

**Before the
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36923

**COLBY NITTERHOUSE
-CONTINUANCE IN CONTROL –
AJAK RAIL, LLC ACQUISITION EXEMPTION**

ENTERED
Office of Chief Counsel
May 6, 2026
Part of
Public Record

**PETITION OF PENNSYLVANIA & SOUTHERN RAILWAY, LLC
TO PARTIALLY REJECT OR REVOKE**

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Dated: May 6, 2026

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PETITION OF PENNSYLVANIA & SOUTHERN RAILWAY, LLC
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Pennsylvania & Southern Railway, LLC (“PSCC”) files this Petition to request that the Board either reject or revoke the notice of exemption filed by Colby Nitterhouse (“Nitterhouse”) to continue in control of non-carrier AJAK Rail, LLC (“AJAK”), if and when, it becomes a rail carrier.¹

AJAK Procedural Status

On December 15, 2025, AJAK filed a notice of exemption in Docket No. FD 36894 under 49 C.F.R. §1150.31 to acquire from Colby Nitterhouse (Nitterhouse), on behalf of Franklin Storage, LP (“Franklin Storage”), and operate what was originally described as 7,665 feet of rail line in Chambersburg, PA. On January 13, 2026, the Board issued a decision based on its review of the notice filed in this proceeding (as well as those filed simultaneously in three other

¹ It is difficult to tell from the Nitterhouse filing whether this docket (FD 36923) is intended to apply solely to the control of AJAK. The “title” of the Nitterhouse filing also references Nitterhouse seeking control of NPJ Rail, LLC (“NPJ”), PNGT Rail, LLC (“PNGT”) and WCN Rail, LLC (“WCN”), showing the docket numbers of each of their respective notices of exemption for authority to acquire and operate. The Board generally requires a separate docket for a control proceeding. If the Board were to find that this docket includes the requests of Nitterhouse to control the other three non-carriers when they become authorized to operate as carriers, PSCC by this motion is challenging only the request for continuance in control with respect to AJAK.

proceedings) requiring AJAK to supplement its notice of exemption by January 27, 2026 to correct certain errors and omissions, including the failure to attach a verification, the failure to certify whether the operation would be subject to an interchange commitment, the failure to accurately describe the length of the subject line and the failure to submit a map that accurately showed the ownership of the proposed subject line. The decision also postponed the effective date of the AJAK exemption (and the three other exemptions that had been filed on behalf of new entities formed by Nitterhouse) until further order of the Board.

On January 27, 2026, AJAK filed a supplement to address the deficiencies previously noted by the Board. Significantly, AJAK clarified that the “rail line” would consist of three separate tracks (on three separate properties) totaling 2,665 feet. AJAK also submitted a new map which it purported accurately identified the three tracks to be acquired and operated by AJAK.

On January 28, 2026, the Board issued a decision in the AJAK docket (as well as three other dockets), directing among other requirements, that Nitterhouse, by February 27, 2026, either seek Board authorization to continue in control of AJAK as well as the three other carriers that Nitterhouse would control upon their becoming rail carriers, or explain why such control authority would not be required.

On February 6, 2026, PSCC filed a petition to reject or revoke AJAK’s notice of exemption in Docket No. FD 36844. On February 28, 2026, in response to the January 28 decision Franklin Storage (and not Nitterhouse) filed in Docket No. FD 36913 (and related dockets) seeking to continue in control of AJAK, NPJ, PNGT. WCN.

In a joint decision served March 27, 2026, the Board rejected the AJAK notice of exemption finding there were a number of unresolved issues and deficiencies in the AJAK notice, including whether its description of the proposed line, including its use of a deceptive map, was

accurate.² The Board also postponed the effective date of the continuance in control exemption and ordered Franklin Storage to either clarify why it is the proper party to seek continuance in control authority, or alternatively a notice of exemption by Nitterhouse seeking continuance in control in a new docket.

Franklin Storage responded by withdrawing its notice(s) seeking continuance in control, and Nitterhouse filed its current continuance in control exemption in this docket seeking to control AJAK (as well as notices in Docket No. FD 36895, 36896 and 36897 seeking authority to control NPJ, PNGT. WCN, respectively).

