



BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. FD 36125

243650

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Office of Proceedings
June 2, 2017
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Public Record

KEAN BURENGA
– CONTINUANCE IN CONTROL EXEMPTION –
DOVER AND ROCKAWAY RIVER RAILROAD, LLC, BELVIDERE & DELAWARE
RIVER RAILWAY COMPANY, INC. AND BLACK RIVER & WESTERN CORP.

NOTICE OF EXEMPTION

(contains color images)

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Dated: May 31, 2017

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215847510

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June 2, 2017
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NOTICE OF EXEMPTION

Kean Burenga, an individual and a non-carrier (“Burenga”) files this Notice of Exemption pursuant to 49 C.F.R. §1180.2(d)(2) to exempt from the provisions of 49 U.S.C. §11323, to the extent required, his potential control of Dover and Rockaway River Railroad, LLC (“DRRR”), a non-carrier, when DRRR becomes a carrier. Burenga currently controls, as discussed more fully below, one or two other Class III carriers. It is not clear that Burenga controls DRRR, and he is filing this Notice of Exemption in an abundance of caution to exempt his control of DRRR were the Board to determine that he controls DRRR.¹

Burenga is filing this Notice of Exemption to enable him to continue to control DRRR, a non-carrier, when DRRR becomes the operator of lines of railroad in the State of New Jersey shown on Exhibit A (the “Rail Lines”), and described in the notice of exemption filed by DRRR. *See Dover and Rockaway Railroad, LLC – Operation Exemption – County of Morris, NJ*, STB Docket No. FD 36124. The Rail Lines to be operated by DRRR do not connect with any of the railroads that Burenga may be deemed to control, nor is the control of DRRR part of a series of anticipated transactions that would connect the Rail Lines to be operated by DRRR with the rail

¹ There is also a question whether Burenga controls Black River & Western Corp. (“BRWC”). If it is determined that he does, then Burenga also requests by this Notice authority to control BRWC in common with the other carriers he is deemed to control.

lines of any carriers that Burenga may be deemed to control. The proposed transaction does not involve a Class I railroad. Accordingly, this transaction qualifies for the class exemption described in 49 C.F.R. §1180.2(d)(2).

Burenga Railroad Holdings and Positions

Burenga currently has the following railroad holdings and positions:

1. Belvidere & Delaware River Railway Company, Inc. ("BDRV"). Burenga owns 100% of the stock of BDRV, a Class III carrier, and is the President and General Manager. He "controls" BDRV.

2. Black River & Western Corp. ("BRWC"). Burenga is the President and General Manager of BRWC, a Class III carrier. However, he owns, directly and indirectly, only a minority interest (32%) of the stock of BRWC (there are 14 other stockholders besides Burenga and two companies that he controls), and is one of three directors. He does not have a contract for his services as President and General Manager, and can be replaced at any time. As such, Burenga does not believe that he "controls" BRWC, and he has not previously sought authority to control BRWC in common with BDRV. If the Board were to determine that his holdings and positions give Burenga control of BRWC, then Burenga requests that the Board exempt the common control of BRWC and BDRV on the basis of the information in this Notice of Exemption.²

3. DRRR. DRRR is a newly formed non-carrier. It is wholly owned by Chesapeake and Delaware, LLC ("CAD"). Burenga owns 20% of the equity of CAD (there are four other equity holders), and is one of five directors. Burenga is the President of CAD, and the President

² To the extent control is found, the previous failure to file should be deemed inadvertent based on Burenga's reasonable interpretation that he was not in control of BRWC.

of DRRR. There is a separate Vice President and General Manager. He does not have a contract for his services as President. As such, Burenga does not believe that he “controls” DRRR, directly or indirectly. However, in the event that the Board were to determine that his holdings and positions give Burenga control of DRRR, then Burenga requests that the Board exempt the common control of DRRR on the basis of the information in this Notice of Exemption.

