

240301

ENTERED
Office of Proceedings
March 15, 2016
Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. FD 36012

**FINGER LAKES RAILWAY CORP.
– ACQUISITION AND OPERATION EXEMPTION –
CAYUGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY;
ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY; ONTARIO
COUNTY INDUSTRIAL DEVELOPMENT AGENCY; SCHUYLER
COUNTY INDUSTRIAL DEVELOPMENT AGENCY; AND YATES
COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

**REQUEST FOR WAIVER OF
NOTICE REQUIREMENTS OF 49 C.F.R. §1150.42(e)**

(Expedited Consideration Requested)

ERIC M. HOCKY
CLARK HILL PLC
One Commerce Square
2005 Market Street, Suite 1000
Philadelphia, PA 19103
(215) 640-8500
ehocky@clarkhill.com

Dated: March 15, 2016

Attorneys for
Finger Lakes Railway Corp.

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. FD 36012

**FINGER LAKES RAILWAY CORP.
– ACQUISITION AND OPERATION EXEMPTION –
CAYUGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY;
ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY; ONTARIO
COUNTY INDUSTRIAL DEVELOPMENT AGENCY; SCHUYLER
COUNTY INDUSTRIAL DEVELOPMENT AGENCY; AND YATES
COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

**REQUEST FOR WAIVER OF
NOTICE REQUIREMENTS OF 49 C.F.R. §1150.42(e)**

Finger Lakes Railway Corp. (“FGLK”) has filed a Verified Notice of Exemption (the “Notice of Exemption”) to acquire and continue to operate the Rail Lines described in the Notice of Exemption. FGLK is a Class III carrier with annual revenues in excess of \$5,000,000. Accordingly, under the Board’s regulations at 49 C.F.R. §1150.42(e), FGLK would be required to give sixty days’ notice to employees working on the Rail Lines unless the waiver requested herein is granted.¹

The Board has held: “The purpose of 49 CFR 1150.42(e) is to ensure that rail labor unions and employees who would be affected by the transfer of a line are given sufficient notice of the transaction before consummation.” *Belt Line Division of Tacoma Public Utilities – Operation Exemption – In Pierce, Thurston and Lewis Counties, WA*, STB Finance Docket No. 33666 (served October 30, 1998) at 2. *See also Acquisition of Leased Lines under 49 USC 10901 and 10902 – Advance Notice of Proposed Transactions (“Advanced Notice of Proposed Transactions”)*, 2 STB 592 (1997). In adopting the notice requirement, the Board specifically

¹ The regulations also require that notice be given to the national offices of their collective bargaining representatives; however, FGLK’s employees are not organized.

recognized that “exceptional situations may occur necessitating acquirer requests for waiver of the 60 day notice provision ...” *Advanced Notice of Proposed Transactions, supra* at 601.

In this instance, FGLK should not be required to comply with the requirements of Section 1150.42(e) because there will be no changes for any employees working on the Rail Lines. As explained in the Notice of Exemption, FGLK already operates the Rail Lines, and has been the sole common carrier operator of the Rail Lines since 1995. The underlying transactions are merely extending the term of the related PILOT program, and making other minor changes, and FGLK will continue to be the sole common carrier operator of the Rail Lines. There is no “transferring carrier” in this transaction.² Further, there will be no operational changes arising from the transactions, and no employees of FGLK will be affected. Thus, under the circumstances of this transaction, compliance with the notice requirements will not further the purposes of the rule and should be waived. Granting FGLK a waiver would be consistent with other circumstances in which the Board has granted waivers from the labor notice requirements when a common carrier has filed to extend a lease it was previously leasing and will remain as the common carrier operator on the line. *See, e.g., Southwestern Railroad, Inc. – Lease and Operations Exemption – BNSF Railway Company*, STB Docket No. FD 35855 (served October 15, 2014); *Piedmont & Atlantic Railroad Co., Inc., d/b/a Yadkin Valley Railroad Company - Lease Exemption Containing Interchange Commitment - Norfolk Southern Railway Company*, STB Docket No. FD 35841 (served July 11, 2014); *New Orleans & Gulf Coast Railway Company, Inc. - Lease Exemption Containing Interchange Commitment - Union Pacific Railroad*

² The original transferring carrier to FGLK in 1995 was Consolidated Rail Corporation (“Conrail”), which has since been split, and which no longer operates in the area. No employees of Conrail or its successors have worked on the Rail Lines since before 1995, and there are no employees of Conrail or its successors who will be affected or have to make any career choices as a result of the transactions. Posting notices on the Rail Lines would not provide notice to any employees of Conrail or its successors since none work on the Rail Lines.

Company, STB Docket No. FD 35777 (served December 12, 2013); *Puget Sound & Pacific Railroad Company - Lease Exemption - The United States of America*, STB Docket No. FD 35714 (served February 22, 2013).

FGLK asks that the waiver of the labor notice requirements be granted expeditiously so that the Notice of Exemption can become effective as scheduled, 30 days after it was filed.

Conclusion

Accordingly, FGLK requests grant the waiver in time to be effective at the same time as the Notice of Exemption.

Respectfully submitted,



ERIC M. HOCKY
CLARK HILL PLC
One Commerce Square
2005 Market Street, Suite 1000
Philadelphia, PA 19103
(215) 640-8500

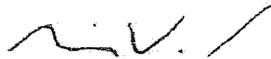
Attorneys for
Finger Lakes Railway Corp.

Dated: March 15, 2016

VERIFICATION

I, Michael V. Smith, President of Finger Lakes Railway Corp., verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on March ~~14~~ 2016



Michael V. Smith

