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SERVICE DATE - JANUARY 17, 2003

DO

FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34300]

Jeffrey L. Sutch and Leonard J. Smolsky—Intracorporate Family Transaction Exemption

Jeffrey L. Sutch and Lenorad J. Smolsky (Applicants), have filed a verified notice of exemption to merge Penn-Jersey Lines, Inc. (PJRL) into SMS Rail Service, Inc. (SLRS) with SLRS as the surviving entity.¹

The transaction was scheduled to be consummated on or after December 27, 2002, the effective date of the exemption (7 days after the notice was filed).

The proposed merger transaction will eliminate the administrative expense of maintaining two separate organizations, thus reducing the operating costs of each. The merger will permit the consolidation of the railroads' equipment, their locomotives and cars, thus resulting in improved service to the shippers served by the two railroads.

This is a transaction within a corporate family of the type specifically exempted from

¹ See Penn-Jersey Rail Lines Inc.—Acquisition and Operations Exemption—WMI Properties, Inc., STB Finance Docket No. 33414 (STB served June 24, 1997); SMS Rail Service, Inc.—Lease and Operate Exemption—Pureland Association, Inc., STB Finance Docket No. 32494 (STB served May 26, 1994); and Jeffrey L. Sutch and Leonard J. Smolsky—Continuance in Control Exemption—Penn-Jersey Rail Lines, Inc., STB Finance Docket No. 33415 (STB served June 24, 1997).

Both PJRL and SLRS are Class III carriers. PJRL's lines are in Pennsylvania. SLRS's lines are in New Jersey.

prior review and approval under 49 CFR 1180.2(d)(3). The Applicants state that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

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 railroad carriers. Because this transaction involves Class III rail carriers only, the Board, under that statute, may not impose labor protective conditions for this transaction.

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 ten copies of all pleadings referring to STB Finance Docket No. 34300, 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 Fritz R. Kahn, 1920 N Street, N.W., 8th Floor, Washington, DC 20036-1601.

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Decided: January 10, 2003.

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

Vernon A. Williams

Secretary