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August 7, 2023

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington, DC 20024

Re: The New York, Susquehanna and Western Railway Corporation
– Acquisition and Operation Exemption –
Onondaga County Industrial Development Agency
Surface Transportation Board Finance Docket 36715

Dear Ms. Brown:

Enclosed for filing in the above referenced docket is a verified notice of exemption filed under 49 U.S.C. § 10902. Included with this notice of exemption is a Request for Waiver of the Notice Requirements of 49 C.F.R. § 1150.42(e).

The filing fee has been paid via pay.gov.

Sincerely,



Justin J. Marks
Counsel to The New York, Susquehanna and
Western Railway Corporation

Enclosure

FILED
August 7, 2023
SURFACE TRANSPORTATION BOARD

FEE RECEIVED
August 7, 2023
SURFACE TRANSPORTATION BOARD

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36715

THE NEW YORK, SUSQUEHANNA AND WESTERN RAILWAY CORPORATION
– ACQUISITION AND OPERATION EXEMPTION –
ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

VERIFIED NOTICE OF EXEMPTION
UNDER 49 U.S.C. §10902

(includes color images)

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*Attorneys for The New York, Susquehanna
and Western Railway Corporation*

Dated: August 7, 2023

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36715

THE NEW YORK, SUSQUEHANNA AND WESTERN RAILWAY CORPORATION
– ACQUISITION AND OPERATION EXEMPTION –
ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

VERIFIED NOTICE OF EXEMPTION
UNDER 49 U.S.C. §10902

The New York, Susquehanna and Western Railway Corporation (“NYS&W”), a Class III railroad, files this Notice of Exemption under 49 U.S.C. § 10902 to exempt from regulation NYS&W’s acquisition from the Onondaga County Industrial Development Agency (“OCIDA”), and the operation as a common carrier, of approximately 10 miles of rail line known as the Jamesville Cluster, in Onondaga County, NY. (the “Rail Line”). The Rail Line includes: (1) the Jamesville Industrial Track from approximately milepost 264.3 to approximately milepost 272.0; (2) the Lake Industrial Track from approximately milepost 272.0 to approximately milepost 273.5 (including the Saltland Spur); and (3) Track 7 of the Chicago Line from approximately milepost 292.0 to approximately milepost 292.8 (displayed on the enclosed map as 274.0 to 274.8).

NYS&W is the current freight operator of the Rail Line and first received operating authority via local and overhead trackage rights in 1995 by assignment from Consolidated Rail Corporation (“Conrail”). *The New York, Susquehanna and Western Railway Corp – Trackage Rights Exemption – Onondaga County Industrial Development Agency and Consolidated Rail Corporation*, STB Finance Docket No. 32772 (served Sept. 20, 1995)(“*NYS&W Trackage*

Rights”).¹ In addition to these trackage rights Conrail also assigned to NYS&W Conrail’s right to re-acquire the Rail Line from OCIDA. NYS&W is now exercising that right.

A map of the Rail Line is included as Exhibit A.

Notice

In accordance with 49 C.F.R. §1150.43, NYS&W hereby provides the following information:

- (a) The full name and address of Applicant: The New York, Susquehanna and Western Railway Corporation 1 Railroad Avenue, Cooperstown, NY 13326.
- (b) Applicant’s Representatives:
 - Eric M. Hocky
Clark Hill PLC
Two Commerce Square
2001 Market St.
Suite 2620
Philadelphia, PA 19103
(215) 640-8523
 - Justin J. Marks
Clark Hill PLC
1001 Pennsylvania Ave. N.W.
Suite 1300 South
Washington, DC 20004
(202) 772-0916
- (c) NYS&W is exercising its right to acquire and operate as a common carrier the approximately 10 miles of rail line known as the Jamesville Cluster, in Onondaga County, NY.

¹ OCIDA acquired the Rail Line from Conrail in 1993, and granted back local and overhead trackage rights to allow Conrail to continue as the sole common carrier serving the Rail Line. *Onondaga County Industrial Development Agency—Acquisition and Operation Exemption—Lines of Consolidated Rail Corporation*, ICC Finance Docket No. 32287 (served May 19, 1993); *Consolidated Rail Corporation—Trackage Rights Exemption—Onondaga County Industrial Development Agency*, ICC Finance Docket No. 32288 (served May 10, 1993).

