and will remain in effect until the December 10, 2062 expiration of the easement for the Line or until terminated by DEC, whichever is earlier.

ARTICLE III. Scope of Parties' Responsibilities

Revolution voluntarily agrees that, upon acquisition of the Line:

1. No railcars will be placed, parked, or stored on the Line for any length of time, except as otherwise provided in this article III.
2. Railcars may be held on the Line temporarily for customers only and only for reasons of operational necessity. Revolution will notify DEC when a customer requests that Revolution hold railcars on the Line for reasons of operational necessity for a continuous duration of more than 30 days. It is understood that these arrangements, if necessary, will be temporary and for the shortest possible duration. At no time will any railcar remain in place on the Line for more than 90 consecutive days absent express DEC authorization.
3. It will make best efforts to minimize the visibility of any temporarily held railcars to the public to the greatest extent practicable, consistent with customer requirements.
4. Neither the terms of this Agreement nor any state-law action to enforce the terms of this Agreement unreasonably interferes with rail common carrier transportation, or with Revolution's legal obligations to serve customers, if any. Revolution will comply with the terms of this Agreement unless ordered by the STB or a court to do otherwise in an action brought by a third party.
5. It will not challenge the enforcement of this Agreement as a remedy that is preempted by federal law.
6. It will include the provisions in this article III in any contract or other agreement with any and all successors, assigns, agents, lessees, licensees, contractors, and/or rail operators to which it might convey full or partial

Line ownership and/or operating rights. For the avoidance of doubt, Revolution agrees to include the provisions in this article III in any contract or other agreement with SMS and/or any other rail operator that will provide freight or passenger service on the Line.

DEC agrees that:

1. No later than 15 days after it receives notice that Revolution has closed the transaction to acquire the Line and has obtained the necessary authority to operate the Line from the STB (whichever is later), DEC will withdraw its Application without prejudice.

ARTICLE IV. RESERVATION OF RIGHTS

Nothing contained in this Agreement will be construed as barring, diminishing, adjudicating, or in any way affecting any of the State of New York's civil, criminal, or administrative rights or authorities in any other proceeding against Revolution or any other party, including but not limited to the failure of Revolution to obtain required permits or other authorizations for work, whether prior to or subsequent to the effective date of this Agreement. DEC reserves all rights to exercise its legal authority to protect human health and the environment or to otherwise require compliance with the law. Nothing contained in this Agreement will be construed to prohibit the DEC Commissioner or the Commissioner's duly authorized representatives from exercising any summary abatement powers or from recovering natural resource damages.

ARTICLE V. ACCESS

For purposes of ensuring compliance with this Agreement, Revolution will allow duly authorized DEC personnel, agents, or representatives access to the Line, upon 72 hours' advance notice, to confirm compliance with the terms of this Agreement. DEC agrees that its personnel, agents, and representatives will comply with any health and/or safety directives and instructions issued by Revolution, and that Revolution may require that it provide an officer, employee, or representative to accompany DEC personnel, agents, or representatives in the event of an on-the-ground inspection.

In addition, and consistent with DEC's existing statutory authority, Revolution will, if necessary, allow DEC and its duly authorized personnel, agents, or representatives access to the Line for the purpose of investigating any reported or suspected spill without prior notice.

ARTICLE VI. COMMUNICATIONS

Copies of all correspondence to DEC required pursuant to the terms of this Agreement shall be provided to the following:

Commissioner
New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12233
(518) 402-8540

and

General Counsel
New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12233
(518) 402-8543

In addition, notification pursuant to article III, paragraph 2 of this Agreement must be provided to:

Regional Director
1115 State Route 86
P.O. Box 296
Ray Brook, NY 12977
(518) 897-1210

Copies of all correspondence to Revolution required pursuant to the terms of this Agreement must be provided to the following:

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

DEC and Revolution each reserve the right to designate other or different addressees upon written notice to the other.

ARTICLE VII. Standard Agreement Terms

1. Governing Law and Forum

This Agreement will be governed by and construed in accordance with the laws

of the State of New York. Any action at law or in equity for the enforcement of this Agreement or any dispute arising in connection with this Agreement must be instituted in a court of competent jurisdiction in the State of New York.

2. Entire Agreement

This Agreement constitutes the entire Agreement between DEC and Revolution and supersedes any prior Agreements or understandings between the parties. It will not be amended, varied, or modified unless in writing executed by both parties.

