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SERVICE DATE - DECEMBER 20, 2002

DO

FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34267]

Morristown & Erie Railway, Inc.–Operation Exemption–Somerset Terminal Railroad Corporation

Morristown & Erie Railway, Inc. (M&E), a Class III rail carrier, has filed an amended verified notice of exemption¹ under 49 CFR 1150.41 to operate over approximately 1.25 miles of rail line located in the Township of Bridgewater and the Borough of Manville, Somerset County, NJ, that is part of a rail line known as the Reading Company New York Branch (also known as the Raritan Valley Connecting Track), and identified as Line Code 0326, between milepost 57.25 at Manville Yard and milepost 58.50 at a junction with New Jersey Transit's commuter line. In the amended notice, M&E states that it proposes to obtain rights from Somerset Terminal Railroad Corporation (STRC), a Class III rail carrier, to operate over this line of railroad that is owned by Joseph C. Horner.²

¹ M&E originally tendered a notice of exemption for filing on October 7, 2002, but additional and corrected information was subsequently filed on November 20, 2002.

² In Somerset Terminal Railroad Corporation–Operation Exemption–A Line of Railroad Owned by Joseph C. Horner, STB Finance Docket No. 33999 (STB served Feb. 13, 2001), STRC, then a noncarrier, was granted an exemption under 49 CFR 1150.31 to operate the line pursuant to a perpetual, irrevocable, exclusive and assignable easement.

M&E states that, as provided in an assignment of contracts agreement dated October 1, 2002, between M&E and STRC, STRC proposes to assign M&E rights which will permit M&E to operate the line.³ By letters filed on October 17, 2002, November 20, 2002, and November 26, 2002, Standard Terminal Railroad of New Jersey, Incorporated (Standard), alleged that STRC does not actually possess the rights it seeks to assign to M&E and requested that the exemption be stayed. By decision served on November 27, 2002, in this proceeding, the request for stay was denied.

Publication of this notice and effectiveness of the exemption does not constitute any finding by the Board concerning the ownership of the property involved. The exemption merely permits M&E and STRC to consummate the described transaction if and when they, in fact, have the legal capacity to do so. The question of whether or not STRC possesses the rights it wishes to assign is currently pending in the United States Bankruptcy Court. In the Matter of Bridgewater Resources, Inc., No. 00-60057 (WHG) (D.N.J.).

M&E certifies that its annual revenues will not exceed those that would qualify it as a Class III rail carrier and that its annual freight revenues are not projected to exceed \$5 million.

M&E states that operations will not commence until all of the contingencies

³ In addition, STRC will assign the right for M&E to operate over a railroad bridge that crosses the Raritan River, which connects the properties on which STRC has its easement. STRC is a party to a Land Use Agreement with Mr. Horner, dated May 1, 2000, and holds an easement to operate over the properties of Mr. Horner. Pursuant to the assignment of contracts agreement, M&E's operating rights will be for a term of 15 years, subject to renewal, extension, and termination. M&E proposes to operate the line to connect with CSX Transportation, Inc., and Norfolk Southern Railway Company.

contained in the assignment of contracts agreement are met.⁴ The earliest the exemption could have been consummated was November 27, 2002, the effective date of the exemption (7 days after the amended exemption was filed).

This transaction is exempt under 49 CFR 1150.41(c).⁵ If the 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. 34267, 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 John K. Fiorilla, 390 George Street, P.O. Box 1185, New Brunswick, NJ 08903.

⁴ These contingencies include a court's determination that STRC possesses the rights it intends to assign to M&E and the consent of Mr. Horner.

⁵ In order to qualify for a change in operators exemption, an applicant must give notice to shippers on the line. See 49 CFR 1150.42(b). To ensure that shippers are informed of the change of operators on the line, M&E is directed to provide notice of the change to any shippers on the line and to certify to the Board that it has done so.

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“WWW.STB.DOT.GOV.”

Decided: December 16, 2002.

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

Vernon A. Williams

Secretary