(d) The current operator of the Rail Line is NYS&W. NYS&W will continue to operate the Rail Line after the acquisition.

(e) Brief Summary of the Proposed Transaction:

NYS&W has operated the Rail Line since 1995 under local and overhead trackage that it acquired by assignment from Conrail. *NYS&W Trackage Rights*. Conrail also assigned its right to re-acquire the Rail Line from OCIDA to NYS&W and NYS&W is now exercising these rights. NYS&W intends to continue as the freight operator of the Rail Line.

(1) The current owner of the Rail Line is the Onondaga County Industrial Development Agency. The name and address of OCIDA is Onondaga County Industrial Development Agency, Office of Economic Development, 355 Montgomery Street, 2nd Floor, Syracuse, NY 13202.

(2) NYS&W is already operating the Rail Line under trackage rights. It will commence operation of the Rail Line as the owner after the effective date of this Notice, thirty days after filing.

(3) The Rail Line includes: (1) the Jamesville Industrial Track from approximately milepost 264.3 to approximately milepost 272.0; (2) the Lake Industrial Track from approximately milepost 272.0 to approximately milepost 273.5 (including the Saltland Spur); and (3) Track 7 of the Chicago Line from approximately milepost 292.0 to approximately milepost 292.8 (displayed on the enclosed map as 274.0 to 274.8).

(4) The total route miles to be acquired and operated is approximately 10 miles.

- (f) Attached as Exhibit A to this Notice of Exemption is a map of the Rail Line.
- (g) NYS&W certifies that its projected revenues as a result of the transaction will not exceed those that would qualify it as a Class III carrier.
- (h) NYS&W certifies that its acquisition of the Rail Line does not include an interchange commitment.

Advanced Notice to Labor

In addition to the information set forth above, NYS&W certifies that its revenues currently exceed \$5,000,000. However, since NYS&W will continue to be the operator of the Rail Line both before and after the transaction, NYS&W is requesting a waiver of the labor notice requirements under 49 C.F.R. §1150.42(e). *See* request for waiver set forth below.

Labor Protection

NYS&W is a Class III carrier and pursuant to 49 U.S.C. §10902(d), approval of this transaction may not be subjected to labor protection conditions. Additionally, since NYS&W is the current operator of the Rail Line, no employees will be adversely affected by the transaction.

Environmental and Historic Reports

Pursuant to 49 C.F.R. §1105.6(c)(2), no environmental documentation should be required because this proceeding involves authority for an acquisition that will allow for continued rail operations that will not exceed the thresholds established in 49 C.F.R. §1105.7(e)(4) or (5).

No historic report under 49 C.F.R. §1105.8(b)(1) should be required because the transaction merely involves the acquisition of the Rail Line with no changes in rail operations and further Board approval is required for NYS&W to abandon or discontinue service on the Rail Line. NYS&W has no plans to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older in connection with this transaction.

Caption Summary

Attached hereto as Exhibit B is the caption summary required by 49 C.F.R. §1150.44.

Request for Waiver of Notice Requirements of 49 C.F.R. §1150.42(e)

As noted above, NYS&W's total revenues exceed \$5,000,000. Under the Board's regulations at 49 C.F.R. §1150.42(e), NYS&W would be required to give sixty days' notice to employees working on the Rail Line (and the national offices of their collective bargaining representatives). However, the Board has held: "The purpose of 49 CFR 1150.42(e) is to ensure that rail labor unions and employees who would be affected by the transfer of a line are given sufficient notice of the transaction before consummation." *Louisiana & Delta Railroad, Inc. – Lease Amendment and Operation Exemption – Union Pacific Railroad Company*, STB Finance Docket No. 36379, slip op. at 2 (served Mar. 4, 2020). *See also Acquisition of Leased Lines under 49 USC 10901 and 10902 – Advance Notice of Proposed Transactions* ("Advanced Notice of proposed Transactions"), 2 STB 592 (1997). In adopting the notice requirement, the Board specifically recognized that "exceptional situations may occur necessitating acquirer requests for waiver of the 60 day notice provision ..." *Advanced Notice of Proposed Transactions, supra* at 601.

