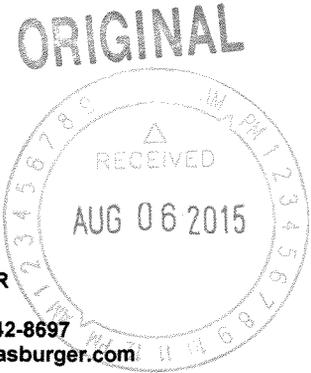


FILED
August 6, 2015
SURFACE
TRANSPORTATION BOARD

Strasburger
ATTORNEYS AT LAW



August 6, 2015

FEE RECEIVED
August 6, 2015
SURFACE
TRANSPORTATION BOARD

JOHN D. HEFFNER
(202) 742-8607
Direct Fax (202) 742-8697
John.Heffner@strasburger.com

Ms. Cynthia T. Brown
Chief of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

239004
ENTERED
Office of Proceedings
August 6, 2015
Part of Public Record

**RE: FD 35760, Hainesport Industrial Railroad, LLC – Corporate Family
Transaction Exemption – Verified Notice of Exemption Under 49 CFR
§1180.2(d) (3)**

**FD 35942, Tunnel Hill Partners, LP- Continuance In Control
Exemption - Hainesport Industrial Railroad, LLC and New Amsterdam
& Seneca Railroad Company, LLC**

Dear Ms. Brown:

Pursuant to 49 CFR §1117.1, I am submitting on behalf of Hainesport Industrial Railroad, LLC, and Hainesport Secondary Railroad, LLC, a Petition to Amend or Correct. The purpose of this filing is to correct information in the map that was previously submitted in FD 35760 rather than to correct any inaccuracies in the text of the filing or the Board's decision granting that exemption.

In addition, in the event that a filing fee is required, I am enclosing a check payable to the Board for \$300 as well as a copy of the filing on a computer disk. I should note in a similar request submitted in *ABE Fairmont, LLC-Acquisition and Operation Exemption- BNSF Railway*, FD 35683, that no filing fee appeared to have been required.

Please date stamp and return one copy of the enclosed pleading for my file.

7079443.1/SP/30019/0101/080615

Strasburger & Price, LLP

1025 Connecticut Ave., N.W. Suite 717 | Washington, DC 20036 | 202.742.8600 tel | 202.742.8699 fax | www.strasburger.com
Austin | Collin County | Dallas | Houston | San Antonio | New York, N.Y. | Washington, D.C. | Mexico City - Strasburger & Price, SC

Strasburger
ATTORNEYS AT LAW

Ms. Cynthia T. Brown
August 6, 2015
Page 2

Sincerely yours,



John D. Heffner

Enclosure

cc: Karen Murray, Esq.
Mr. Ronald Bridges
Jeffrey Wahl, Esq.

ORIGINAL

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



FD 35760

**HAINESPORT INDUSTRIAL RAILROAD, LLC
- CORPORATE FAMILY TRANSACTION EXEMPTION -
VERIFIED NOTICE OF EXEMPTION
UNDER 49 CFR § 1180.2(d) (3)**

FD 35942

**TUNNEL HILL PARTNERS, LP
-- CONTINUANCE IN CONTROL EXEMPTION --
HAINESPORT INDUSTRIAL RAILROAD, LLC
AND
NEW AMSTERDAM & SENECA RAILROAD COMPANY, LLC
VERIFIED NOTICE OF EXEMPTION
UNDER 49 CFR § 1180.2(d) (2)**

PETITION TO AMEND OR CORRECT

Submitted By:

John D. Heffner
Strasburger & Price, LLP
1025 Connecticut Ave., N.W.
Suite 717
Washington, D.C. 20036
(202) 742-8607

Counsel for Petitioner

Dated: August 6, 2015

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35760

**HAINESPORT INDUSTRIAL RAILROAD, LLC
- CORPORATE FAMILY TRANSACTION EXEMPTION -
VERIFIED NOTICE OF EXEMPTION
UNDER 49 CFR § 1180.2(d) (3)**

FD 35942

**TUNNEL HILL PARTNERS, LP
-- CONTINUANCE IN CONTROL EXEMPTION --
HAINESPORT INDUSTRIAL RAILROAD, LLC
AND
NEW AMSTERDAM & SENECA RAILROAD COMPANY, LLC
VERIFIED NOTICE OF EXEMPTION
UNDER 49 CFR § 1180.2(d) (2)**

PETITION TO AMEND OR CORRECT

**I.
INTRODUCTION**

Pursuant to 49 CFR §1117.1 Hainesport Industrial Railroad, LLC (“HIRR”) and Hainesport Secondary, LLC (“HSR”), two Petitioners in the above-captioned proceedings,¹ file this petition seeking amendment or correction of a decision issued by the Board on September 11, 2013. For the reasons stated below and to the extent that this matter is even subject to Board approval authority, Petitioners

¹ Although the proceeding docketed as FD 35942 is not at issue here, it is referenced in the title for the Board’s understanding.

seek Board permission to change the description of the rail lines that are the subject of the September 11, 2013, decision as per the map attached here as Exhibit A.

