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DILLON & NASH, LTD.

Attorneys at Law

David C. Dillon
Mary Ellen Nash

November 12, 2014

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

ENTERED

Office of Proceedings

November 12, 2014

Part of
Public Record



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

Re: Filing of Verified Notices of Exemption
Under 49 C.F.R. §1150.31 – Joliet Bulk
Barge & Rail, LLC

Dear Sir or Madam:

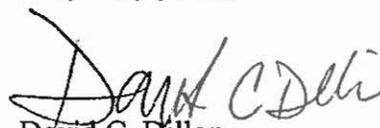
Our office represents Joliet Bulk Barge & Rail, LLC. I have enclosed herewith Verified Notices of Exemption Under 49 C.F.R. §1150.31 (an original and ten copies). I have also enclosed a check in the amount of \$1,800.00 for the filing fee.

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 Joliet Bulk Barge & Rail, LLC is 34,450 linear feet (6.5 miles).

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

FILED
November 12, 2014
SURFACE
TRANSPORTATION BOARD

Enclosures

FEE RECEIVED
November 12, 2014
SURFACE
TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Joliet Bulk Barge & Rail, LLC

)
)

Finance Docket Number: FD 35875

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

By: David C. Dillon
Dillon & Nash, Ltd.
111 West Washington Street
Suite 719
Chicago, Illinois 60602
(312) 782-9025

Joliet Bulk Barge & Rail, LLC

*Attorney for Applicant
in Finance Docket No. 35875*

Applicant in Finance Docket No. FD 35875

DATE FILED: November 10, 2014



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Joliet Bulk Barge & Rail, LLC

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Finance Docket Number: FD 35875

**VERIFIED NOTICE OF EXEMPTION
UNDER 49 C.F.R. § 1150.31**

Pursuant to 49 C.F.R. § 1150.31, *et. seq.* and 49 U.S.C. § 10502(a), Joliet Bulk Barge & Rail, LLC (JBBR), a noncarrier, hereby provides verified notice of exemption from 49 U.S.C. § 10901 for JBBR's acquisition by deed from CenterPoint Properties (CenterPoint), and operation of approximately 6.5 miles of railroad right-of-way and trackage and transloading facilities currently owned by CenterPoint Properties, in Joliet, Illinois ("Joliet Transload Facility trackage"). The Joliet Transload Facility trackage is more specifically described and depicted in Appendix 1-A (description) and Appendix 1-B (map) attached to this notice.

**THE JOLIET TERMINAL RAILROAD TRackage IS A LINE OF RAILROAD
THAT QUALIFIES FOR THE CLASS EXEMPTION FROM 49 U.S.C. § 10901,
RATHER THAN TRACK EXCEPTED FROM BOARD ACQUISITION AND
OPERATION AUTHORITY UNDER § 10906**

CenterPoint Properties currently owns the Joliet Transload Facility trackage. The trackage is used in conjunction with interchanging to and from Canadian National, and, it is intended, the Burlington Northern and Santa Fe Railroad, carloads of inbound crude oil for transloading into a pipeline to a nearby refinery.

There is currently 34,450 linear feet of track being finished on the Joliet Transload Facility.

In these circumstances, the Joliet 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: Chicago 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 JBRR's initial railroad acquisition, and the Joliet Transload Facility trackage will constitute the entire line of railroad of JBRR, it follows that the Joliet 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 35875 is Joliet Bulk Barge & Rail, LLC, 1808 Swift Drive, Oak Brook, IL, 60523.

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

JBRR 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 agreement between CenterPoint Properties and Joliet Bulk Barge & Rail, LLC concerning the Joliet Transload Facility trackage will be reached within thirty (30) days, and an agreement in principle has been reached.

(d) *The operator of the property;*

JBRR 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 35875 is , CenterPoint Properties, a non-railroad corporation, 1808 Swift Drive, Oak Brook, Illinois, 60523.

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

Operations are proposed to be consummated at a date no later than February 13, 2015.

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

The Joliet Transload Facility trackage is not described by milepost numbers. That trackage is described and depicted in Appendix 1-A and 1-B attached to this Notice.

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

A total of approximately 34,450 feet/ 6.5 miles 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 FD35875 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. 35875. 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