Required Information

In accordance with the provisions of 49 C.F.R. 1180.4(g), Burenga provides the following information as required by 49 C.F.R. §1180.6(a)(1)(i)-(iii), (a)(5), (a)(6), and (a)(7)(ii):

1180.6(a)(1)

(i) The proposed transaction as described above involves the continuance in control of DRRR, a non-carrier, when DRRR becomes the operator of the Rail Lines. Because Burenga the owner of at least one other carrier, if it is determined that he is in control of DRRR, his continuance in control of DRRR when DRRR becomes a carrier would require authorization under 49 U.S.C. §11323(a)(5) or an exemption therefrom.

The full name and address of the applicant is: Kean Burenga, 20 Toad Lane, Ringoes, NJ 08551.

The name, address and telephone number of Burenga’s counsel who should receive correspondence is: Eric M. Hocky, Esquire, Clark Hill PLC, One Commerce Square, 2005 Market Street, Suite 1000, Philadelphia, PA 19103; (215) 640-8500.

(ii) DRRR is filing its notice of exemption contemporaneously with the filing of this Notice of Exemption to operate approximately 17.4 miles of Rail Lines in the County of Morris, NJ. *See Dover and Rockaway Railroad, LLC – Operation Exemption – County of*

Morris, NJ, STB Docket No. FD 36124. DRRR's authority to operate will be effective on July 1, 2017. DRRR expects to begin operating as of that date.

(iii) The purpose of the transaction is to allow Burenga, an individual and a non-carrier that controls one or two other carriers, to continue in control of DRRR when DRRR begins to operate as a carrier. The continuance in control will allow DRRR to take advantage of Burenga's administrative, financial, marketing and operational experience, thus promoting the ability of DRRR to provide safe and efficient service to their shippers.

1180.6(a)(5)

DRRR will operate solely in the State of New Jersey. The railroads that Burenga currently controls or may be deemed to control, BDRV and BRWC, also operate in New Jersey. Neither of the railroads that Burenga controls or may be deemed to control connect with each other or with the Rail Lines to be operated by DRRR.

1180.6(a)(6)

A map showing the Rail Lines to be operated by DRRR is attached as Exhibit A. Also attached as part of Exhibit A are maps of the lines operated by BDRV and BRWC.

1180.6(a)(7)(ii)

There is no agreement covering the potential control of DRRR by Burenga, nor any agreement covering the common control of DRRR with BDRV or BRWC.

Interchange Commitments

Burenga does not believe that the Board's interchange disclosure requirements are intended to apply to equity control transactions such as this one in which no new interchange commitment is being imposed as part of the transaction. *See generally* 49 C.F.R. §1180.4(g)(4) "Transactions *imposing* interchange commitments." *See also Information Required in Notices* 215847510

and Petitions Containing Interchange Commitments, STB Docket No. EP714 (served September 5, 2013), slip op. at 1 (“disclosure requirements for notices and petitions for exemption where *the underlying lease or line sale* includes an interchange commitment”), p.9 (“regulations adopted here will affect all railroads filing notices and petitions for exemption for *sales and leases* that contain interchange commitments”) (emphasis added).

This Notice of Exemption covers only the continuance in control of DRRR and is not a direct purchase or lease of a rail line. No interchange commitment is being imposed in connection with the continuance in control of DRRR in common with BDRV or BWRC. Moreover, the management agreement to be entered into by DRRR does not contain an interchange commitment.

Labor Protection

Burenga recognizes that under 49 U.S.C. §10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Because this transaction will involve the control of Class III carriers only, this transaction may not be subject to labor protection. *See* 49 U.S.C. §11326(c).

Environmental and Historic Reports

The proposed acquisition of control involves only the continuance in control of a non-carrier when it becomes a carrier, and will not affect the level of operations on the Rail Lines to be operated by DRRR, or the rail lines operated by BDRV or BRWC. As such, the proposed transaction should be exempt from the Board’s environmental reporting requirements pursuant to 49 C.F.R. §1105.6(c)(2)(ii). Further, the proposed transaction is exempt from the historic preservation reporting requirements since the proposed acquisition of control will not

substantially change the level of operations over, or maintenance of, the Rail Lines be operated by DRRR, or the rail lines of BDRV or BRWC. *See* 49 C.F.R. §1105.8(b)(3).

