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SERVICE DATE – LATE RELEASE SEPTEMBER 29, 2010

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35412

MIDDLETOWN & NEW JERSEY RAILROAD, LLC–LEASE AND OPERATION  
EXEMPTION–NORFOLK SOUTHERN RAILWAY COMPANY

Decided: September 29, 2010

On August 31, 2010, a notice invoking the class exemption for lease and operation at 49 C.F.R. § 1150.41 was filed by Middletown & New Jersey Railroad, LLC (M&NJ), a Class III rail carrier, to lease and operate certain lines from Norfolk Southern Railway Company (NSR). In conjunction with the lease of the NSR rail lines, M&NJ will also sublease connecting track owned by New York, Susquehanna & Western Railway (NYS&W) and receive incidental trackage rights. On September 16, 2010, the decision and notice was served and published in the Federal Register at 75 FR 56,653, and the exemption is scheduled to become effective on September 30, 2010.

By decision also served on September 16, 2010, the Board granted a motion for access to confidential documents and protective order filed by Samuel J. Nasca, on behalf of the United Transportation Union-New York State Legislative Board (UTU-NY).<sup>1</sup> On September 23, 2010, UTU-NY filed a petition for stay of the effective date of the exemption in this proceeding pending disposition of a petition to revoke.<sup>2</sup> On September 28, 2010, M&NJ filed a reply in opposition to the petition for stay. M&NJ has not yet responded to UTU-NY's petition to revoke.

A housekeeping stay of the effective date of the notice of exemption will be imposed until October 7, 2010. A housekeeping stay will provide the Board sufficient time to fully consider the issues presented by the petition for stay.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

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<sup>1</sup> UTU-NY filed its motion for access on September 10, 2010, seeking to review unredacted copies of the executed agreements between M&NJ and NSR. M&NJ did not oppose UTU-NY's motion.

<sup>2</sup> UTU-NY filed its petition to revoke the notice of exemption on September 27, 2010.

It is ordered:

1. The effective date of M&NJ's notice of exemption is stayed until October 7, 2010.
2. This decision is effective on its date of service.

By the Board, Daniel R. Elliott, Chairman.