

BEFORE THE
SURFACE TRANSPORTATION BOARD

242367

ENTERED
Office of Proceedings
January 5, 2017
Part of
Public Record

SMS RAIL LINES OF NEW YORK, LLC –	)	
ACQUISITION AND OPERATION	)	FINANCE DOCKET
EXEMPTION – RAIL LINE OF WCC, LLC	)	NO. 36088
IN HUDSON FALLS, NY	)	

NOTICE OF EXEMPTION UNDER 49 C.F.R. § 1150.41

SMS RAIL LINES OF NEW YORK, LLC
513 Sharptown Road
Logan Township, NJ 08085

Applicant



ROBERT A. KLEIN, ESQUIRE
BERKOWITZ KLEIN, LLP
629 B Swedesford Road
Swedesford Corporate Center
Malvern, PA 19355-1530
(610) 889-3200, ext. 2
rak@berklein.com

Attorney for Applicant

DATE FILED: January 5, 2017

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NOTICE OF EXEMPTION UNDER 49 C.F.R. § 1150.41

Pursuant to 49 C.F.R. § 1150.41 *et seq.*, SMS RAIL LINES OF NEW YORK, LLC (“SMS”), a Class III rail carrier, hereby provides notice of its class exemption from 49 U.S.C. § 10902 for its acquisition by lease from WCC, LLC (“WCC”) and operation of a rail line which comprises approximately three and one-half (3.5) miles of rail lines on a property located at 446 Lock 8 Way, Hudson Falls, Washington County, New York (the “Rail Line”). The transaction will not yield five million dollars or more of revenue, and as a result of the transaction, SMS will not become a Class I or Class II rail carrier. The Rail Line does not have milepost designations. A map of the Rail Line is attached to this Notice as Appendix 1.

BACKGROUND

WCC is the owner of the property located at 466 Lock 8 Way, Hudson Falls, Washington County, New York on which exists an industrial park and three and one-half (3.5) miles of rail lines. SMS is in the business of operating and servicing a short line railroad and desires to provide rail service as a common carrier at the industrial park. WCC and SMS have entered into an agreement whereby SMS has acquired the Rail Line by lease and will operate the Rail Line, providing exclusive rail service at the industrial park. This Notice of Exemption is filed for that purpose.

INFORMATION REQUIRED BY 49 C.F.R. § 1150.43

(a) The full name and address of the Class III rail carrier applicant:

Applicant is SMS Rail Lines of New York, LLC, 513 Sharptown Road, Logan Township, NJ 08085.

(b) The name, address, and telephone number of the representative of the applicant who should receive correspondence:

Applicant's attorney is Robert A. Klein, Esquire, Berkowitz Klein, LLP, 629 B Swedesford Road, Swedesford Corporate Center, Malvern, PA 19355-1530, (610) 889-3200, ext. 2.

(c) A statement that an agreement has been reached or details about when an agreement will be reached:

An agreement has been entered into between SMS and WCC by which SMS has acquired the Rail Line by lease and will operate the Rail Line.

(d) The operator of the property:

SMS will operate the Rail Line.

(e) A brief summary of the proposed transaction, including:

(1) The name and address of the railroad transferring the subject property to the Class III rail carrier applicant:

The lessor of the Rail Line to SMS is WCC, LLC, 269 Ballard Road, Wilton, NY 12831.

(2) The proposed time schedule for consummation of the transaction:

The transaction provides for SMS to acquire the Rail Line by lease. SMS will commence service and operation of the Rail Line upon the effective date of this Notice of Exemption.

(3) The mileposts of the subject property, including any branch lines:

The Rail Line does not have milepost numbers.

(4) The total route miles being acquired.

Approximately 3.5 miles of rail lines on a property located at 446 Lock 8 Way, Hudson Falls, Washington County, New York.

(f) A map that clearly indicates the area to be served, including origins, termini, stations, cities, counties, and states:

The required map is attached to this Notice as Appendix 1.

(g) A certificate that applicant's projected revenues as a result of the transaction will not result in the creation of a Class II or Class I rail carrier so as to require processing under Sec. 1150.45.

The required certificate is contained in the Verification of Mr. Jeffrey L. Sutch, Managing Member of SMS, which is attached to this Notice as Appendix 2.