3. Records

Revolution will establish and maintain complete and accurate books, records, documents, and accounts (collectively, "records") that will include data that can be used to determine whether Revolution has complied with the railcar storage provisions of this Agreement. The records must be kept for the balance of the calendar year in which they were made and for two additional years thereafter. The State Comptroller, the Attorney General, DEC, and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this Agreement, will be permitted to examine these records during normal business hours at an office of Revolution within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, upon 72 hours' advance request. DEC may request consent to copy all or portions of the subject records, which request Revolution will consider and reasonably grant or withhold (for reason given).

To the extent Revolution consents to the duplication and retention of records that Revolution has identified as containing commercially sensitive information, DEC will take reasonable steps to protect from public disclosure any records that are exempt from disclosure under section 87 of the New York State Public Officers Law, provided that: (1) Revolution timely informs an appropriate state official, in writing, that said records should not be disclosed publicly; (2) said records are sufficiently identified; and (3) designation of said records as exempt under the Public Officers Law is not unreasonable.

Nothing contained herein will diminish or in any way adversely affect DEC's rights to discovery in any pending or future litigation.

4. No Arbitration

Disputes involving this Agreement, including the breach or alleged breach of this Agreement, may not be submitted to binding arbitration (except where statutorily required) but must instead be heard in a court of competent jurisdiction in the State of New York.

5. Service of Process

To the extent necessary, service of process shall, as to both parties, be accomplished in accordance with New York State Civil Practice Law and Rules (CPLR). Revolution shall promptly notify DEC in writing of any change in the address to which service of process can be made.

6. Notice

Except as otherwise expressly provided in this Agreement or by law, any and all notices or other communications required or permitted by this Agreement or by law to be served on, given to, or delivered to any party to this Agreement by another party must be in writing and must be transmitted either: (a) via certified or registered United States mail, return receipt requested; (b) by personal delivery; (c) by expedited delivery service; or (d) by email. Notices shall be addressed to the party to be notified at the addresses specified in article VI above. The parties may mutually designate specific individuals as their representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration, resolving issues and problems, for dispute resolution, and/or for general awareness.

Nothing in this paragraph shall be construed as varying the statutory requirements for service of process as set forth in the CPLR.

7. Signatories

By executing this Agreement, each signatory confirms that they are acting as principal or have the requisite authority to execute this Agreement on behalf of their employer.

8. No Waiver

No party's failure to exercise any of its rights or remedies upon default of another party will be a waiver of such default, a modification of this Agreement or of any party's obligations under this Agreement, or a waiver of any subsequent default by any party. A waiver will be valid only if it is in writing and signed by the waiving party.

9. Assignment

This Agreement will bind the successors, assigns, agents, lessees, or licensees of Revolution. Revolution will not lease or convey all or any part of any interest, including its common carrier interest, whether as owner, shareholder, member, trustee, or sole beneficiary in the Line, to any third party unless the acquiring third party

agrees in writing to be equally bound by the terms of this Agreement. Revolution must, before entering into any contract for a proposed conveyance of any interest in the Line that would include a right to transport railcars over the Line, provide a copy of this Agreement to the proposed transferee. Upon conclusion of an agreement for any such conveyance as described in this paragraph, Revolution will notify DEC in accordance with Article VI of this Agreement within two business days.

10. No Third-Party Beneficiaries

Nothing contained in this Agreement will, directly or indirectly, create a contractual relationship with, or give any claim or right of action in favor of, any third party against DEC or the State of New York.

11. Headings

The headings in this Agreement are for convenience only and will not have legal significance or affect the meaning or interpretation of this Agreement.

12. Mistake

In case this Agreement is found to contain any mistake, including any error, ambiguity, illegality, or omission, then it will be interpreted as if such mistake were rectified in a manner which implements the intent of the parties as nearly as possible and effects substantial fairness under all circumstances in accordance with applicable New York law.

13. Counterparts

This Agreement may be executed simultaneously in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same Agreement.

14. Not Construed Against Drafter

The parties acknowledge that they have read this Agreement, have had the opportunity to review it with an attorney of their choice, and have agreed to all of its terms. Under these circumstances, the parties agree that the rule of construction that a contract be construed against the drafter will not be applied in interpreting this Agreement and that in the event of any ambiguity in any of the terms or conditions of this Agreement, such ambiguity will not be construed for or against any party to the Agreement on the basis that such party was or was not the drafting party.

15. Amendments

This Agreement can be amended or changed only by a written instrument signed by each party's duly authorized representative.

IN WITNESS WHEREOF, the individuals listed below are authorized to sign and execute this Agreement between their respective parties, on the date appearing below their respective signatures.

**New York State Department
of Environmental Conservation**

Thomas Berkman

By:



Title: *Deputy Commissioner & General Counsel*

Dated: *June 30, 2022*

Revolution Rail Holdings, LLC

By:



Robert Harte

Title: Owner

Dated: 06/16/2022