Conclusion

For the foregoing reasons, Burenga requests that the Board issue a notice of exemption pursuant to 49 C.F.R. §1180.2(d)(2) if it determines that Burenga will be in control of DRRR. Additionally, to the extent the Board determines that Burenga is in control of BRWC, then Burenga requests that he also be given authority to continue in control of BRWC in common with BDRV (and DRRR if applicable).

Respectfully submitted,


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Dated: May 31, 2017

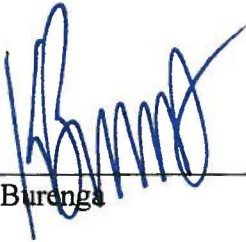
Attorneys for Kean Burenga

VERIFICATION

I, Kean Burenga, verify under penalty of perjury that the foregoing is true and correct.

Further, I certify that I am qualified and authorized to file the foregoing document.

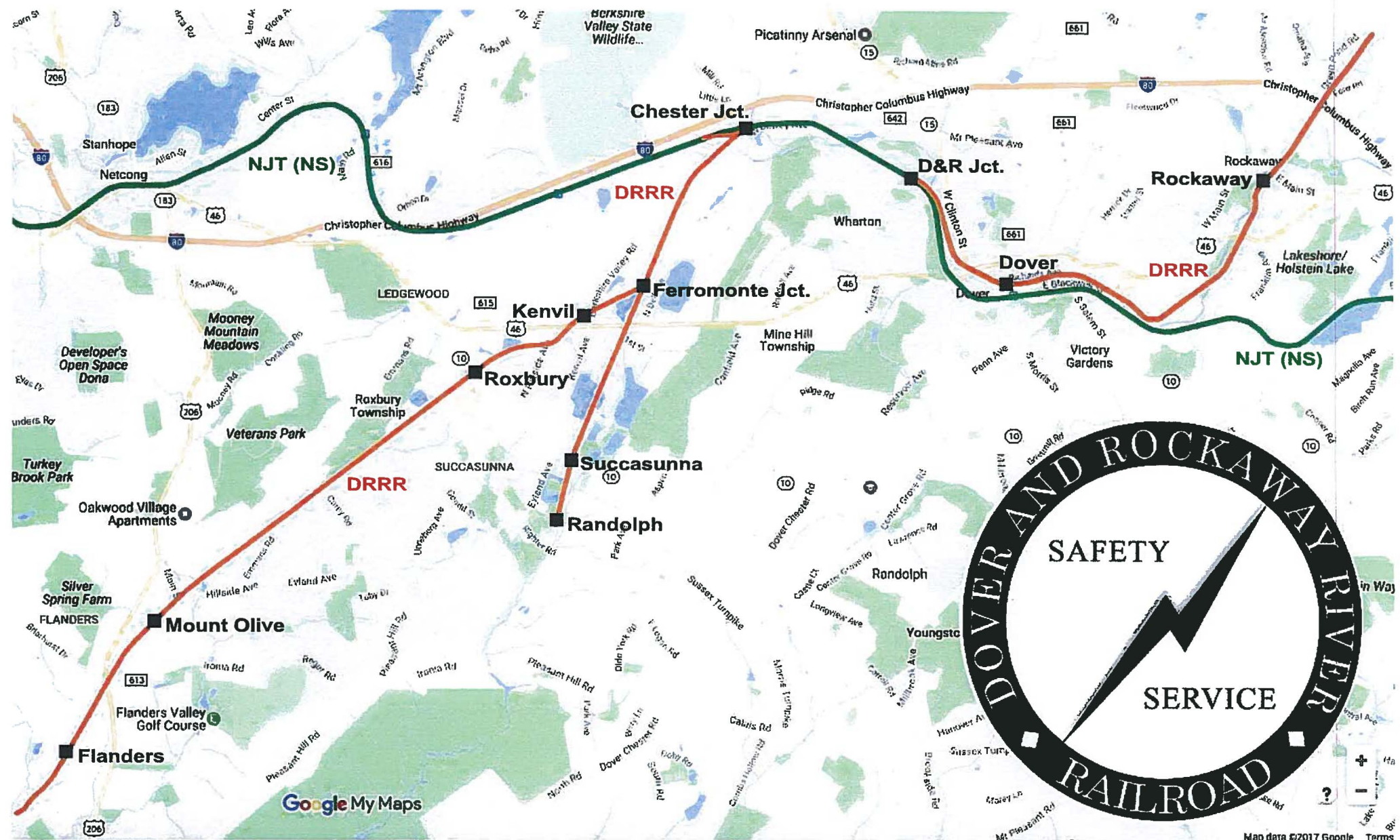
Executed on May 31, 2017.