(h) Interchange Commitments. (1) The filing party must certify whether or not a proposed acquisition or operation of a rail line involves a provision or agreement that may limit future interchange with a third-party connecting carrier, whether by outright prohibition, per-car penalty, adjustment in the purchase price or rental, positive economic inducement, or other means ("interchange commitment").

The proposed acquisition and operation of the Rail Line does not involve any provision or agreement that may limit future interchange commitments.

CAPTION SUMMARY

The caption summary required by 49 C.F.R. § 1150.44 is attached to this Notice as Appendix 3.

ENVIRONMENTAL AND HISTORIC MATTERS

By virtue of 49 C.F.R. § 1105.6(c)(1), no environmental assessment is required in conjunction with the proposed acquisition and operation. Also, by virtue of 49 C.F.R. § 1105.8(b)(1), no historic reporting is required.

LABOR PROTECTION

By virtue of 49 U.S.C. § 10902, no labor protective conditions are to be imposed in conjunction with this Notice.

ANNUAL REVENUES

The certificate required by 49 C.F.R. § 1150.43(g) (SMS's projected revenues as a result of the transaction will not result in the creation of a Class II or Class I rail carrier so as to require processing under 49 C.F.R. § 1150.45), is contained in Appendix 2 attached to this Notice.

VERIFICATION

A general verification of all factual assertions in this Notice is contained in Appendix 2.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, within 16 days after the filing of this Notice, the Director of the Board's Office of Proceedings should arrange for publication of notice of the filing of this Notice in the Federal Register.

