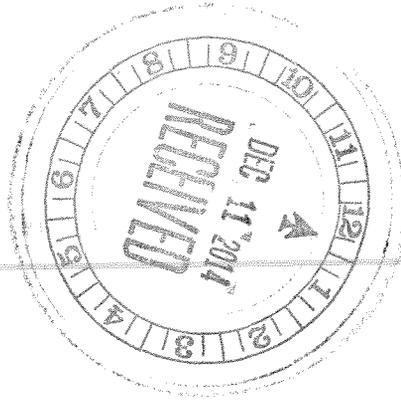


DILLON & NASH, LTD.
Attorneys at Law

David C. Dillon
Mary Ellen Nash



111 West Washington
Chicago, Illinois 60602
Telephone (312) 782-9025
Fax (312) 236-0472

December 10, 2014

237207
ENTERED

Office of Proceedings
December 11, 2014
Part of
Public Record

Surface Transportation Board
Chief Section of Administration
395 E. Street S.W.
Washington, D.C. 20423

Re: Filing of Verified Notices of Exemption
Under 49 C.F.R. §1150.31 –
TransDistribution Brookfield Railroad
Company

Dear Sir or Madam:

Our office represents TransDistribution Brookfield Railroad Company. I have enclosed herewith Verified Notices of Exemption Under 49 C.F.R. §1150.31 (an original and ten copies). I have also enclosed a check in the amount of \$1,800.00 for the filing fee.

While I have filed this action as Verified Notice of Exemption that the railroad entity is a Class III rail, I want to confirm that the *railroad revenue will be under Five Million Dollars (\$5,000,000)*.

Further, the total track owned by TransDistribution Brookfield Railroad Company is 2,450 linear feet (0.46 mile).

If you have any questions please feel free to contact me. Thank you for your assistance in this matter.

Very truly yours,


David C. Dillon
W

Enclosures

FILED
December 11, 2014
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
December 11, 2014
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD



TransDistribution Brookfield Railroad Company)
)

Finance Docket Number: FD 35890

VERIFIED NOTICES OF EXEMPTION
UNDER 49 C.F.R. § 1150.31

By: David C. Dillon
Dillon & Nash, Ltd.
111 West Washington Street
Suite 1023
Chicago, Illinois 60602
(312) 782-9025

TransDistribution Brookfield Railroad Company

*Attorney for Applicant
in Finance Docket No. 35890*

Applicant in Finance Docket No. FD 35890

DATE FILED: December 10, 2014

Northern and Santa Fe Railroad Company. The TDBR will operate the subject railroad property under an operating agreement between TBDR and Sweetener Supply Company, the property lessee.

There is currently 2,450 linear feet of track located on the Brookfield Transload Facility.

In these circumstances, the Brookfield Transload Facility trackage is properly considered to be a line of railroad under 49 U.S.C. § 10901 pursuant to the Board's tenant-use test, rather than spur, switching or side tracks excepted from Board authority over their acquisition and operation by virtue of 49 U.S.C. § 10906. The tenant-use test is described in the Board's decision denying reconsideration in *Effingham Railroad Company - Petition for Declaratory Order - Construction at Effingham, IL*, STB Docket No. 41986 and embraced proceedings, 1998 STB LEXIS 253, decision served September 18, 1998; *aff'd sub nom. United Transp. Union v. Surface Transportation Board.*, 183 F.3d 606 (7th Cir. 1999).

In that case, as here pertinent, Agracel Corporation transloaded beer from rail to truck at a warehouse that it operated in an industrial park at Effingham, IL. Agracel owned approximately 206 feet of right-of-way and track that extended between its warehouse and trackage owned and operated by Conrail. Previously, Conrail had operated over the Agracel trackage to provide service to Agracel. It was proposed that Effingham Railroad Company (ERRC), a noncarrier, substitute for Conrail as provider of the rail service over the Agracel trackage. ERRC filed a notice of exemption under 49 C.F.R. § 1150.31 for its operation over that trackage. The United Transportation Union (UTU) contended that the Board lacked authority over the proposed operation because Agracel trackage is spur, switching or side track excepted from Board operation authority under 49 U.S.C. § 10906.

