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SERVICE DATE – FEBRUARY 23, 2024

DO

FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36753]

Wilmington Terminal Railroad, Limited Partnership—Operation Exemption—North
Carolina State Ports Authority

Wilmington Terminal Railroad, Limited Partnership (WTR), a Class III railroad, has filed a verified notice of exemption under 49 CFR 1150.42 to exempt from regulation WTR’s entry into an amendment (Amendment) with the North Carolina State Ports Authority (NCSPA) to extend a 2002 Rail Operating Agreement (Original Agreement) between WTR and NCSPA relating to WTR’s continued operations as a common carrier over approximately 18 miles of track in three segments (the Line).¹ The Line encompasses: (1) the Front Street Spur, extending from the east line of Third Street at CSX Rail Valuation Station 91+37.3 and extending generally in a northerly direction a

¹ WTR originally received acquisition and operation authority for the Line in 2002 using the Board’s expedited notice-of-exemption process. See Wilmington Terminal R.R.—Acquis. & Operation Exemption—N.C. Ports Ry. Comm’n, FD 34257 (STB served Oct. 31, 2002). The verified notice here states that the Original Agreement has been amended three other times since 2002 and that it does not appear Board authority was sought for those amendments. WTR asserts that it is not clear that amendments to the Original Agreement require Board authority because, in a proceeding related to Docket No. FD 34257, the Board held that WTR’s acquisition of a permanent and exclusive railroad operating easement over the Line means that WTR “will continue to have a common carrier obligation until we permit that obligation to be transferred to [an]other carrier[] or the line[] to be abandoned.” See N.C. State Ports Auth.—Acquis. Exemption—N.C. Ports Ry. Comm’n, FD 34258, slip op. at 5 (STB served Oct. 31, 2002). WTR states that it is seeking authority for the Amendment out of an abundance of caution.

distance of approximately 0.66 miles to CSX Rail Valuation Station 56+39; (2) the New River Spur, extending from the CSX Rail Valuation Station 0+00, also being Rail Valuation Station 86+20 on the Front Street Spur at the west line of Second Street and extending generally in a southerly direction approximately 3.5 miles to CSX Rail Valuation Station 185+00; and (3) the line extending from the north entrance to the Port of Wilmington at Transit Road, near its intersection with Burnett Blvd., to the south entrance to the Port of Wilmington at River Road near its intersection with Shipyard Blvd., through and including the classification yards and including all of the railroad tracks on the Port of Wilmington, whether denominated as spurs, side tracks, industrial tracks, or otherwise (but excluding crane rails).

According to the verified notice, WTR currently operates the Line and has owned a permanent and exclusive railroad operating easement for the Line since 2002. WTR states that it has entered into the Amendment with NCSPA to extend the term of the Original Agreement and amend other commercial terms related to WTR's operations over the Line. The verified notice states that the Amendment will be effective on the effective date of the exemption.

WTR certifies that neither the Original Agreement nor the Amendment include an interchange commitment. WTR also certifies that its projected annual revenue are not expected to exceed those that would qualify it as a Class III carrier and that its revenues currently exceed \$5 million.

Pursuant to 49 CFR 1150.42(e), if a carrier's projected annual 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. However, WTR has filed a request for waiver of the 60-day advance labor notice requirements to allow the transaction to become effective 30 days after WTR's notice of exemption was filed. WTR's waiver request will be addressed in a separate decision. The Board will establish the effective date of the exemption in its separate decision on the waiver request.

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 March 1, 2024.

All pleadings, referring to Docket No. FD 36753, 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 WTR's representative, Eric M. Hocky, Clark Hill PLC, Two Commerce Square, 2001 Market St., Suite 2620, Philadelphia, PA 19103.

According to WTR, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

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

Decided: February 16, 2024.

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