

40257
DO

SERVICE DATE – LATE RELEASE SEPTEMBER 25, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35296

ANTHONY MACRIE—CONTINUANCE IN CONTROL EXEMPTION—NEW JERSEY
SEASHORE LINES, INC.

STB Finance Docket No. 35297

NEW JERSEY SEASHORE LINES, INC.—OPERATION EXEMPTION—CLAYTON
COMPANIES, INC.

Decided: September 25, 2009

On September 10, 2009, in STB Finance Docket No. 35296, Anthony Macrie (Macrie), a noncarrier individual, filed a verified notice of exemption pursuant to 49 CFR 1180.2(d)(2) to continue in control of Cape May Seashore Lines, Inc. (CMSL), an existing class III carrier, and its corporate affiliate New Jersey Seashore Lines, Inc. (NJSL), upon the latter becoming a common carrier.¹ NJSL concurrently filed a verified notice of exemption pursuant to 49 CFR 1150.31 in STB Finance Docket No. 35297 to operate line of rail that extends between milepost 66.0 at Lakehurst, Borough of Lakehurst, Ocean County, NJ and milepost 79.0 at Woodmansie, Woodland Township, Burlington County, NJ. The line is owned by a shipper, Clayton Companies, Inc. (Clayton), but Clayton is not an applicant here. According to the parties' filings, after Consolidated Rail Corporation (Conrail) abandoned the line, Clayton acquired it from Conrail in 1985 for use as a private industry track. Clayton has now engaged NJSL to operate the line for 10 years, replacing Ashland Railway, Inc. which had operated the line as private track under contract. NJSL states that it will hold itself out to provide common carrier rail freight service over the line during the 10-year period.²

The proposed transaction in STB Finance Docket No. 35297 raises issues that must be addressed before further action can be taken in this matter. The proposal is to convert what is currently private track into a line of railroad that is regulated. Therefore, Clayton, the line's

¹ Macrie owns 100 percent of the common stock of CMSL and NJSL.

² NJSL is reminded that once a party obtains STB authorization to provide common carrier rail service over a line, the common carrier obligation continues, notwithstanding any term of the parties' agreement, unless and until the Board grants the appropriate discontinuance or abandonment authority. 49 U.S.C. 10903; Chicago & N. W. Transp. Co. v. Kalo Brick & Tile Co., 450 U.S. 311, 320 (1981); Pittsburg & Shawmut Railroad, LLC—Abandonment Exemption—in Armstrong and Jefferson Counties, PA, STB Docket No. AB-976X, slip op. at 1 (STB served Sept. 15, 2005).

owner, would assume a residual common carrier obligation to ensure continuing service to shippers in the event NJSL should cease operations. Consequently, Clayton must seek acquisition authority from the Board, or NJSL must provide an explanation as to why Clayton need not do so in these circumstances. See 49 U.S.C. 10901; Pro-Go Corp.—Operation Exemption—in Suffolk County, NY, STB Finance Docket No. 35120 et al., slip op. at 3 (STB served June 13, 2008).

Until this issue is resolved, operating authority will not be granted to NJSL, and publication of the notice and effectiveness of the exemption will be held in abeyance. In addition, Macrie's notice of exemption in the continuance in control transaction (STB Finance Docket No. 35296) will also be held in abeyance as Macrie would not need Board authority to control NJSL and CMSL unless and until NJSL becomes a carrier.

NJSL is directed provide a copy of this decision to Clayton within 5 days and to certify to the Board that it has done so. In addition, Clayton should seek Board authority, and/or NJSL should respond to the issue identified in this decision by October 15, 2009. In the event the issue raised here is not timely addressed, the notices of exemption will be dismissed.

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

It is ordered:

1. NJSL is directed provide a copy of this decision to Clayton within 5 days and to certify to the Board that it has done so.
2. Clayton should seek Board authority, and/or NJSL should respond to the issue identified in this decision by October 15, 2009. In the event the issue raised here is not timely addressed, the notices of exemption will be dismissed.
3. The notices of exemption in STB Finance Docket No. 35297 and No. 35296 are accepted, but their publication in the Federal Register and the effectiveness of the exemptions will be held in abeyance pending NJSL's response and further decision of the Board.
4. This decision is effective on its service date.

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

Anne K. Quinlan
Acting Secretary