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SERVICE DATE – OCTOBER 6, 2010

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE

Docket No. FD 35411

JACKSON & LANSING RAILROAD COMPANY—LEASE AND OPERATION
EXEMPTION—NORFOLK SOUTHERN RAILWAY COMPANY

Decided: October 1, 2010

BY THE BOARD:

Under 49 C.F.R. § 1011.7(b)(10), the Director of the Office of Proceedings (Director) is delegated the authority to determine whether to issue notices of exemption for lease transactions under 49 U.S.C. § 10902. However, the Board reserves to itself the consideration and disposition of all matters involving issues of general transportation importance. 49 C.F.R. § 1011.2(a)(6). Accordingly, the Board revokes the delegation to the Director with respect to the issuance of this notice of exemption. The Board determines that this notice of lease and operation exemption should be issued, and does so here.

Notice

Jackson & Lansing Railroad Company (JAIL), a noncarrier, has filed a verified notice of exemption under 49 C.F.R. § 1150.31, *et seq.*, to lease and operate certain rail lines from Norfolk Southern Railway Company (NSR). Pursuant to the lease agreement, JAIL will lease the following rail lines from NSR: (1) the Lansing Secondary, located between the connection with NSR's Michigan Main Line at milepost LZ 0.0 in Jackson, Mich., and milepost LZ 36.9 in Lansing, Mich. (36.9 miles in length); (2) the Lansing Manufacturers Railroad, located between milepost XF 0.0 and milepost XF 5.1 in Lansing (5.1 miles in length); (3) the Lansing Industrial Track line segment located between milepost XM 57.1 and milepost XM 58.9 in Lansing (1.8 miles in length); and (4) the Lansing Industrial Track line segment between milepost UA 60.7 and milepost UA 61.4 in Lansing (approximately 0.7 miles in length).¹ The total length of the lines to be leased is 44.5 miles. In conjunction with the lease of these lines, NSR will also grant to JAIL limited incidental trackage rights over 2.6 miles of NSR's Michigan Main Line, between milepost NS 72.73 and milepost NS 75.67 (equal to milepost LZ 0.0) in Jackson, for the sole

¹ JAIL's lease and operation agreement was filed under seal pursuant to 49 C.F.R. § 1150.43(h)(1)(ii).

purpose of interchanging with NSR at NSR's Jackson Yard. The lease agreement will expire on December 31, 2030.

As required at 49 C.F.R. § 1150.33(h), JAIL has disclosed that the lease agreement contains a provision that would provide for a "Lease Credit" whereby JAIL may reduce its lease payments by receiving a credit for each car interchanged with NSR. JAIL notes that NSR initially proposed a fixed rental payment with no option to reduce the rent, but JAIL insisted on a lease credit option to provide an opportunity for JAIL to earn a lower rental payment so it would be able to invest in improvements on the lease lines to increase traffic levels. According to JAIL, the affected interchange point is Jackson.

This transaction is related to 2 other transactions for which notices of exemption have been simultaneously filed: Docket No. FD 35410, Adrian & Blissfield Rail Road Company—Continuance in Control Exemption—Jackson & Lansing Railroad Company, in which Adrian & Blissfield Rail Road Company seeks to continue in control of JAIL, upon JAIL's becoming a Class III rail carrier; and Docket No. FD 35418, Jackson & Lansing Railroad Company—Trackage Rights Exemption—Norfolk Southern Railway Company, in which JAIL seeks to acquire, pursuant to an agreement with NSR, non-exclusive local and overhead trackage rights over approximately 1.06 miles of line owned by NSR and currently leased to CSX Transportation, Inc., on the Lansing Secondary, between milepost LZ 36.8² in Lansing and milepost 37.86 in North Lansing, Mich., for the sole purpose of interchanging with NSR.

JAIL certifies that the projected annual revenues as a result of the proposed transaction will not exceed \$5 million, and that JAIL will be a Class III carrier.

The transaction may not be consummated until October 20, 2010, the effective date of the exemption (30 days after the exemption was filed).

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 for stay must be filed not later than October 13, 2010 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35411, 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 John D. Heffner, PLLC, and James H. M. Savage, Of Counsel, 1750 K Street, N.W., Washington, DC 20006.

² JAIL states that, despite the apparent overlap, the boundary of the assigned trackage rights is distinct from the boundary of the Lansing Secondary. The apparent overlap is the result of an historical rounding error in NSR's engineering maps.

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It is ordered:

1. The delegation of authority to the Director of the Office of Proceedings, under 49 C.F.R. § 1011.7(b)(10), to determine whether to issue a notice of exemption in this proceeding is revoked.

2. This decision is effective on the date of service.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Nottingham. Vice Chairman Mulvey dissented with a separate expression.

VICE CHAIRMAN MULVEY, dissenting:

I disagree with the Board’s decision to allow this transaction to be processed under the Board’s class exemption procedures. In this case, I would like to have more information about the likely impact of the proposed interchange commitment prior to permitting the exemption to become effective. I believe that it is incumbent for the Board to take a close look at interchange commitments, particularly when they contain outright bans on interchange with third-party carriers or, as here, economic incentives that can only be evaluated with the provision of additional information.