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SERVICE DATE – LATE RELEASE JUNE 3, 2010

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35377

NORTH SHORE RAILROAD COMPANY—ACQUISITION AND OPERATION  
EXEMPTION—PPL SUSQUEHANNA, LLC

Decided: June 3, 2010

On May 17, 2010, North Shore Railroad Company (North Shore), a Class III rail carrier, filed a verified notice of exemption under 49 C.F.R. § 1150.41 to acquire a rail operating easement over approximately 6 miles of rail line in Luzerne County, Pa., owned by PPL Susquehanna, LLC (PPLS), a noncarrier.<sup>1</sup> The easement extends from North Shore's existing rail line at milepost 171.0 at Berwick to milepost 177.0 at the PPLS power plant at Beach Haven.

Where a notice raises issues of concern to the Board, publication of that notice and effectiveness of that exemption may be held in abeyance to allow the applicant to provide an explanation through the filing of supplemental information. Anthony Macrie—Continuance in Control Exemption—New Jersey Seashore Lines, Inc., FD 35297 et al. (STB served Sept. 25, 2009). As subsequently discussed, North Shore's filing does not provide sufficient information for the Board to evaluate the notice properly. Consequently, the proceeding will be held in abeyance.

Where an operator has an easement to provide for-hire service over a line, but the line is owned by a noncarrier (who wishes to remain a noncarrier), the Board has taken steps to safeguard the common carrier obligation by analyzing the owner's degree of control and potential for interference with the operator's ability to carry out its common carrier obligation to provide service over the line. Me., Dep't of Transp.—Acquis. & Operation Exemption—Me. Central R.R., et al., 8 I.C.C.2d 835 (1991).

Here, PPLS would convey to North Shore an easement to operate over the line at issue. North Shore states that it has reached an "agreement" with PPLS and refers to a "new operating easement"<sup>2</sup> but no relevant documents have been submitted. In order to safeguard North Shore's ability to carry out the common carrier obligation it would acquire over the line, it is necessary for the Board to examine the instrument granting the easement and any other agreement or

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<sup>1</sup> The line was formerly owned by the Pennsylvania Department of Transportation (PA DOT).

<sup>2</sup> North Shore's Notice of Exemption 3, May 17, 2010.

evidence relevant to the relationship between PPLS and North Shore. North Shore should also clarify the status of the track at issue. North Shore states that it “has provided contract rail service on the Subject line . . . .”<sup>3</sup> From that statement, it remains unclear whether the track is currently private track or a regulated line of railroad and what its status was at the time of conveyance from PA DOT to PPLS. For these reasons, publication of the notice and effectiveness of the exemption will be held in abeyance pending North Shore’s submission of additional information and further Board action.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Publication of the notice and effectiveness of the exemption are held in abeyance pending further Board action.
2. North Shore is directed to file the additional information identified in this decision by June 23, 2010. In the event North Shore fails to do so, the notice of exemption will be dismissed.
3. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

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<sup>3</sup> Id.