II. DISCUSSION

In support of their request, Petitioners state as follows:

1. By notice of exemption filed on August 26, 2013, HIRR advised the Board of a corporate family transaction that qualified for an exemption under 49 CFR §1180.2(d)(3) whereby it would be establishing a new corporate affiliate, HSR, to which it would be transferring one of the two railroad lines that it owned and operated.² The map provided with the 2013 notice incorrectly depicted the East Line.
2. The Board duly served a notice of exemption on September 11, 2013, granting that request. A copy of that decision is attached as Exhibit B.
3. The owners of HIRR and HSR are now negotiating an agreement with Tunnel Hill Partners, LP (“Tunnel”), whereby the owners of HIRR and HSR would sell their ownership interest in HIRR to Tunnel upon receipt of Board approval.
4. On June 30, 2015, Tunnel filed a notice of exemption with the Board for it to acquire control of HIRR while continuing to own another Class III short line railroad in Ohio, the New Amsterdam & Seneca Railroad Company, LLC. The

² Those lines were identified as “the East Line” and “the South Line.”



map submitted by Tunnel with its notice correctly depicted the South Line. On July 16, 2015, the Board served a decision authorizing Tunnel to acquire the ownership interest in HIRR. While the text of the notice and the Board's decision both referred to the South Line, neither actually provided a description. As the parties prepared for the transaction's closing, they realized that the map accompanying the August 26, 2013, notice of exemption inaccurately identified the track constituting the East Line.

5. Accordingly, Petitioners request that the Board to substitute the map attached hereto as Exhibit A for the map submitted with the August 26, 2013, notice of exemption.

6. Petitioners believe that 49 CFR §1117.1 governs its request as there is no specific Board procedure for making minor corrections to licensing matters. The Board's rules state

“A party seeking relief not provided for in any other rule may file a petition for such relief. The petition should contain (a) a short, plain statement of the grounds upon which the Board's jurisdiction is based; (b) a short plain statement of the claim showing that the petitioner is entitled to relief; and (c) a demand for the relief the petitioner believes is appropriate.”

7. The Board has previously permitted a party that has filed a notice of exemption to submit a correction to a rail line's description after the exemption became effective. *See, ABE Fairmont, LLC-Acquisition and Operation Exemption-BNSF Railway Company*, FD 35683 (STB served July 19,

2013)(accepting a letter from the applicant correcting the description of a rail line over six months after the exemption became effective).

8. The Board has jurisdiction to act as it previously considered and granted the Petitioners' 2013 request for the subject corporate family transaction and the 2015 request by Tunnel to acquire control of HIRR.

9. Petitioners urge that they are entitled to the requested relief as they do not anticipate that anyone will oppose this request, that no party appeared in opposition to the original 2013 corporate family transaction request, and that no one will be adversely affected by this request.

10. Granting Petitioner's request will not require any alterations in the text of either the September 11, 2013, or the July 16, 2015, decisions.

Accordingly, Petitioners request that the map submitted here as Exhibit A be substituted for that previously filed on August 26, 2013.

Respectfully submitted,



John D. Heffner
Strasburger & Price, LLP
1025 Connecticut Ave., N.W.
Suite 717
Washington, D.C. 20036
(202) 742-8607

Counsel for Petitioner

Dated: August 6, 2015

EXHIBIT A

EXHIBIT B

43327

SERVICE DATE – SEPTEMBER 11, 2013

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35760]

Hainesport Industrial Railroad, LLC—Corporate Family Transaction Exemption

Hainesport Industrial Railroad, LLC (Hainesport), a Class III railroad, filed a verified notice of exemption under 49 C.F.R. § 1180.2(d)(3) for a corporate family transaction pursuant to which Hainesport will transfer ownership and operation of a line of railroad in Hainesport, N.J., to a corporate affiliate.

According to Hainesport, it currently owns and operates a series of tracks serving several customers located in the Hainesport Industrial Park in Hainesport, N.J., where it connects with a line owned and served by Consolidated Rail Corporation (Conrail).¹ Hainesport states that several sidings point in an easterly direction (East Line) and one or more sidings point in a southerly direction (South Line). Hainesport proposes to establish a new corporate affiliate, Hainesport Secondary Railroad, LLC (Hainesport Secondary), to own and operate the East Line. Hainesport will continue to own and operate the South Line. Hainesport states that it will enter into a haulage agreement with Hainesport Secondary that provides for Hainesport Secondary to move traffic between the South Line and the Conrail interchange on behalf of Hainesport.

¹ See Hainesport Indus. R.R.—Acquis. & Operation Exemption—Hainesport Indus. Park R.R., FD 34695 (STB served May 18, 2005).

Unless stayed, the exemption will be effective on September 25, 2013 (30 days after the verified notice was filed). Applicant states that the parties intend to consummate the proposed transaction on or about September 26, 2013.

According to Hainesport, the purpose of this transaction is to allow Hainesport to separate the lines of railroad according to the types of traffic each handles. In addition, Hainesport states that the transaction will facilitate the sale of the South Line should Hainesport's owners choose to sell that line in the future.

The line transfer is a transaction within a corporate family exempted from prior review and approval under 49 C.F.R. § 1180.2(d)(3). Applicant states that the transaction will not result in adverse changes in service levels, significant operational changes, or changes in the competitive balance with carriers outside the corporate family.

Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under §§ 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III rail carriers.

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 for stay must be filed no later than September 18, 2013 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35760, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on applicant's representative, John D. Heffner, Strasburger & Price, LLP, 1700 K Street, N.W., Suite 640, Washington, DC 20006.

Board decisions and notices are available on our website at
“WWW.STB.DOT.GOV.”

Decided: September 6, 2013.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.