

SERVICE DATE – APRIL 5, 2019

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36279

SJRE-RAILROAD SERIES—EXEMPTION UNDER 49 C.F.R. § 1150.31—RAIL LINE IN
HARRIS COUNTY, TEX.

Decided: April 4, 2019

On March 7, 2019, SJRE-Railroad Series (SJRE)¹ filed a verified notice of exemption under 49 C.F.R. § 1150.31 concerning approximately six miles of rail line within the San Jacinto River and Rail Park, of which SJRE is the owner, in Harris County, Tex. (the Line). According to SJRE, the Line connects with Union Pacific Railroad Company and BNSF Railway Company at milepost 344-346 on the Lafayette Subdivision. Because SJRE's verified notice raises questions, SJRE will be directed to file a supplement providing clarification as to the issue noted below.

In 2016, San Jacinto Transportation Company, Inc. (SJTC), received an exemption to operate over the Line pursuant to an operating agreement with SJRE. See San Jacinto Transp.—Operating Exemption—SJRE-R.R. Series, FD 35996 (STB served Mar. 25, 2016). It is not clear from the exemption filed in this proceeding whether SJRE seeks to replace SJTC as the operator on the Line or merely become an additional operator. For example, SJRE states that it is filing its notice of exemption under § 1150.31, but it does not otherwise specify the type of transaction. Moreover, although SJRE states that it seeks “to assume the operating rights” on the Line and also notes that it will “enter into an operating agreement prior to operations,” both of which might indicate a change in operator exemption, the notice does not refer to SJTC or otherwise comply with the requirements for a change in operator exemption.

If SJRE seeks to replace SJTC as the operator on the Line, SJRE may indicate that it seeks a change in operator exemption under 49 C.F.R. § 1150.31(a)(3). In that case, SJRE should show that SJTC agrees to being replaced as the operator and also must demonstrate that notice has been provided to any shippers on the Line. See § 1150.32(b). If SJRC seeks simply to become an additional operator on the Line without removing SJTC, an operating exemption under § 1150.31(a) would be appropriate (and consent from SJTC and notice to shippers would not be required). See, e.g., Buffalo Ridge Reg'l R.R. Auth.—Operation Exemption—Rail Line Between Manley & Worthington, Minn., FD 33925 (STB served Sept. 22, 2000).

¹ SJRE describes itself as a noncarrier and a series within San Jacinto Real Estate, a series LLC formed under the laws of the State of Texas. (SJRE Notice 1.)

SJRE should clarify the type of transaction it wishes to pursue. Additionally, under either scenario, SJRE should clarify its statement that it “will enter into an operating agreement prior to operations.” If it is entering into an agreement with other entities, such as SJTC, it should so specify. If no other entities are involved (e.g., because SJRE owns the Line), it should so explain.

It is ordered:

1. The exemption that is the subject of this proceeding will not become effective until further order of the Board.
2. SJRE is directed to file the supplemental information described above no later than April 19, 2019.
3. This decision is effective on its service date.

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