

STEPTOE & JOHNSON LLP

ATTORNEYS AT LAW

David F. Rifkind
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via Hand Delivery

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

DID# 0102047001

206428

October 15, 2002

FILED

OCT 15 2002

SURFACE
TRANSPORTATION BOARD



**Re: CAROLINA RAIL SERVICE, LLC
-- ACQUISITION AND OPERATION EXEMPTION --
BEAUFORT & MOREHEAD RAILWAY, INC.
FINANCE DOCKET NO. 34268**

Dear Secretary Williams:

Enclosed for filing in the above referenced docket are the original and ten (10) copies of the Carolina Rail Service, LLC's (CRS) Verified Notice Exemption. This filing is related to the North Carolina State Ports Authority's Verified Notice of Exemption and Motion to Dismiss filed in Finance Docket 34258 on October 1, 2002 and the CRS's Verified Notice of Exemption filed in Finance Docket 34256 on October 1, 2002.

A check in the amount of \$1,300 is enclosed to cover the filing fee.

This filing includes a color map as an exhibit.

Please date stamp the extra copy of this cover letter and return it to the messenger who delivered this filing.

Sincerely,

David F. Rifkind

FEE RECEIVED

OCT 15 2002

SURFACE
TRANSPORTATION BOARD

Enclosures

ENTERED
Office of Proceedings

OCT 16 2002

Part of
Public Record

WASHINGTON

PHOENIX

LOS ANGELES

LONDON

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34268



CAROLINA RAIL SERVICE, LLC -- ACQUISITION AND OPERATION EXEMPTION --
BEAUFORT & MOREHEAD RAILWAY, INC.

FEE RECEIVED

OCT 15 2002

**SURFACE
TRANSPORTATION BOARD**

CAROLINA RAIL SERVICE, LLC
VERIFIED NOTICE OF EXEMPTION
FROM 49 U.S.C § 10902

ENTERED
Office of Proceedings

OCT 16 2002

Part of
Public Record

Carolina Rail Service, LLC (CRS), a Class III rail carrier, hereby files this Verified Notice of Exemption under 49 C.F.R. § 1150.41(a)(1) to acquire from the Beaufort & Morehead Railway, Inc. (BMRI) any and all operating authority that BMRI has over a rail line. The subject railroad line extends from the connection with the Norfolk Southern Railway Company (Atlantic & East Carolina Railway) at milepost 0.0 in Morehead City to milepost 0.87 at Gallants Channel near Morehead City, a distance of .87 miles in Carteret County, NC, serving the intermediate stations of Marsh Island and Radio Island and includes all trackage incidental thereto. CRS will operate over that line pursuant to an operating agreement with the North Carolina State Ports Authority (SPA) and a permanent and exclusive easement granted by the North Carolina Ports Railway Commission (PRC).¹

¹ This Notice of Exemption is related to the Notices of Exemption filed on October 1, 2002, by SPA in Finance Docket No. 34258, and CRS in Finance Docket No. 34256. As noted in those two Notices, the impetus for these related transactions is the enactment by the North Carolina legislature of SB1115, ratified September 20, 2002. Among other things, the new legislation requires the transfer of PRC's assets and liabilities, including the stock of its wholly owned subsidiary, BMRI, to SPA and the abolition of PRC. In the context of this transaction,

CRS expects to consummate the above described transactions by November 20, 2002.

In support of this Verified Notice of Exemption and pursuant to 49 C.F.R. § 1150.43,
CRS submits the following information:

(a) Full name and address of applicant:

Carolina Rail Service, LLC
100 Terminal Road
State Port
Morehead City, NC 28557

(b) Applicant's representative:

Karl Morell, Esq.
Ball Janik LLP
1455 F. St., NW Ste 225
Washington, DC 20005
202-638-3307

(c) Statement of agreement:

Consistent with the permanent and exclusive easement to be granted to CRS by PRC and the operating agreement to be concluded between SPA and CRS, BMRI and CRS have tentatively reached agreement as to the terms of the transfer of BMRI's operating authority over the subject lines. A draft of that agreement is attached hereto as Exhibit A. Drafts of the easement granted by PRC to CRS and of the operating agreement between SPA and CRS are attached as Exhibits C and E, respectively, to SPA's Motion to Dismiss filed in Docket No. 34258.

PRC and BMRI have agreed to the assignment of BMRI's operating authority over the line to CRS.

(d) The operator of the property:

CRS will operate the subject lines, pursuant to a permanent and exclusive rail operating easement granted to it by PRC and an operating agreement with SPA.