In this instance, NYS&W should not be required to comply with the requirements of Section 1150.42(e) because there will be no changes for any employees working on the Rail Line. NYS&W already holds trackage rights over the rail facilities, performs all maintenance of the Rail Line and has been the sole common carrier operator providing local and overhead service of the Rail Line since at least 1995. Under the proposed transaction, NYS&W will be acquiring the Rail Line and will continue to be the sole common carrier operator of the Rail Line. The current owner, OCIDA, has never operated the Rail Line or had any employees working on

the Rail line. Prior to 1995, the Rail Line was operated by Conrail. Further, no employees of the former operator Conrail have worked on the Rail Line since at least 1995. Thus, there are no employees of OCIDA or Conrail who will be affected or have to make any career choices as a result of the transaction. Posting notices on the Rail Line would not provide notice to any employees of OCIDA or Conrail who may have previously worked on the Rail Line. Further, there will be no operational changes, and no employees of NYS&W will be affected.² Thus, under the circumstances of this transaction, compliance with the notice requirements will not further the purposes of the rule and should be waived. Granting NYS&W a waiver would be consistent with other circumstances in which the Board has granted waivers from the labor notice requirements when a common carrier has filed to acquire rights to a rail line it was previously operating and to remain as the common carrier on the line. *See North Carolina & Virginia Railroad Company, LLC, Chesapeake & Albemarle Railroad Division – Lease Amendment Exemption – Norfolk Southern Railway Company*, STB Docket No. FD 35564 (Sub-No. 1) (served December 23, 2011). *See also Louisiana Southern Railroad, LLC – Lease Exemption containing Interchange Commitment – The Kansas City Southern Railway Company*, STB Docket No. FD 35983 (served February 18, 2016).

NYS&W asks that the waiver of the labor notice requirements be granted expeditiously so that this Notice of Exemption can become effective as scheduled 30 days after it is filed.

² Notwithstanding that there will be no effect on employees of NYS&W, NYS&W is providing notice of its acquisition of the Rail Line to the national offices of the unions that represents employees working on the line by serving it with a copy of this Notice of Exemption.

Conclusion

Accordingly, NYS&W requests that the Board issue a notice allowing NYS&W to acquire the Rail Line effective 30 days after the date of filing of this notice of exemption, and grant the request for a waiver of the advance notice to labor requirements.

Respectfully submitted,



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jmarks@clarkhill.com

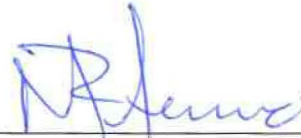
*Attorneys for The New York, Susquehanna and
Western Railway Corporation*

Dated: August 7, 2023

VERIFICATION

I hereby verify on behalf of The New York, Susquehanna and Western Railway Corporation, under penalty of perjury, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verification.

Executed on August 7, 2023.