In finding that the Agracel trackage was a line of railroad under 49 U.S.C. § 10901, the Board said (1998 STB LEXIS 253, at 8-9 (emphasis in original)):

...(I)n those cases where a tenant railroad's intended use of a track segment is different from the use made by the railroad owning the track, we have determined that the tenant's use, rather than the character of the trackage itself, is controlling with regard to its own operations, subject to consideration of the purpose and effect of the construction under *Texas & Pacific* (citations omitted).

In the initial notice, even under its new approach, ERRC became the operator of a line of track connecting Conrail to the site of the industrial park. Conrail clearly had operated this short track segment as an exempt siding or spur. However, because it was ERRC's initial railroad operation, this track segment became ERRC's entire line of railroad and was not, as to ERRC, a siding or spur. This small piece of trackage initiated ERRC's service from a connection or interchange point with Conrail to a shipper's facility within the industrial park. Thus ERRC's becoming the operator was the proper subject of the initial notice of exemption and was not statutorily exempt under section 10906.

It is apparent from the Board's decision in that case that the tenant-use test also applies when a new rail carrier is using trackage pursuant to an operating agreement rather than a lease, and when the prior use of the track was by a third-party carrier rather than by the shipper-owner of the trackage. In upholding the Board's decision in that case, the reviewing court held that it was reasonable for the Board to classify the trackage by virtue of the tenant's use. *United Transp. Union vs. Surface Transportation Bd.*, *supra*. 193 F.3d at 614. *Accord: Brookfield Rail Link LLC - Lease & Oper. - Union Pacific R.R. Co.*, 2 S.T.B. 534 (1997), *aff'd sub nom. United Transp. Union - Illinois v. Surface Transp.*, 169 F.3d 474 (7th Cir. 1999).

Inasmuch as the subject transaction will be TDBR's initial railroad acquisition, and the Brookfield Transload Facility trackage will constitute the entire line of railroad of TDBR, it follows that the Brookfield Transload Facility trackage is a line of railroad under 49 U.S.C. § 10901, rather than spur, switching or side tracks excepted from Board acquisition and operation authority by virtue of 49 U.S.C. § 10906.

INFORMATION REQUIRED BY 49 C.F.R. § 1150.33

(a) *The full name and address of the applicant;*

The full name and address of the applicant in Finance Docket Number 35890 is TransDistribution Brookfield Railroad Company, 9500 West Southview, Brookfield, Illinois, 60513.

(b) *The name, address, and telephone number of the representative of the applicant who should receive correspondence;*

TDBR representative is David C. Dillon, Dillon & Nash, Ltd., Attorneys at Law, 111 West Washington Street, Suite 1023, Chicago, Illinois, 60602, 312-782-9025.

(c) *A statement that an agreement has been reached or details when an agreement will be reached;*

An operating agreement between Sweetener Supply Company and TransDistribution Brookfield Railroad Company concerning the Brookfield Transload Facility trackage will be reached within thirty (30) days, and an agreement in principle has been reached.

(d) *The operator of the property;*

TDBR will be the operator of the property.

(e) *A brief summary of the proposed transaction, including:*

(1) *The name and address of the railroad transferring the subject property,*

The above entity in Finance Docket Number 35890 is Sweetener Supply Company, a non-railroad corporation, 9500 W. Southview, Brookfield, IL, 60513.

(2) *The proposed time schedule for consummation of the transaction,*

Operations are proposed to be consummated on or about January 1, 2015.

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

The Brookfield Transload Facility trackage is not described by milepost numbers.

That trackage is described and depicted in Appendix 1-A attached to this Notice.

(4) *The total route miles being acquired;*

A total of approximately 2,450 feet/ 0.46 mile of trackage is to be operated under an operating agreement.