(e) Brief summary of proposed transaction:

(1) Name and Address of Railroad Transferring Subject Property:

Beaufort & Morehead Railway, Inc.
1213 Bridges Street
Morehead City, NC 28557

(2) Proposed time schedule for consummation of the transaction:

It is anticipated that the agreement between BMRI and CRS will be executed no later than November 20, 2002, but in no event prior to the effective date of this Notice of Exemption.

(3) The mile-posts of the subject property, including any branch lines:

1. The railroad line extending from the connection with the Norfolk Southern Railway Company / North Carolina Railroad Company at Milepost 0.0 in Morehead City 28557 to Milepost 0.87 at Gallants Channel on Radio Island, Morehead City 28557, a distance of 0.87 miles, and including the spur track and consolidation tracks leading from said line, generally along Inlet Drive, to the industrial tracks on the property leased from SPA to PCS Phosphate Company, Inc and the spur tracks leading to the PCS Phosphate Company, Inc.

rail car dump and the "Fishmeal" spur on the area commonly known as Marsh Island, all in Carteret County, North Carolina.

(4) The total route miles being acquired:

.87, more or less.

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

See Exhibit B attached hereto.

(g) Revenue certification:

CRS'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 CFR §1150.45.

In addition, CRS's projected annual revenues will not exceed \$5,000,000.

Therefore, 49 CFR § 1150.42(e) does not apply to this transaction.

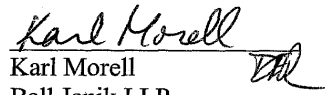
(h) Environmental and historic preservation reporting requirements:

Under 49 C.F.R. § 1105.6(c)(2)(i), the proposed transaction is exempt from environmental reporting requirements. The transaction will not result in significant changes in carrier operations, i.e., changes that exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5). Under 49 C.F.R. § 1105.8(b), the proposed transaction is also exempt from historic preservation reporting requirements.

(i) Caption summary:

A caption summary in the appropriate form is attached as Exhibit C hereto.

Respectfully submitted,


Karl Morell
Ball Janik LLP
1455 F. St., NW Ste 225
Washington, DC 20005
(202) 638-3307

Verification

I, Karen M. Godfrey, verify under penalty of perjury that I am Secretary of Carolina Rail Service, LLC, that the foregoing Verified Notice of Exemption pursuant to 49 C.F.R. § 1150.41 is true and correct to the best of my knowledge and belief, and that I am authorized to verify this Notice on behalf of the Carolina Rail Service, LLC.


Karen M. Godfrey Godfrey

Date: October 11, 2002

Exhibit A

ASSIGNMENT OF OPERATING AUTHORITY

THIS AGREEMENT made this _____ day of _____, 2002, is between the Beaufort & Morehead Railway, Inc. ("BMRI") and the Carolina Rail Service, LLC ("CRS").

WHEREAS, pursuant to a lease between the North Carolina Ports Railway Commission ("PRC") and BMRI dated January 1, 2002, and the Administrative and Service Contract between PRC and BMRI dated January 1, 2002 (collectively, the "Agreements"), BMRI has operated the rail trackage at the Morehead City Terminal described in Schedule A attached hereto (hereinafter the "Trackage");

WHEREAS, by operation of law, (2002 SB 1115*) the North Carolina State Ports Authority ("SPA") has become the owner of all assets of the PRC, including the Trackage; and

WHEREAS, CRS will operate over, and will assume all common carrier obligations relating to, the Trackage pursuant to a permanent and exclusive easement granted by PRC and an operating agreement between CRS and the SPA.

THEREFORE, in consideration of One Dollar (\$1.00) and other good and valuable consideration, receipt of which is hereby acknowledged, BMRI hereby assigns to CRS any and all rights under the Agreements, operating authority, common carrier obligations, and any and all other rights and obligations with respect to operations over the Trackage.

ACCEPTED BY:

BEAUFORT & MOREHEAD RAILWAY, INC.

By: _____
Title: _____

ACCEPTED BY:
CAROLINA RAIL SERVICE, LLC

By: _____
Title: _____

* SB 1115 contains a provision which makes the transfer of PRC's assets and liabilities to SPA contingent upon there being issued an opinion by the North Carolina Attorney General that such transfer will not subject SPA to the provisions of the Railway Labor Act. If that opinion is not issued within the time provided, then SB 1115 will not become law. Should that occur, and should SB 1115 not become law, then this ASSIGNMENT OF OPERATING AUTHORITY shall be null and void.

SCHEDULE A

Description of Track

The railroad line extending from the connection with the Norfolk Southern Railway Company / North Carolina Railroad Company at Milepost 0.0 in Morehead City 28557 to Milepost 0.87 at Gallants Channel on Radio Island, Morehead City 28557, a distance of 0.87 miles, and including the spur track and consolidation tracks leading from said line, generally along Inlet Drive, to the industrial tracks on the property leased from the North Carolina State Ports Authority to PCS Phosphate Company, Inc and the spur tracks leading to the PCS Phosphate Company, Inc. rail car dump and the "Fishmeal" spur on the area commonly known as Marsh Island, all in Carteret County, North Carolina.

