

45120

SERVICE DATE – MARCH 31, 2015

DO

FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36011]

Cayuga County Industrial Development Agency, Onondaga County Industrial Development Agency, Ontario County Industrial Development Agency, Schuyler County Industrial Development Agency, and Yates County Industrial Development Agency—Acquisition Exemption—Finger Lakes Railway Corp.

Cayuga County Industrial Development Agency, Onondaga County Industrial Development Agency,¹ Ontario County Industrial Development Agency, Schuyler County Industrial Development Agency, and Yates County Industrial Development Agency (collectively, Agencies) have filed a verified notice of exemption under 49 C.F.R. § 1150.31 to acquire by lease approximately 86.45 miles of rail lines from Finger Lakes Railway Corp. (FGLK), located in New York, as follows:² (1) Watkins Glen

¹ According to the notice, Onondaga County Industrial Development Agency (OCIDA) is a non-operating carrier that owns other rail lines not involved in this transaction and the New York Susquehanna & Western Railway Corp. currently provides service over these other rail lines. See Onondaga Cty. Indus. Dev. Agency—Acquis. and Operation Exemption—Line of Consolidated Rail Corp., FD 32287 (ICC served July 7, 1994) and New York Susquehanna & W. Ry.—Trackage Rights Exemption—Onondaga Cty. Indus. Dev. Agency, FD 32772 (STB served Aug. 7, 2001).

² The Agencies and FGLK jointly filed one notice for two related transactions under 49 C.F.R. §§ 1150.31 and 1150.41, one in this docket and one in Docket No. FD 36012, as described further below. A separate notice will be published for each exemption. Further, because OCIDA is a rail carrier, the notice of exemption in this docket will be treated as request for an exemption from 49 U.S.C. § 10902 under the regulations at 49 C.F.R. § 1150.41 with regard to OCIDA and as a request for an

(continued...)

Industrial Track, located between milepost 41.35 at or near Penn Yan and milepost 16.55 at or near Watkins Glen, in Schuyler and Yates Counties, a distance of 24.8 miles; (2) Canandaigua Secondary, located between milepost 76.00 at or near Canandaigua and milepost 51.30 at or near Geneva, in Ontario County, a distance of 24.70 miles; (3) Auburn Secondary, located between milepost 37.56 at the Seneca/Cayuga County line and milepost 3.61 at or near Solvay Yard, in Cayuga County, a distance of 33.95 miles; (4) Geneva Running Track, located between milepost 344.40 at or near Geneva and milepost 342.8 at the Ontario/Seneca County line, in Ontario County, a distance of 1.6 miles; (5) Lehigh & Northern Industrial Track, located between milepost 349.20 and milepost 348.70 at or near Auburn, in Cayuga County, a distance of 0.90 miles; and (6) Auburn & Ithaca Industrial Track, located between milepost 349.20 and milepost 348.70 at or near Auburn, in Cayuga County, a distance of 0.50 miles.

According to the Agencies, the acquisition of the rail lines is part of a series of proposed transactions that will allow FGLK to continue to pay a negotiated “payment in lieu of taxes” (PILOT), rather than be subject to local and state taxes. The Agencies state that FGLK originally acquired the rail lines in 1995 and transferred the title to the Agencies and then leased back the rail lines for purposes of the PILOT arrangement. The Agencies state that to extend and restructure the PILOT arrangement, they will first

(...continued)
exemption from 49 U.S.C. § 10901 under 49 C.F.R. § 1150.31 for the four noncarrier Agencies.

transfer title to the rail lines to FGLK.³ Next, the Agencies will lease the rail lines from FGLK—the transaction at issue in this docket. Lastly, FGLK will sublease the rail lines back from the Agencies to continue operations, including all common carrier service and maintenance of the tracks.⁴

The Agencies state that they will not hold themselves out to provide any rail service, and are not acquiring any of the common carrier obligations with respect to the rail lines.⁵ Under the terms of the lease from FGLK to the Agencies and the amended and restated lease from the Agencies to FGLK, the Agencies maintain that FGLK will continue to be the sole provider of railroad services and will have the rights necessary to operate those services. The Agencies state that they are not leasing or acquiring any of the common carrier obligations with respect to the rail lines. The Agencies further state that they will be precluded from interfering materially with FGLK’s common carrier obligation.

The Agencies certify that they would not operate over the rail lines and that the transaction will not result in the creation of a Class I or Class II carrier. The Agencies further state that FGLK is a Class III carrier.

³ FGLK filed a verified notice of exemption to acquire the rail lines in Finger Lakes Railway Corp.—Acquis. and Operation Exemption—Cayuga County Industrial Development Agency, et al., FD 36012.

⁴ FGLK and the Agencies requested authority for all three transactions but did not file a separate docket or filing fee for the sublease. This notice, therefore, does not address that transaction.

⁵ A motion to dismiss the notice of exemption on grounds that the transaction does not require authorization from the Board was concurrently filed with this notice of exemption. The motion to dismiss will be addressed in a subsequent Board decision.

The Agencies state that the parties intend to consummate the transaction no sooner than April 14, 2016, the effective date of the exemption (30 days after the verified notice was filed), and only after the Board has ruled on the motion to dismiss.

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 effectiveness of the exemption. Petitions to stay must be filed no later than April 7, 2016 (at least seven days before the exemption becomes effective).

An original and ten copies of all pleadings, referring to Docket No. FD 36011, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Eric M. Hocky, Clark Hill PLC, 2005 Market Street, Suite 1000, Philadelphia, PA 19103.

According to the Agencies, this action is categorically excluded from environmental review under 49 C.F.R. § 1105.6(c).

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

Decided: March 28, 2016.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.