Joliet Bulk Barge & Rail, LLC

*Attorney for Applicant
in Finance Docket No. FD 35875*

Applicant in Finance Docket No. FD 35875

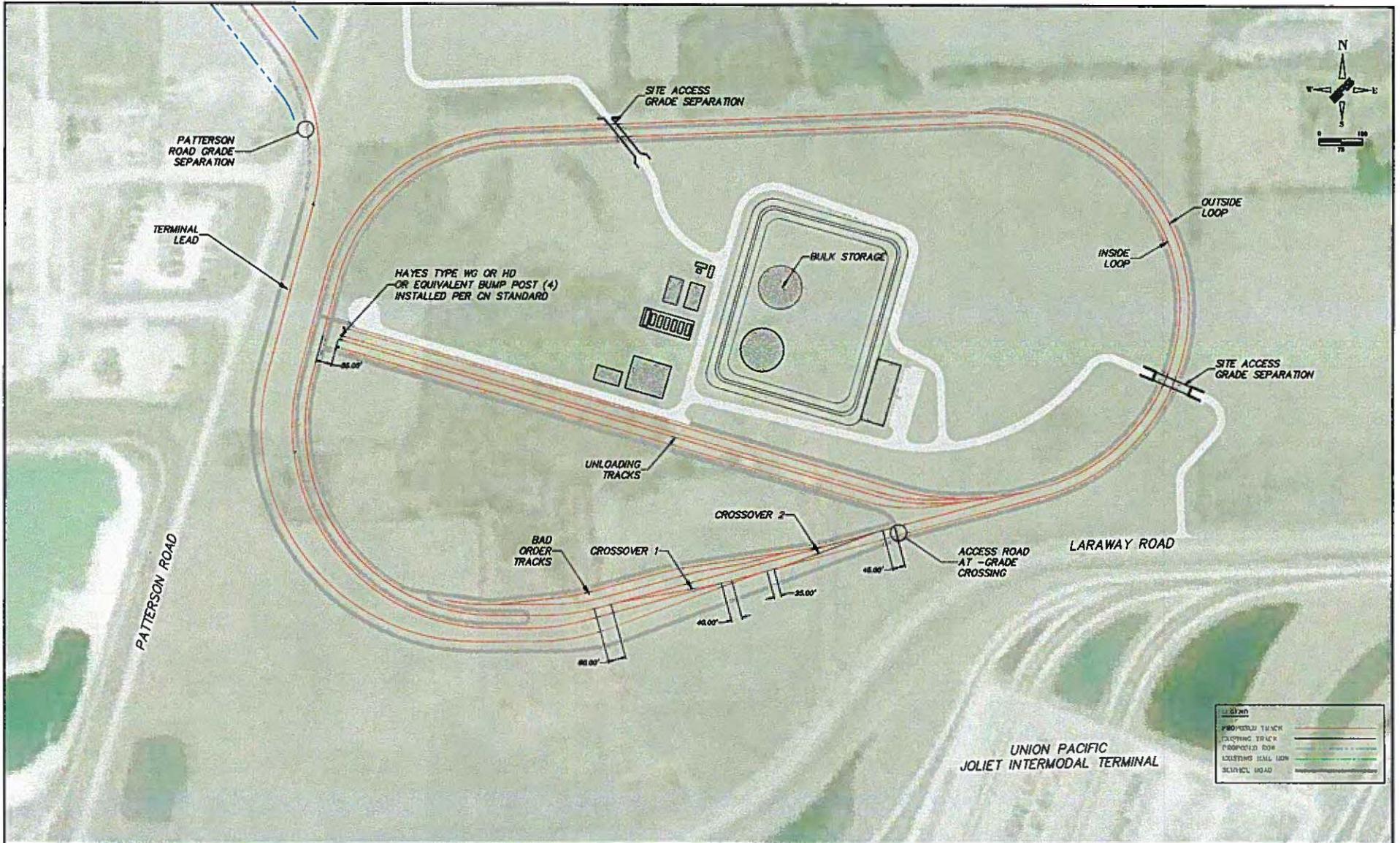
DATE FILED: November 10, 2014

Finance Docket Number: FD 35875

Appendix 1-A

LENGTH OF JOLIET BULK BARGE & RAIL, LLC
JOLIET TRANSLOAD FACILITY

Total Track: 34,450 linear feet = 6.5 miles of track



DRAWN BY: MJZ
 APPROVED: KAH
 CAD DATE: 7/25/14
 CAD FILE:

JOB DATE: 07-25-2014
 JOB NUMBER: 86130073

THIS IS ONE INCH OR OFFICIAL DIMENSIONS.
 ALL DIMENSIONS ARE IN FEET AND INCHES.
 UNLESS OTHERWISE SPECIFIED.
 DIMENSIONS SHALL BE AS SHOWN.
 UNLESS OTHERWISE SPECIFIED.

NO.	DATE	BY	REVISION DESCRIPTION
1	7/25/14	MJZ	ISSUED PER CONTRACT LIST AND ACCESS
2	7/25/14	MJZ	REVISED PER ON CROSSING ON 7/24/14



NORTH LARAWAY TERMINAL
 WILL COUNTY, ILLINOIS
 JOLIET, ILLINOIS

NORTH LARAWAY TERMINAL
 TERMINAL LAYOUT EXHIBIT

SHEET NO.
 1 of 1

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

Joliet Bulk Barge & Rail, LLC 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
Joliet Bulk Barge & Rail, LLC*

SUBSCRIBED AND SWORN TO before
me this 12th of November, 2014.


Notary Public

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

Notice of Exemption

FINANCE DOCKET NO. FD 35875

**JOLIET BULK BARGE & RAIL, LLC
- ACQUISITION EXEMPTION -
RAIL LINE OF CENTERPOINT PROPERTIES.
AT JOLIET TRANSLOAD FACILITY, JOLIET, ILLINOIS**

Joliet Bulk Barge & Rail, LLC (JBBR), has filed a Notice of Exemption to acquire and operate from CenterPoint Properties, a non-carrier, approximately 6.5 miles of right-of-way and trackage at CenterPoint Properties' Joliet Transload Facility in Joliet, Illinois. Comments must be filed with the Board and be served on JBBR'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.

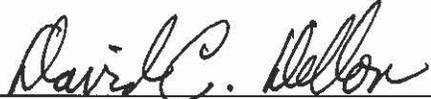
By the Board

(Seal)

VERIFICATION

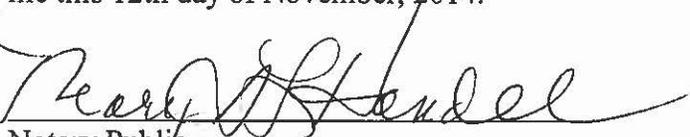
STATE OF ILLINOIS)
)
COUNTY OF COOK)

David C. Dillon, being duly sworn, states that he is an attorney for Joliet Bulk Barge & Rail, LLC; that he is familiar with the factual allegations made in the foregoing Notice of Exemption on behalf of JBRR; and that such allegations are true as stated.



David C. Dillon, Attorney for
Joliet Bulk Barge & Rail, LLC

SUBSCRIBED AND SWORN to before
me this 12th day of November, 2014.



Notary Public