Kean Burenga

EXHIBIT A

MAPS

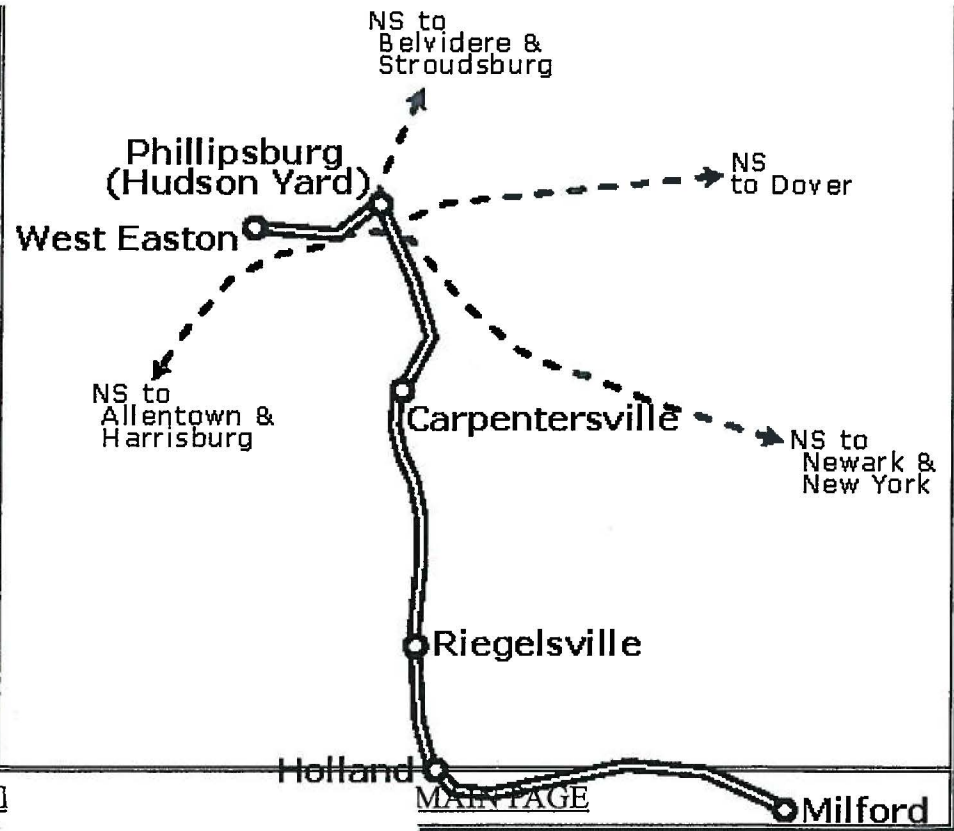


*The Right Connection
in New Jersey!*



Allentown: 12 miles
New York: 90 miles
Philadelphia: 60 miles
Trenton: 50 miles
Scranton: 70 miles

<http://www.bdry.com/BDRV%20059/bdrv059.htm>



*The Right Connection
in New Jersey!*



Allentown: 45 miles
New York: 60 miles
Philadelphia: 50 miles
Trenton: 20 miles
Wilmington: 70 miles

<http://www.bdry.com/BRW%20066/brw066.htm>

