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SERVICE DATE – LATE RELEASE JULY 21, 2016

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36047

JERSEY MARINE RAIL, LLC—OPERATION EXEMPTION—LINES OF RAILROAD OWNED BY CONSOLIDATED RAIL CORPORATION IN THE CITY OF LINDEN, N.J.

Decided: July 21, 2016

On June 22, 2016, Jersey Marine Rail, LLC (JMR), a noncarrier, filed a verified notice of exemption pursuant to 49 C.F.R. § 1150.31 to rehabilitate tracks and restore rail service over three segments of track, all located within the City of Linden, N.J.: (1) a portion of right-of-way on land owned by Consolidated Rail Corporation (Conrail) known as the Third Industrial Lead Track, (2) a right-of-way owned by Conrail known as the Sound Shore Segment, and (3) a right-of-way (LM Segment) leased by Linden Marine (LM) for the past 20 years, which has been assigned to JMR. JMR states that customers on the LM Segment were formerly served by Conrail. In addition to restoring service and rehabilitating track, JMR states that it seeks authority to operate as a Class III carrier.

In its notice, JMR states that it intends to “re-construct” an additional track adjacent to the Third Industrial Lead Track within Conrail’s former Tremley Yard. JMR states that title to portions of that yard is unclear, and that it is currently seeking clarification of title via a title search. JMR states that if title has changed and an adequate right-of-way has not been reserved, that JMR will seek sufficient rights on the land within that yard to “re-install” what JMR describes as the Third Industrial Lead Track bypass. JMR also states that it intends to rehabilitate two tracks and construct a track in the JMR Yard, within its leasehold on property along Tremley Point Road. According to JMR, it is still engaged in negotiations with Conrail regarding operating responsibility for the rights-of-way and the location of an interchange between Conrail and JMR. JMR further states that the scope of its operations will be determined when a final agreement with Conrail is in place.

Conrail filed comments in opposition to the notice of exemption on July 15, 2016. Conrail asks that JMR’s notice be dismissed or rejected. Conrail states that JMR’s notice is premature in that it seeks operating rights on Conrail tracks and property that Conrail has not agreed to grant and has informed JMR that it would not provide these operating rights.

## DISCUSSION AND CONCLUSIONS

The notice of exemption process is an expedited means of obtaining Board authorization in certain classes of transactions that ordinarily do not require greater regulatory scrutiny.<sup>1</sup> When a party files a verified notice of exemption under 49 C.F.R. pt. 1150 Subpart D, § 1150.33(c) requires “[a] statement that an agreement has been reached or details about when such an agreement will be reached.” This rule contemplates that the party seeking authority to operate as a common carrier over the subject line either has, or is in the process of acquiring, an agreement with the underlying owner to provide that service. Midwest R.R.—Lease & Operation Exemption—Chicago Rail Link, L.L.C., FD 35733 (STB served Oct. 16, 2014).

Here, however, it appears that an agreement has not been reached and that there is still a question as to the parties with whom JMR will need to negotiate. JMR’s notice states that title to parts of Tremley Yard is unclear. While engaged in negotiations with Conrail, JMR may ultimately need to consult with other owners of the land on which it anticipates laying track. Because no agreement has been reached, and because JMR has neither provided “details of when an agreement will be reached” as required by the Board’s regulations, nor determined the necessary parties to such an agreement, the Board will reject JMR’s notice.

Further, based on JMR’s description of its proposed activities, it is possible that there are plans for track construction activity that would require Board authority. Specifically, based on JMR’s intent to provide common carrier service over the above-described trackage, the construction to which JMR refers in its notice may involve construction of a line of railroad, in which case prior approval for construction under 49 U.S.C. § 10901, and an environmental review under the National Environmental Policy Act, 42 U.S.C. §§ 4321-4370h, may be required. JMR’s notice cites to Swanson Rail Transfer, LP—Declaratory Order—Swanson Rail Yard Terminal, FD 35424 (STB served June 14, 2011) as a similar case where the Board determined that construction licensing authority was not necessary for a carrier to relocate track and construct ancillary spur track. Here, unlike Swanson, JMR has not acquired the necessary property or operating authority and has not addressed whether Board authority for construction or re-construction is needed. Questions as to whether JMR’s proposed activities require Board authority should be directed to the Board’s Rail Customer and Public Assistance program.

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<sup>1</sup> See Class Exemption for the Acquis. & Operation of Rail Lines Under 49 U.S.C. 10901, 1 I.C.C.2d 810, 811 (1985) (class exemption is “designed to meet the need for expeditious handling of a large number of requests that are rarely opposed.”).

It is ordered:

1. JMR's verified notice of exemption is rejected.
2. A copy of this decision will be served on Conrail.
3. This decision is effective on its date of service.

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