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SERVICE DATE – SEPTEMBER 9, 2016

DO

FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 35187 (Sub-No. 1)]

Grand Elk Railroad, Inc.—Acquisition of Incidental Trackage Rights Exemption—
Norfolk Southern Railway Company

Grand Elk Railroad, Inc. (GDLK), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire by assignment from Norfolk Southern Railway Company (NSR) trackage rights over approximately 3.3 miles of rail line owned by CSX Transportation, Inc. (CSXT) in Grand Rapids, Mich. (the Line). The Line extends from milepost CH 151.3± at Pleasant Street through milepost CH 151.6/CGE 0.0 to milepost CGE 3.0± north of Ann Street in Grand Rapids, Mich.

GDLK states that the subject trackage rights conveyance was incidental to GDLK's 2009 lease and operation of NSR-owned railroad lines extending generally from Grand Rapids, Mich., to Elkhart, Ind., but was inadvertently omitted from GDLK's notice of exemption for that transaction. See Grand Elk R.R.—Lease & Operation Exemption—Norfolk S. Ry., FD 35187 (STB served Nov. 17, 2008). GDLK states that it has filed this notice to obtain proper agency authority for the prior assignment of trackage rights over the CSXT Line. (Notice 2.) GDLK contends that it operated pursuant to the CSXT Line trackage rights from its start-up in 2009 until August 10, 2016, when CSXT denied GDLK access to the line. (Notice 3). According to GDLK, CSXT is disputing the 2009 assignment and GDLK is addressing CSXT's contractual arguments in state

court.¹ (Id.) GLDK states that it is seeking retroactive Board authorization to assure that the court is fully able to address the matters before it. (Id.) GDLK states that the transaction does not involve any provision or agreement that would limit future interchange with a third-party connecting carrier.

GDLK states that its projected annual revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier, but that its projected annual revenues would exceed \$5 million. Accordingly, GDLK is required, at least 60 days before this exemption is to become effective, to send notice of the transaction to the national offices of the labor unions with employees on the affected lines, post a copy of the notice at the workplace of the employees on the affected lines, and certify to the Board that it has done so. 49 CFR 1150.42(e).

In addition to its verified notice of exemption, GDLK has filed a petition for waiver of the 60-day labor notice requirements of 49 CFR 1150.42(e), asserting that: (1) no employees would be affected by the Board's authorization of these trackage rights; and (2) GDLK provided the required notice to NSR employees and relevant national labor organizations at the time of the underlying lease transaction in 2009. GDLK has also filed a petition to partially revoke the class exemption at 49 CFR 1150.41 to allow the Board to retroactively authorize the assignment of trackage rights from NSR to GDLK. GDLK's waiver request and petition for partial revocation will be addressed in a

¹ GDLK acknowledges that the authority invoked by its notice is permissive and that issuance of this notice is not determinative of the disputed trackage rights contract issues. (Notice 6 n.3 (citing Wis. Cent. Ltd.—Trackage Rights Exemption—Lines of Union Pac. R.R., FD 35992 (STB served Mar. 4, 2016), and Rock & Rail, Inc.—Acquis. & Operation Exemption—Burlington N. & Santa Fe. Ry., FD 33738 (STB served Apr. 30, 1999).)

separate decision. The Board will establish in the decision on the waiver request the earliest date this transaction may be consummated.

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 effectiveness of the exemption. Petitions to stay must be filed no later than September 16, 2016 (at least seven days before the exemption becomes effective.)

An original and ten copies of all pleadings, referring to Docket No. FD 35187 (Sub-No. 1), must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on applicant's representative, Robert A. Wimbish, Fletcher & Sippell LLC, 29 North Wacker Drive, Suite 290, Chicago, IL 60606.

According to GDLK, this action is categorically excluded from environmental review under 49 CFR 1105.6(c).

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Decided: September 2, 2016.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.