

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35559

SARATOGA AND NORTH CREEK RAILWAY, LLC–
OPERATION EXEMPTION–TAHAWUS LINE

Decided: November 23, 2011

This decision rejects the notice of exemption filed in this proceeding.

On October 25, 2011, Saratoga and North Creek Railway, LLC (Saratoga), a Class III rail carrier, filed a verified notice of exemption under 49 U.S.C. § 10902 and 49 C.F.R. § 1150.41 to operate, as a line of railroad, approximately 29.71 miles of private track owned by NL Industries, Inc. (NL). Saratoga calls the private track the “Tahawus Line.” The track runs between its existing connection with Saratoga at North Creek, N.Y., and its terminus at Newcomb, N.Y. The exemption is scheduled to become effective on November 24, 2011.

The notice indicates that Saratoga intends to restore rail service on the track by serving NL and other shippers. The notice also states that Saratoga plans to acquire the 29.71-miles of track before this notice is scheduled to become effective. Saratoga states that the subject track has never been operated in common carrier service and that, therefore, Saratoga does not need any Board authority to acquire it.

On November 14, 2011, Protect the Adirondacks! Inc. (Protect), a non-profit organization, filed a petition to reject Saratoga’s notice of exemption.¹ In its petition, Protect argues that Saratoga’s claim that it will provide common carrier service to NL is not credible. Protect also argues that the transfer and proposed operations represent an attempt to defeat other property interests and to subvert the acquisition of the land for a state forest preserve within Adirondack Park, a state park. The track at issue here lies within the park. In support of its argument, Protect notes that NL ceased mining operations in 1982, that the track would need rehabilitation in excess of \$5 million in order to meet current safety standards, and that NL demolished most of its mill buildings in 2006. Protect also states that, other than a mine located near the southern end of the track that ships garnet stones via truck, there are no other potential customers on or near the track, and that Saratoga’s primary intention is to operate a passenger tourist service over the entire 29.71 miles of track. In addition, Protect disputes NL’s legal authority to allow Saratoga to acquire the track under NL’s rail easement. Finally, Protect

¹ Although Protect describes its letter as a “protest,” it will be considered a petition to reject the notice of exemption.

contends that the proposed transaction requires environmental review under the Board's regulations implementing the National Environmental Policy Act (NEPA), 42 U.S.C. § 4332.

On November 22, 2011, Saratoga filed a reply to Protect's petition to reject the notice of exemption. Saratoga argues that Protect has not alleged any basis for the Board to reject the notice. Saratoga submits additional information regarding the legal status of the track and the current operational status of NL's mine. Saratoga argues that there are no restrictions on the easement for rail service over the right-of-way. Saratoga also states that the State of New York's Department of Transportation, in a letter dated September 19, 2011, has waived its statutory right to exercise its reversionary interest and reacquire the underlying property. Furthermore, Saratoga states that it has conducted initial discussions for transporting via rail both the industrial garnets from nearby Barton Mines and the magnetite ore reserves located and processed at NL's mine. Both Barton and NL currently ship via truck. Saratoga also states that the acquisition does not trigger environmental review under NEPA. Finally, Saratoga's reply submission contains conflicting statements regarding its intentions for passenger excursion operations on the line.²

Typically, the Board does not consider the feasibility of proposed rail operations in giving effect to a notice invoking the class exemption. The Board's authority is permissive, so the possibility always exists that the party filing the notice may be unable to initiate the proposed operations. But where an allegation is made, supported by evidence, that the exemption sought is for purposes other than for providing common carrier rail service, the Board will not allow the exemption to go forward without considering that evidence and argument. Although Saratoga states that it has engaged in discussions with 2 shippers about potential freight rail service, both customers currently ship their products via truck. Furthermore, although Saratoga's notice of exemption made no mention of potential passenger service, its reply contains statements that such operations will commence in the very near future.

In general, the notice of exemption process is an expedited means of obtaining Board authority in certain classes of transactions, defined in the Board's regulations, which ordinarily do not require extensive regulatory scrutiny. Thus, notices of exemption are intended to be used for routine and non-controversial cases. In cases where issues arise that cannot be resolved within the limited procedures afforded by the class exemption, the Board may reject a notice.

² Compare Saratoga Reply at 10 ("While Saratoga might elect to operate excursion service at some point, it has no immediate plans to do so."), with V.S. of Stephen Gregory at ¶4 ("[O]ur vision to develop the . . . rail asset was twofold: initial deployment of resources to immediately provide passenger-train service to be followed by freight traffic development."), and Letter of L. Andrew Fleck at ¶5 ("NL has agreed to provide Saratoga with reasonable and appropriate site access at the northern terminus of the rail line for passenger accommodation."). Not all passenger service is within the Board's jurisdiction.

Saratoga's notice of exemption will be rejected because the record indicates that this matter is not routine and non-controversial and because the short deadlines provided in the class exemption regulations do not provide sufficient time to enable the Board to address the issues raised here before the exemption takes effect. To allow a proper examination of all the concerns discussed above, Saratoga may file a petition for an individual exemption or a full application.

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

It is ordered:

1. Saratoga's notice of exemption is rejected.
2. The decision is effective on the date of service.

By the Board, Julia M. Farr, Acting Director, Office of Proceedings.