Respectfully submitted,

SMS RAIL LINES OF NEW YORK, LLC
513 Sharptown Road
Logan Township, NJ 08085

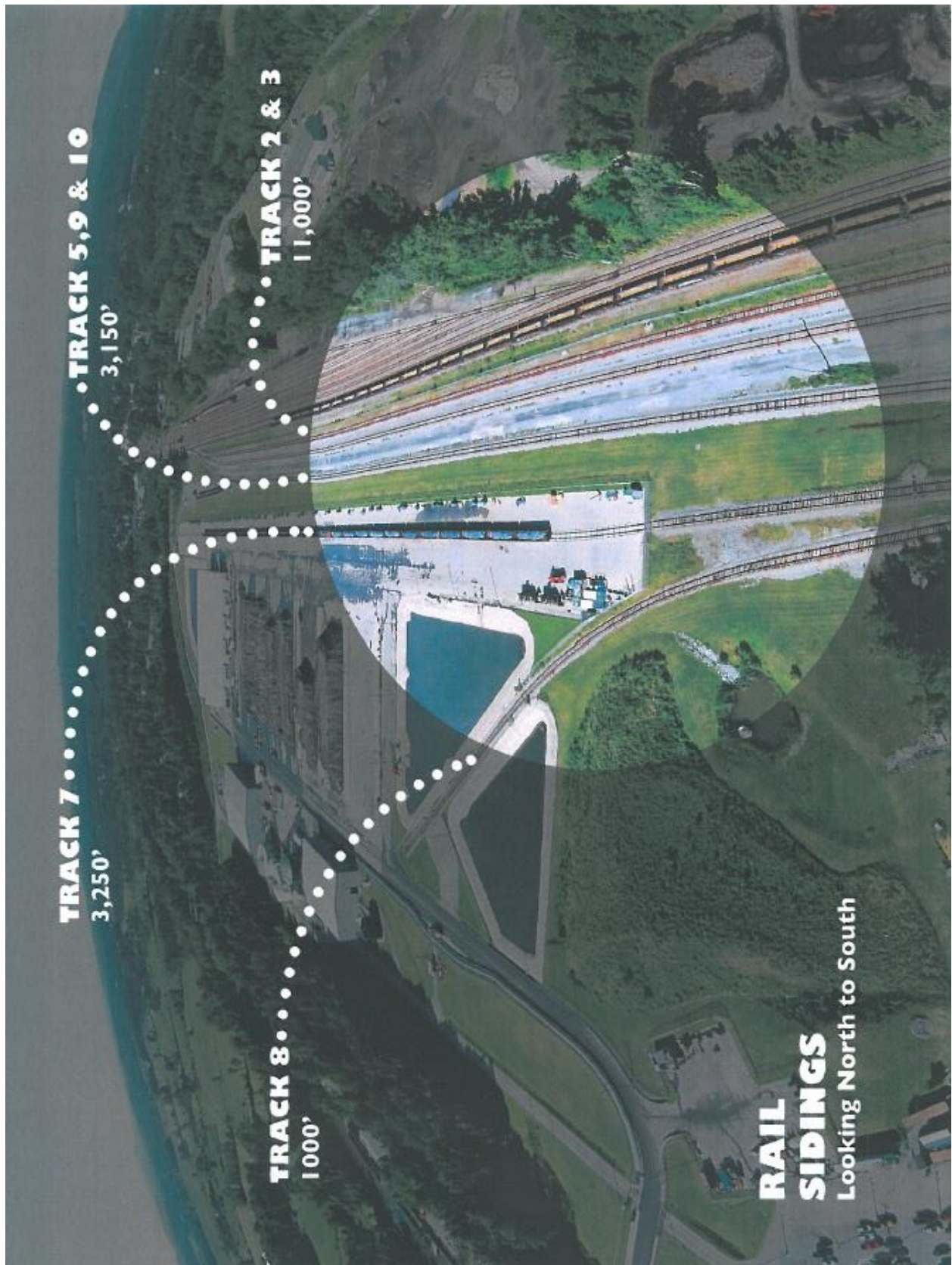
Applicant



ROBERT A. KLEIN, ESQUIRE
BERKOWITZ KLEIN, LLP
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Attorney for Applicant

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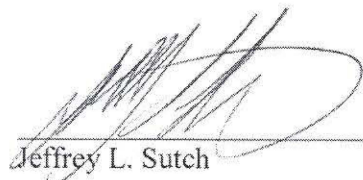




APPENDIX 2

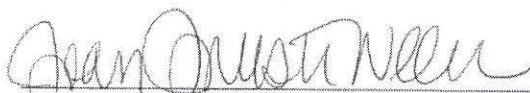
VERIFICATION

JEFFREY L. SUTCH, being duly sworn, states that he is Managing Member of SMS Rail Lines of New York, LLC ("SMS"); that he has read the foregoing Notice of Exemption under 49 C.F.R. § 1150.41 being filed by SMS; that the projected annual revenue of the rail line being acquired by lease and operated by SMS as a result of the transaction will not be five million dollars or more; that SMS's projected revenues as a result of the transaction will not result in the creation of a Class II or Class I rail carrier so as to require processing under 49 C.F.R. § 1150.45; that the proposed acquisition and operation of the rail line does not involve any provision or agreement that may limit future interchange commitments as defined in 49 C.F.R. § 1150.43(h); and that all allegations of fact contained in SMS's Notice of Exemption are true and correct.


Jeffrey L. Sutch

STATE OF NEW JERSEY)
) SS:
COUNTY OF GLOUCESTER)

SUBSCRIBED and SWORN to before me
this 5th day of January, 2017.


Notary Public

My Commission expires: July 15, 2018

JOAN J. RUSH WEBER
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires July 15, 2018

APPENDIX 3

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

Notice of Exemption

FINANCE DOCKET NO. 36088

SMS RAIL LINES OF NEW YORK, LLC –
ACQUISITION AND OPERATION EXEMPTION –
RAIL LINE OF WCC, LLC IN HUDSON FALLS, NY

SMS Rail Lines of New York, LLC (“SMS”), a Class III rail carrier, has filed a Notice of Exemption to acquire by lease from WCC, LLC (“WCC”) and operate a rail line which comprises approximately three and one-half (3.5) miles of rail lines on a property located at 446 Lock 8 Way, Hudson Falls, Washington County, New York (the “Rail Line”). Comments must be filed with the Board and be served on SMS’s attorney, Robert A. Klein, Esquire, Berkowitz Klein, LLP, 629 B Swedesford Road, Swedesford Corporate Center, Malvern, PA 19355-1530, (610) 889-3200, ext. 2.

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.

By the Board

Dated:

(SEAL)

Cynthia T. Brown
Chief, Section of Administration