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SERVICE DATE – APRIL 29, 2016

DO

FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36024]

Finger Lakes Railway Corp.—Sublease and Operation Exemption—Seneca County  
Industrial Development Agency

Finger Lakes Railway Corp. (FGLK), a Class III rail carrier, has filed a verified notice of exemption under 49 C.F.R. § 1150.41 to sublease from Seneca County Industrial Development Agency (Agency), and operate, approximately 26.44 miles of railroad located in New York as follows: (1) Auburn Secondary, between milepost 37.56 at the Seneca/Cayuga County line and milepost 50.50 at or near Geneva, a distance of 12.94 miles; and (2) Geneva Running Track, between milepost 342.80 at the Ontario/Seneca County line and milepost 329.30 at or near Kendaia, a distance of 13.50 miles.<sup>1</sup> The Agency and FGLK state that the Agency currently owns the rail lines but FGLK is responsible for all railroad operations over the rail lines.

According to FGLK, the sublease of the rail lines is part of a series of proposed transactions that will allow FGLK to continue to pay a negotiated “payment in lieu of taxes” (PILOT) while maintaining the benefits of being exempt from local and state taxes. FGLK states that it originally acquired the rail lines in 1995 and transferred title to the Agency and then leased back the rail lines for purposes of the PILOT arrangement.

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<sup>1</sup> The Agency and FGLK jointly filed one notice for three related transactions under 49 C.F.R. §§ 1150.31 and 1150.41, one in this docket, one in Docket No. FD 36022, and one in Docket No. FD 36023, as described further below. A separate notice will be published for each exemption.

FGLK states that to extend and restructure the PILOT arrangement, the Agency will first transfer title to the rail lines to FGLK.<sup>2</sup> Then the Agency will lease the rail lines from FGLK.<sup>3</sup> Lastly, FGLK will sublease the rail lines back from the Agency to continue operations over them, including all common carrier service and maintenance of the tracks—the transaction at issue in this docket.

FGLK certifies that the proposed transaction does not include an interchange commitment.

FGLK states the transaction will not result in the creation of a Class II or Class I rail carrier, but that its projected revenues as a result of this transaction would exceed \$5 million. Accordingly, under 49 C.F.R. § 1150.42(e), FGLK is required, at least 60 days before this exemption is to become effective, to send notice of the transaction to the national offices of the labor unions with employees on the affected lines, post a copy of the notice at the workplace of the employees on the affected lines, and certify to the Board that it has done so. FGLK, however, has filed a petition for waiver of this 60-day advance labor notice requirement, asserting that there will be no changes for employees working on the rail lines because FGLK already operates the rail lines and will continue

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<sup>2</sup> FGLK filed a verified notice of exemption to acquire the rail lines in Finger Lakes Railway—Acquisition & Operation Exemption—Seneca County Industrial Development Agency, Docket No. FD 36022.

<sup>3</sup> The Agency filed a verified notice of exemption to acquire the rail lines by lease, in Seneca County Industrial Development Agency—Lease Exemption—Finger Lakes Railway, Docket No. FD 36023. The Agency also filed a motion to dismiss that notice of exemption on grounds that the transaction does not require authorization from the Board. That motion will be addressed in a separate decision.

to be the sole common carrier operator of the rail lines. FGLK's waiver request will be addressed in a separate decision.

FGLK states that the parties intend to consummate the transaction no sooner than May 13, 2016, the effective date of the exemption (30 days after the verified notice was filed), and only after the Board has ruled on the motion to dismiss in Docket No. FD 36023. The Board will establish in the decision on the waiver request the earliest date this transaction can be consummated.

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 to stay must be filed no later than May 6, 2016 (at least seven days before the exemption becomes effective).

An original and ten copies of all pleadings, referring to Docket No. FD 36024, 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 Eric M. Hocky, Clark Hill PLC, 2005 Market Street, Suite 1000, Philadelphia, PA 19103.

According to FGLK, this action is categorically excluded from environmental review under 49 C.F.R. § 1105.6(c).

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Decided: April 26, 2016.

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