

39516

SERVICE DATE – NOVEMBER 17, 2008

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35187]

Grand Elk Railroad, L.L.C.–Lease and Operation Exemption–Norfolk Southern Railway Company

Grand Elk Railroad, L.L.C. (GER), a noncarrier,¹ has filed a verified notice of exemption under 49 CFR 1150.31 to acquire, by lease, and to operate approximately 122.9 miles of Norfolk Southern Railway Company (NS) rail lines in Michigan and Indiana.² The lines to be leased and operated are located between: (1) milepost KH 1.4 at Elkhart, IN, and milepost KH 27.4 at Three Rivers, MI; (2) milepost FB 27.3 at Three Rivers, MI, and milepost FB 102.3 at Grand Rapids, MI; (3) milepost KZ 94.25 and milepost KZ 95.0 (Kalamazoo Industrial Track); (4) milepost OW 66.6 and milepost OW 70.24 (Plainwell Industrial Track); (5) milepost XH 88.10 and milepost XH 92.40 (Hastings Running Track); (6) milepost CQ 42.8 and milepost CQ 43.9 (CK&S Industrial Track); (7) milepost KY 0.0 and milepost 3.2 (B O Secondary); (8) milepost UP 0.0 and milepost UP 6.7 (Upjohn Secondary); (9) milepost QY 421.2 and milepost QY 421.3 (Quincy Secondary); (10) milepost VW 106.0 and milepost VW 106.9 (Comstock

¹ GER is a wholly owned subsidiary of Watco Companies, Inc.

² GER and NS have entered into a lease agreement. According to GER, the lease agreement does not contain any provision that prohibits GER from interchanging traffic with a third party.

Industrial Track); (11) milepost AZ 69.6 and milepost AZ 70.4 (Airline Extension); and (12) milepost IJ 44.3 and milepost IJ 44.7 (CK&S Industrial Track), along with the yard tracks in Botsford Yard located between milepost MH 141.8 and milepost MH 142.7.

NS will also grant GER incidental trackage rights over approximately 0.43 miles of NS rail line located between milepost 143.03 and milepost 142.6 at Botsford Yard.

This transaction is related to STB Finance Docket No. 35188, Watco Companies, Inc.–Continuance in Control Exemption–Grand Elk Railroad, L.L.C. In that proceeding, Watco Companies, Inc. has concurrently filed a verified notice of exemption to continue in control of GER upon GER's becoming a Class III rail carrier.

GER certifies that its projected annual revenues as a result of the transaction will not result in GER's becoming a Class II or Class I rail carrier. Because its projected annual revenues may exceed \$5 million, however, GER states that it is in the process of complying with the 60-day labor notice requirement at 49 CFR 1150.32(e).

GER states that it expects to consummate the transaction some time after the effective date of the exemption. However, the exemption cannot become effective and consummation of this transaction cannot occur until 60 days after GER certifies to the Board that it has satisfied the labor notice requirement.

Pursuant to the Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting and shredding). The term "solid waste" is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

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 at least 7 days before the exemption becomes effective.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35187, 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 Karl Morell, Of Counsel, Ball Janik LLP, Suite 225, 1455 F Street, N.W., Washington, DC 20005.

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

Decided: November 10, 2008.

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

Anne K. Quinlan

Acting Secretary