

SERVICE DATE – NOVEMBER 18, 2022

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36612

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

Digest:¹ The Board permits the exemption to acquire a rail line in this proceeding to become effective.

Decided: November 17, 2022

On April 20, 2022, 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, as well as approximately 2.97 miles of passing tracks and siding (the Line).² Because of the interrelationship between RRHC's acquisition exemption and the pending application for adverse abandonment of the same Line in Docket No. AB 1261, the effective date of the exemption was postponed pending further Board order by decision served on May 19, 2022. As discussed below, the notice of exemption will now be published in the Federal Register and allowed to become effective December 7, 2022.

RRHC's verified notice stated that on September 10, 2018, an application was filed by the New York State Department of Environmental Conservation (the Department) in Docket No. AB 1261 for "adverse" abandonment of the Line under 49 U.S.C. § 10903. (Verified Notice 2); see N.Y. State Dep't of Env't Conservation—Adverse Aban.—Saratoga & N. Creek Ry. in Town of Johnsburg, N.Y., AB 1261 (STB served June 21, 2021). According to RRHC's verified notice, on March 30, 2020, William A. Brandt, as Chapter 11 trustee for SNCR (the Trustee) filed a voluntary petition for bankruptcy on behalf of SNCR in federal court and, thereafter, planned to auction SNCR's assets. (Verified Notice 3-4.) RRHC's verified notice stated that it

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol'y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

² RRHC initially filed a verified notice of exemption to acquire the Line on August 11, 2021, in Revolution Rail Holding Co.—Acquisition Exemption—Saratoga & North Creek Railway, Docket No. FD 36535. That notice of exemption, however, was rejected for several reasons. See Revolution Rail Holding Co., FD 36535 (STB served Sept. 10, 2021).

participated in the bankruptcy auction along with other bidders and, ultimately, RRHC was the successful bidder. (*Id.* at 5.) According to RRHC, it subsequently entered into an Amended Asset Purchase Agreement (the Agreement) with the Plan Administrator to purchase SNCR's assets, including the Line. (*See id.* at 5, 8-9, Ex. B.)

The Department filed a response to RRHC's verified notice, asserting that it was finalizing a railcar storage agreement with RRHC that would lead to a withdrawal of the adverse abandonment application in Docket No. AB 1261. (N.Y. Dep't Response 2, 4, May 13, 2022.) The May 19, 2022 decision postponed the effectiveness of the exemption and directed RRHC and the Department to file (jointly, if possible) a status report and notify the Board if an agreement was reached. Revolution Rail Holding Co.—Acquis. Exemption—Saratoga & North Creek Ry., FD 36612 (STB served May 19, 2022).

On June 21, 2022, the Department filed a letter stating that it had negotiated a “mutually satisfactory” agreement with RRHC, but that the agreement had not been fully executed. (N.Y. Dep't Letter, June 21, 2022.) The Department requested that the Board continue to hold the proceeding in abeyance. (*Id.*) By decision served on June 28, 2022, the Department's request was granted and the Department and RRHC were directed to file a status report by July 28, 2022, and notify the Board if an agreement is finalized.

On July 19, 2022, the Department filed a letter stating that it had entered into an agreement with RRHC.³ The Department states that, in accordance with the agreement, it will withdraw the adverse abandonment application in Docket No. AB 1261 no later than 15 days after RRHC receives Board authority and closes on its purchase of the Line. Lastly, the Department states that it does not oppose the Board lifting the stay and allowing RRHC's exemption to take effect.

On September 7, 2022, the Trustee filed a letter requesting expedited approval of RRHC's notice of exemption, noting that the sale of the Line cannot close without the Board's approval of RRHC's notice of exemption.

DISCUSSION AND CONCLUSIONS

Effectiveness of RRHC's exemption was postponed because of the uncertainty arising from the interrelationship between RRHC's acquisition and the pending adverse abandonment application. That uncertainty has now been resolved. A negotiated agreement between the Department and RRHC has been reached regarding railcar storage on the Line, and the Department no longer seeks adverse abandonment or opposes the notice of exemption here. RRHC, the successful bidder for SNCR's assets, has entered into the Agreement to purchase those assets, including the Line, and, recognizing its common carrier obligation to provide service, has reached an agreement with SMS Rail Service, Inc. (SMS), a Class III rail carrier, to provide any freight rail service on the Line sought by a shipper. (Verified Notice 7-8.) Thus,

³ A copy of the fully executed agreement was submitted with the Department's July 19, 2022 letter.

the concerns that led to the rejection of the verified notice in Docket No. FD 36535 have been resolved.

Therefore, because the uncertainty involving RRHC's acquisition and the pending adverse abandonment application have been addressed, it is appropriate to allow RRHC's exemption to become effective. Accordingly, notice of the exemption will be published in the Federal Register, and the exemption will become effective December 7, 2022.

It is ordered:

1. Notice of the exemption in this docket will be published in the Federal Register. The exemption will become effective December 7, 2022.
2. This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.