

36699

SERVICE DATE – FEBRUARY 23, 2006

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34825]

Gordon Reger–Continuance in Control Exemption–New Amsterdam & Seneca Railroad Company, LLC

Gordon Reger (Reger) has filed a verified notice of exemption to continue in control of New Amsterdam & Seneca Railroad Company, LLC (NASR), upon NASR's becoming a Class III rail carrier.

The transaction was scheduled to be consummated after January 31, 2006, the effective date of this exemption (7 days after the exemption was filed).

This transaction is related to a verified notice of exemption wherein NASR seeks to acquire by lease from Sunny Farms Landfill, LLC (Sunny Farms), and operate approximately 1.25 miles of rail line in Fostoria, OH. See New Amsterdam & Seneca Railroad Company, LLC–Lease and Operation Exemption–Line in Fostoria, OH, STB Finance Docket No. 34811. Notice of the exemption was served and published in the Federal Register on January 20, 2006 (71 FR 3349-50).¹

Reger, a noncarrier individual, directly controls Mid Atlantic New England Rail, LLC (Mid Atlantic), a noncarrier. Mid Atlantic, through ownership of GJ Railco

¹ NASR and Sunny Farms are both wholly owned subsidiaries of Regus Industries, LLC, which is in turn controlled by Gordon Reger.

Acquisition, LLC, also a noncarrier, controls New York Cross Harbor Railroad Terminal Corp (NYCH), a Class III rail carrier. Thus, Reger indirectly controls NYCH.

Reger also owns New York New Jersey Rail LLC (NYNJ), a newly formed limited liability company. NYNJ and NYCH have filed a verified notice of exemption for a corporate family transaction wherein NYCH seeks to transfer to NYNJ all or substantially all of its railroad assets and intangible assets required for railroad operation. NYNJ would then assume all of NYCH's rights and obligations to provide service as a common carrier. See New York New Jersey Rail LLC and New York Cross Harbor Railroad Terminal Corp.–Corporate Family Transaction Exemption, STB Finance Docket No. 34813 (STB served Jan.10, 2006) (proceeding being held in abeyance until further notice to allow Conrail to discuss its concerns with NYCH regarding the effect of the proposed transaction on NYCH's contractual obligations to Conrail).

Applicant states that: (1) the lines being leased and operated by NASR do not connect with the rail lines in its corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect the leased lines with any other rail lines in NASR's corporate family; and (3) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(2).

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 sections 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 carriers.

If the verified 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.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34825, must be filed with the Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on James E. Howard, One Thompson Square, Suite 201, Charlestown, MA 02129.

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

Decided: February 14, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary