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SERVICE DATE – AUGUST 15, 2019

DO

FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36287]

Cleveland & Cuyahoga Railway, LLC—Change in Operator Exemption Containing
Interchange Commitment—Cleveland Commercial Railroad Company, LLC

Cleveland & Cuyahoga Railway, LLC (CCR), a noncarrier, has filed a verified notice of exemption under 49 C.F.R. § 1150.31 to acquire from Cleveland Commercial Railroad Company, LLC (Cleveland Commercial) two lease agreements and to operate approximately 35.7 miles of rail line as follows: (1) a 10.4-mile rail line located in Cuyahoga County, Ohio, between milepost 15.5 at Falls Junction in Glenwillow, and milepost 5.1 in Cleveland (the W&LE Line); and (2) a 25.3-mile rail line located in Cuyahoga and Portage Counties, Ohio, between milepost RH 2.2+/- in Cleveland, and milepost RH 27.5+/- in Aurora (the NS Line) (collectively, the Lines).

The verified notice states that Cleveland Commercial entered into an agreement with the Wheeling & Lake Erie Railway Company in 2004 to lease and operate the W&LE Line, see Cleveland Commercial R.R.—Change in Operators Exemption—Wheeling & Lake Erie Ry., FD 34521 (STB served Aug. 6, 2004), and an agreement with Norfolk Southern Railway Company in 2009 to lease and operate the NS Line, see Cleveland Commercial R.R.—Lease & Operation Exemption—Norfolk Southern Ry., FD 35251 (STB served May 29, 2009).

According to CCR, Cleveland Commercial and CCR now have entered into an agreement under which Cleveland Commercial will assign both leases to CCR. As a result, CCR will replace Cleveland Commercial as the lessee and operator of the Lines.

This transaction is related to a concurrently filed verified notice of exemption in OmniTRAX Holdings Combined, Inc.—Continuance in Control Exemption—Cleveland & Cuyahoga Railway, Docket No. FD 36288, in which OmniTRAX Holdings Combined, Inc., and HGS Railway Holdings, Inc., both noncarriers, seek Board approval to continue in control of CCR under 49 C.F.R. § 1180.2(d)(2) upon CCR's becoming a Class III rail carrier.¹

CCR certifies that its projected annual revenues as a result of the transaction will not result in the creation of a Class II or Class I carrier and will not exceed \$5 million. As required under 49 C.F.R. § 1150.33(h)(1), CCR has disclosed in its verified notice that the lease agreement governing the NS Line contains an interchange commitment in the form of lease credits.² CCR has provided additional information regarding the interchange commitment as required by 49 C.F.R. § 1150.33(h).

¹ The verified notices in Docket Nos. FD 36287 and FD 36288 were initially submitted on April 1, 2019. On April 15, 2019, CCR requested that the Board hold both dockets in abeyance until it could complete negotiations regarding the NS Line, and the request was granted. On July 16, 2019, CCR notified the Board that it had completed its negotiations and requested that the Board process the verified notices in both dockets. On July 31, 2019, CCR filed a supplement clarifying that Docket No. FD 36287 should be a change in operator exemption and providing the most recent version of the lease agreement.

² A copy of the lease agreement with the interchange commitment was submitted under seal. See 49 C.F.R. § 1150.33(h)(1).

Under 49 C.F.R. § 1150.32(b), a change in operators requires that notice be given to shippers. In its July 31, 2019 supplement, CCR states that it has provided notice of the proposed transaction to all active shippers on the Lines in the last two years.

The earliest this transaction may be consummated is August 30, 2019 (30 days after the verified notice was filed).³ 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 August 23, 2019 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36287, must be filed with the Surface Transportation Board either via e-filing 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 CCR's representative, Karl Morell, Karl Morell and Associates, 440 1st Street, N.W., Suite 440, Washington, DC 20001.

According to CCR, this action is excluded from environmental review under 49 C.F.R. § 1105.6(c) and from historic preservation reporting requirements under 49 C.F.R. § 1105.8(b)(1).

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

Decided: August 12, 2019.

By the Board, Allison C. Davis, Director, Office of Proceedings.

³ The date of CCR's supplement (July 31, 2019) will be considered the filing date for the purposes of calculating the effective date of the exemption.