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

The required map is attached to this Notice as Appendix 1-B.

(g) *A certificate that applicant's projected revenues do not exceed those that would qualify it as a Class III carrier.*

The required certificate is attached to this Notice as Appendix 2.

CAPTION SUMMARY

A caption summary required by 49 C.F.R. § 1150.34 for Finance Docket Number FD35890 is attached to this Notice as Appendix 3.

ENVIRONMENTAL AND HISTORIC REPORT

The proposed acquisition and operation do not require environmental and historic reporting. See 49 C.F.R. § 1105.6(c)(2)(i) and 49 C.F.R. § 1105.8(b)(1).

LABOR PROTECTION

Pursuant to 49 U.S.C. § 10901(c), labor protection requirements do not apply to this transaction.

VERIFICATION

The verification is attached to this Notice as Appendix 4.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, within 30 days of the filing of this Notice, the Director of the Board's Office of Proceedings should publish notices in the Federal Register of the filing of notices of exemption in Finance Docket No. 35890. See 49 C.F.R. § 1150.32(b).

Respectfully submitted,

By: David C. Dillon
Dillon & Nash, Ltd.
111 West Washington Street
Suite 1023
Chicago, Illinois 60602
(312) 782-9025

TransDistribution Brookfield Railroad Company

*Attorney for Applicant
in Finance Docket No. FD 35890*

Applicant in Finance Docket No. FD 35890

DATE FILED: December 10, 2014

Finance Docket Number: FD 35890

Appendix 1-A

LENGTH OF TRANSDISTRIBUTION BROOKFIELD RAILROAD COMPANY
BROOKFIELD TRANSLOAD FACILITY

Total Track: 2,450 linear feet = 0.46 mile of track



9501 Southview Ave, Brookfield, IL

CERTIFICATION UNDER 49 C.F.R. § 1150.33(g)

TransDistribution Brookfield Railroad Company hereby certifies under 49 C.F.R. § 1150.33(g), that the projected revenues from the acquisition and operation proposed in this matter do not exceed those that would qualify it as a Class III rail carrier.



David C. Dillon
*Authorized Representative of
TransDistribution Brookfield Railroad Company*

SUBSCRIBED AND SWORN TO before
me this 10th day of December, 2014.



CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

Notice of Exemption

FINANCE DOCKET NO. FD 35890

TRANSDISTRIBUTION BROOKFIELD RAILROAD COMPANY
- ACQUISITION EXEMPTION -
RAIL LINE OF SWEETENER SUPPLY COMPANY, INC.
AT BROOKFIELD TRANSLOAD FACILITY, BROOKFIELD, ILLINOIS

TransDistribution Brookfield Railroad Company (TDBR), has filed a Notice of Exemption to acquire and operate from Sweetener Supply Company, a non-carrier, approximately 0.46 mile of right-of-way and trackage at Sweetener Supply Company's Brookfield Transload Facility in Brookfield, Illinois. Comments must be filed with the Board and be served on TDBR's representative, David C. Dillon, Dillon & Nash, Ltd., 111 W. Washington Street, Suite 1023, Chicago, IL, 60602, (312) 782-9025.

This Notice is filed under 49 C.F.R. § 1150.31. 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 transaction.

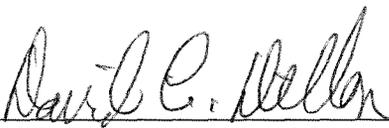
By the Board

(Seal)

VERIFICATION

STATE OF ILLINOIS)
)
COUNTY OF COOK)

David C. Dillon, being duly sworn, states that he is an attorney for TransDistribution Brookfield Railroad Company; that he is familiar with the factual allegations made in the foregoing Notice of Exemption on behalf of TDBR; and that such allegations are true as stated.



David C. Dillon, Attorney for
TransDistribution Brookfield Railroad Company

SUBSCRIBED AND SWORN to before
me this 10th day of December, 2014.



Notary Public

