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SERVICE DATE – SEPTEMBER 29, 2006

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34929]

Jeffrey L. Sutch—Continuance in Control Exemption—SMS Rail Lines of New York, LLC

Jeffrey L. Sutch (applicant) has filed a verified notice of exemption to continue in control of SMS Rail Lines of New York, LLC (SMSNY), upon SMSNY's becoming a Class III rail carrier.

The transaction was scheduled to be consummated on or after September 8, 2006.

This transaction is related to the concurrently filed verified notice of exemption in STB Finance Docket No. 34928, SMS Rail Lines of New York, LLC—Acquisition and Operation Exemption—Northeastern Industrial Park, Inc. In that proceeding, SMSNY seeks to acquire by lease from Northeastern Industrial Park, Inc., and to operate approximately 15 miles of rail line in Albany County, NY.

Applicant is a noncarrier that currently controls SMS Rail Service, Inc. (SMSRS), a Class III rail carrier.

Applicant states that: (1) the rail lines operated by SMSRS do not connect with the rail line being acquired by lease and operated by SMSNY; (2) the continuance in control is not part of a series of anticipated transactions that would connect the rail line being acquired by lease and operated by SMSNY with applicant's rail lines or with those of any other railroad within applicant's corporate family; and (3) the transaction does not

involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(2). The purpose of the transaction is to allow applicant to continue in control of SMSNY after SMSNY becomes a Class III rail carrier.

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 section 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. 34929, must be filed with the Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on Fritz R. Kahn, Fritz R. Kahn, PC, 1920 N St., N.W., Eighth Floor, Washington, DC 20036-1601.

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

Decided: September 22, 2006.

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

Vernon A. Williams

Secretary