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FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36703]

Dover and Delaware River Railroad, LLC—Lease Containing Interchange Commitment and Trackage Rights Exemption—Norfolk Southern Railway Company and New Jersey Transit Corporation

Dover and Delaware River Railroad, LLC (DDRR), a Class III rail carrier, has filed a verified notice of exemption under 49 C.F.R. § 1150.41 to amend an existing lease between DDRR and Norfolk Southern Railway Company (NSR) and an existing trackage rights agreement among NSR, DDRR, and the New Jersey Transit Corporation (NJT), that together will allow DDRR to continue operating over 107.9 miles of rail line in the State of New Jersey.¹ Under the amended agreements, a 0.75-mile segment of line that is subject to the current trackage rights agreement will become subject to the amended lease agreement instead. The amended lease will also revise other commercial terms.

Under the amended lease agreement with NSR, DDRR will continue leasing: (1) the Washington Secondary, between milepost WD 58.0 at Hackettstown, N.J. and milepost WD 80.3 at Phillipsburg, N.J.; (2) the Old Road Industrial Track, between milepost 66.5 TG at Washington, N.J. and milepost 67.6 TG at Washington, N.J.; (3) the Pompton Industrial Track, between milepost PQ 21.4 at Mountain View, N.J., and milepost 22.2 at Wayne, N.J.;

¹ See Dover & Del. River R.R.—Lease with Interchange Commitment & Trackage Rights Exemption—Norfolk S. Ry. & N.J. Transit Corp., FD 36258 et al. (STB served Feb. 15, 2019) (authorizing DDRR to operate over these lines).

and (4) the Totowa Spur, between milepost TO 18.0 at Totowa, N.J., and milepost 21.0 at Wayne. In addition, a segment of rail line between WD 57.25 and WD 58.0 will be added to the lease. These lines are referred to as the Amended Lease Lines.

Under the amended trackage rights agreement with NSR and NJT, DDDR will continue operating over: (1) the Morristown Line, between milepost 7.8 at Newark Broad Street in Newark, N.J., and milepost 48.1 at Netcong, N.J.; (2) the Morristown Line, between milepost 48.1 at Netcong, and milepost 57.25 at Hackettstown; (3) the Gladstone Branch, between milepost 20.1 at Summit, N.J., and milepost 25.7 at Berkeley Heights, N.J.; and (4) the Montclair Line, between milepost 9.0 at Newark Roseville Avenue in Newark, and milepost 33.9 at Denville, N.J. The segment of rail line between milepost WD 57.25 and WD 58.0 will no longer be part of the trackage rights agreement. These lines are referred to as the Amended Trackage Lines.

This transaction is related to a concurrently filed verified notice of exemption in New Jersey Transit Corp.—Acquisition Exemption—Norfolk Southern Railway in the Counties of Morris & Warren, N.J., Docket No. FD 36676, in which NJT will acquire from NSR the portion of the Morristown Line² between milepost 48.1 and milepost 57.25.³

DDRR certifies that its projected annual revenues from this transaction will not result in the creation of a Class I or Class II rail carrier and will not exceed \$5 million. As is required under 49 C.F.R. § 1150.33(h)(1), DDDR discloses in its verified notice that the amended lease agreement with NSR for the Amended Leased Lines contains an interchange

² This line is referred to as part of the Washington Secondary by NJT in the related proceeding.

³ Concurrent with its verified notice in Docket No. FD 36676, NJT also filed a motion to dismiss its notice of exemption on the grounds that its proposed transaction does not require authorization from the Board.

commitment that will affect interchange with carriers other than NSR on the Amended Leased Lines. DDDR states that the interchange commitment in the amended lease has not been changed from the one in the current lease. DDDR has provided additional information regarding the interchange commitment as required under 49 C.F.R. § 1150.33(h).

According to the verified notice, DDDR and NSR have entered into the amended lease agreement for the Amended Leased Lines and DDDR, NSR, and NJT are amending the current trackage rights agreement to cover DDDR's operation of the Amended Trackage Lines, but the amended agreements will not become effective until the effective date of the verified notice. The earliest this transaction may be consummated is July 1, 2023, the effective date of the exemption (30 days after the verified notice was filed).

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 June 23, 2023.

All pleadings, referring to Docket No. FD 36703, 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, one copy of each pleading must be served on DDDR's representative, Justin J. Marks, Clark Hill PLC, 1001 Pennsylvania Ave., N.W., Suite 1300 South, Washington, DC 20004.

According to DDDR, this action is categorically excluded from environmental review under 49 C.F.R. § 1105.6(c) and from historic reporting requirements under 49 C.F.R. § 1105.8(b).

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

Decided: June 12, 2023.

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