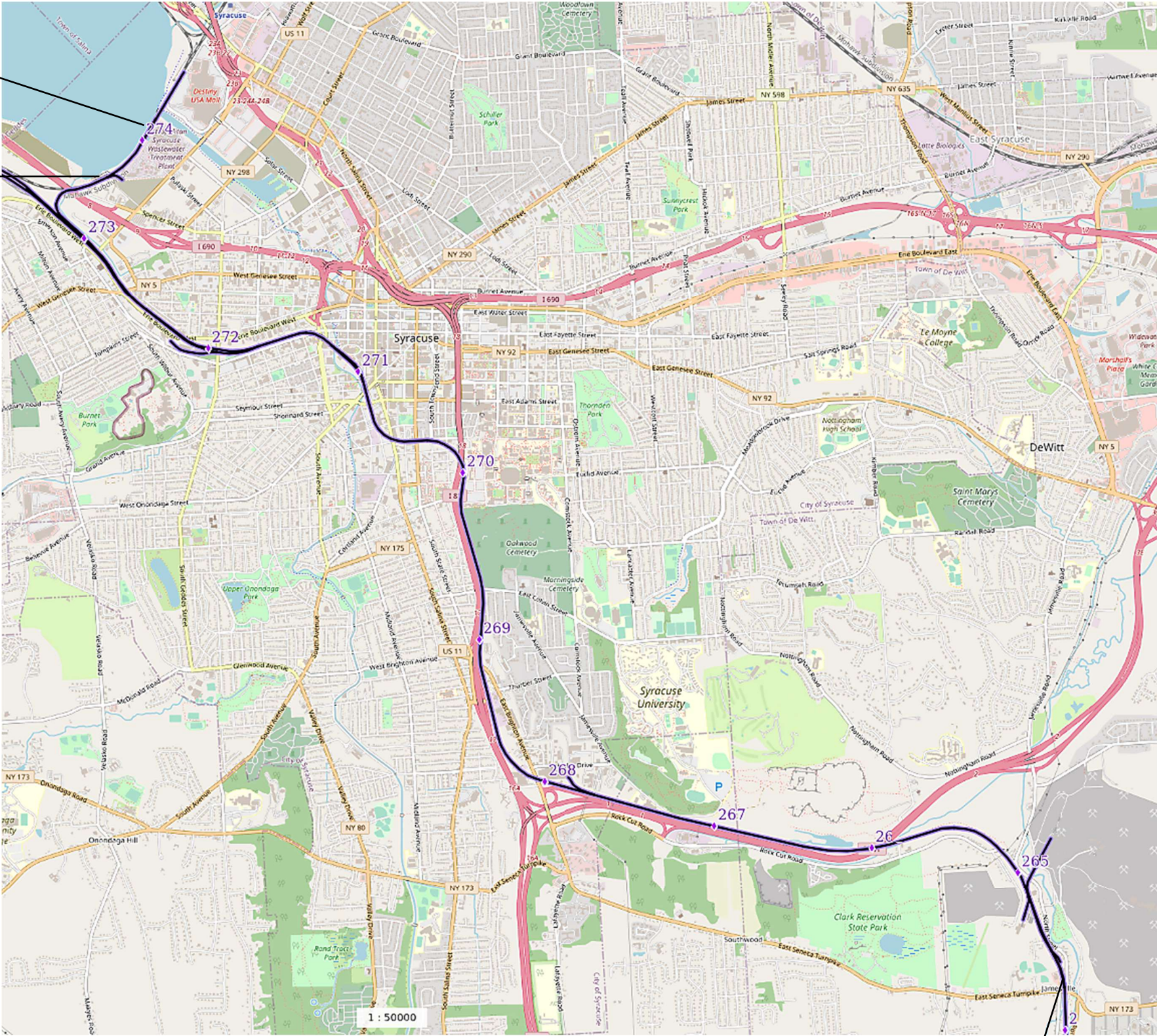
Nathan Fenno, President

EXHIBIT A

MAP

Track 7 mp
292.0-292.8
(known to
NYS&W as
mp 274.0-
274.8)

Milepost
273.5



Milepost 264.3

Purple Line = NYS&W Rail Line

EXHIBIT B

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

Notice of Exemption

STB Docket No. FD 36715

**THE NEW YORK, SUSQUEHANNA AND WESTERN RAILWAY CORPORATION -
ACQUISITION AND OPERATION EXEMPTION –
ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

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Comments must be filed with the Board and served on NYS&W’s representative, Justin Marks, Clark Hill, 1001 Pennsylvania Ave. N.W., Suite 1300 South, Washington, DC 20004, (202) 772 0916, jmarks@clarkhill.com.

The Notice is filed under 49 C.F.R. §1150.41. If the 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 transaction.

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

Decided: _____, 2023.

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

CERTIFICATE OF SERVICE

I, hereby certify that on this date a copy of the foregoing document was served by U.S.
first class mail, postage pre-paid on the following national representatives of NYS&W
employees working on the Rail Line:

Brotherhood of Railway Signalmen
Michael S. Baldwin, President
917 Shenandoah Shores Road
Front Royal, VA 22630

J.B. Long, General Chairman
American Rail System Federation of the
Brotherhood of Maintenance of Way Employees Division of
The International Brotherhood of Teamsters
9300 Runyan Road
Catlettsburg, KY 41129

Brotherhood of Locomotive Engineers and Trainmen
7061 East Pleasant Valley Road
Independence, Ohio 44131



Justin J. Marks

Dated: August 7, 2023