SURFACE TRANSPORTATION BOARD

Notice of Exemption

FINANCE DOCKET NO. 34268

CAROLINA RAIL SERVICE, LLC
-- ACQUISITION AND OPERATION EXEMPTION --
BEAUFORT & MOREHEAD RAILWAY, INC.

Carolina Rail Service, LLC (CRS), a Class III carrier, has filed a verified notice of exemption under 49 C.F.R. § 1150.41 to acquire by assignment from the Beaufort & Morehead Railway, Inc. (BMRI) operating authority over a certain rail line. The subject railroad line extends from the connection with the Norfolk Southern Railway Company (Atlantic & East Carolina Railway) at milepost 0.0 in Morehead City to milepost 0.87 at Gallants Channel near Morehead City, a distance of .87 miles in Carteret County, NC, serving the intermediate stations of Marsh Island and Radio Island and includes all trackage incidental thereto. CRS will operate over those lines pursuant to an operating agreement with the North Carolina State Ports Authority (SPA) and a permanent and exclusive easement granted by the North Carolina Ports Railway Commission (PRC).

Comments must be filed with the Board and served on Karl Morell, Ball Janik LLP, 1455 F. St., NW, Ste 225, Washington, DC 20005, (202) 638-3307.

This notice is filed under §1150.41. If this notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Dated: October __, 2002

By the Board

Vernon A. Williams
Secretary

CERTIFICATE OF SERVICE

I hereby certify that I have on this 15th day of October, 2002, served copies of this Verified Notice of Exemption by regular mail, postage pre-paid, on the following parties:

Apex Oil
P.O. Box 3127
Wilmington, NC 28406
Attn: John Joyner,
Terminal Manager

Boke Trading
810 Sunnyvale Drive
Wilmington, NC 28412
Attn: Robert Alston

Cape Fear Bonded
P.O. Box 292
Wilmington, NC 28402
Attn: William Stanfield

Cape Fear Bulk
2217 Jump'in Run
Wilmington, NC 28403
Attn: Eric Higgins

Carolina Rail Service
100 Terminal Road
State Port
Morehead City, NC 28557

CSX Transportation
P.O. Box 44057
Jacksonville, FL 32231
Attn: Director - Operations

Colonial Terminals, Inc.
Cape Fear Terminal
1002 South Front Street
Wilmington, NC 28401
Attn: Ronald G. Hart,
Terminal Manager

Flint Hills Resources
P.O. Box 3958
Wilmington, NC 28406
Attn: Cliff Ruark,
Terminal Manager

International Longshoreman's
Association, AFL-CIO
c/o Gleason & Mathews, P.C.
26 Broadway, 17th Floor
New York, NY 10004-1864

Nooter/Eriksen
1509 Ocello Drive
Fenton, MO 63026
Attn: Leo Deterding,
Mgr. of Transportation

Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510-2191
Attn: Dr. Robert Martinez,
VP Ports & Development

North Carolina Department of
Transportation
1501 Mail Service Center
Raleigh, NC 27699-1501
Attn: David King,
Deputy Secretary, Transit

North Carolina Ports Railway
Commission
Attn: William Kincheloe, Chairman
516 Paul Street
PO Box 671
Rocky Mount, NC 27802

PCS Phosphate
PO Box 48
Aurora, NC 27806
Attn: Keith Thornton, General Manager

Rescar Companies
3333 River Road
Wilmington, NC 28412
Attn: Rex Greer

S&R Packing and Crating
P.O. Box 2551
Wilmington, NC 28402
Attn: Steve Thompson

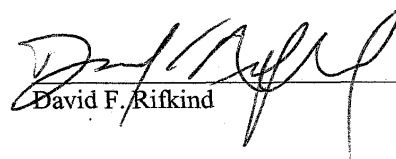
South Wilmington Terminal Exxon
P.O. Box 1350
Wilmington, NC 28402
Attn: Mike Mayhugh,
Terminal Manager

Touchstone Shipping and Logistics, Inc.
17350 S.H. 249, Suite 320
Houston, TX 77064
Attn: Lynn Stewart

U.S. Army Military Ocean Terminal
6280 Sunny Point Road
Southport, NC 28461
Attn: Brenda Hewett

Vopak Terminal Wilmington, Inc.
P.O. Box 896
Wilmington, NC 28402
Attn: Al Smeilus,
Terminal Manager

Wilmington Terminal Railroad
1717 Woodbine Street
Wilmington, NC 28401
Attn: Billy Tucker


David F. Rifkind