Interest of PSCC

As noted in its petition to reject or revoke the AJAK notice in Docket No. FD 36894, PSCC is a Class III carrier that operates in the Chambersburg, PA area. It provides service to a number of shippers, including the Franklin Storage properties where AJAK proposes to operate. PSCC, was and still is, concerned about the proposed AJAK rail operations because AJAK had not discussed in its notice of exemption or in private discussions with PSCC such issues as how AJAK proposes to operate the three disconnected track segments as a single railroad / line of railroad, or how and where interchange will take place given the lack of available track space that can be used for interchange.³

Request for Relief

PSCC respectfully requests the Board reject the Nitterhouse notice of exemption as it relates to its control of AJAK. The notice as it relates to AJAK is deficient and clearly premature. As noted above, and acknowledged in the Nitterhouse notice, at p. 2, the AJAK notice of

² The rejection of the AJAK notice was without prejudice to AJAK refiling in a new docket. AJAK has not submitted any new filing.

³ AJAK still has not approached PSCC following the rejection of AJAK's notice of exemption.

exemption was rejected by the Board. Although the Nitterhouse notice indicates that AJAK will re-file under a new docket, it has not yet done so. As such, at this time, neither the Board, nor any interested parties such as PSCC, know what tracks AJAK will seek to operate, if AJAK will be able to submit an accurate description⁴ and whether AJAK will address the other concerns raised regarding its previous notice.

In particular, the Nitterhouse continuance in control notice is deficient in the following ways (at least as to the proposed control of AJAK):

Description of Proposed Transaction.

In paragraph (i) on page 2 of the notice, Nitterhouse first states that the various entities including AJAK will be “contract operators.” This is inconsistent with its statement that the various entities will become Class III carriers.

Proposed Schedule for Consummation.

On page 4 of the notice, Nitterhouse indicates his intention to consummate his continuance in control upon the “filing of new Notices [sic] of Exemption on behalf of” AJAK. This is in error because control of AJAK can only be effective if and when any new AJAK notice of exemption is filed, accepted by the Board and becomes effective. Moreover, since AJAK has not even filed a new notice of exemption, there is no way to determine when Nitterhouse would consummate his control of AJAK. Thus, the Nitterhouse notice in this proceeding fails to provide the proposed time schedule for consummation as required by 49 CFR §1180.6(a)(1)(ii).

⁴ The Nitterhouse control notice in this proceeding attached as Exhibit A the same AJAK map that was rejected in the March 27, 2026 decision, suggesting that AJAK still does not understand the issues.

Purpose Sought to Be Accomplished.

Although Nitterhouse includes a statement of the purpose of the transaction (which was missing from the Franklin Storage continue in control notice in Docket No. FD 36913), that statement, at p.4, merely recites that the purpose is to proceed with control. This statement does not meet the requirements of 49 CFR §1180.6(a)(1)(iii) which requires a notice to include a justification for the proposed control, including “e.g., operating economies, eliminating excess facilities, improving service, or improving the financial viability of the applicants.”

Maps.

The regulations at 49 CFR §1180.6(a)(6) require the control notice to include a map indicating the lines of the carriers to be controlled in their relation to each other. Nitterhouse’s control notice includes maps of each of the individual entities (although no map showing their relation to each other is provided). Of more concern, with respect to the rail line identified to be AJAK (Exhibit A), Nitterhouse has included the same map that was included in AJAK’s notice in Docket No. FD 36894 – the same map that was rejected by the Board in its March 27, 2026 decision for not accurately describing the tracks to be operated by AJAK. As such the AJAK map does not satisfy the requirements of the regulations.

Summary

Based on the deficiencies discussed above the Board should reject or revoke the Nitterhouse control notice as it relates to the proposed control of AJAK. Additionally, without a pending AJAK notice of exemption, it would be premature for the Board to act on the Nitterhouse control notice, and accordingly, the notice should be dismissed (without prejudice for Nitterhouse to re-file under a new docket if and when AJAK files a complete and accurate notice of exemption to acquire and operate).⁵

Respectfully submitted,

/s/ Eric M. Hocky

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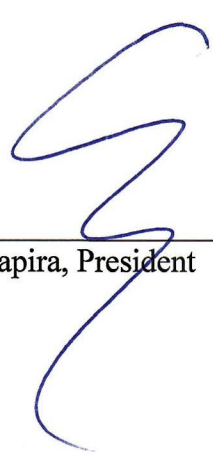
Dated: May 6, 2026

⁵ Even if the Board does not to reject the control notice as it relates to AJAK, the Board should refrain from issuing a decision on the control of AJAK that would suggest that any new notice filed by AJAK would be accepted without rigorous review and correction of the previous deficiencies.

VERIFICATION

I hereby verify on behalf of Pennsylvania & Southern Railway, LLC, 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 May 6th, 2026.



Eyal Shapira, President

CERTIFICATE OF SERVICE

I certify that I have served copies of the foregoing Petition to Partially Reject or Revoke on all parties of record in this proceeding by electronic delivery:

Max Callahan (max@prptax.com)

/s/ Eric M. Hacky

Dated: May 6, 2026