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SERVICE DATE—NOVEMBER 10, 2011

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35559]

Saratoga and North Creek Railway, LLC—Operation Exemption—Tahawus Line

Saratoga and North Creek Railway, LLC (Saratoga),¹ a Class III rail carrier, has filed a verified notice of exemption under 49 C.F.R. § 1150.41 to operate an approximately 29.71-mile line of railroad, known as the Tahawus Line. Saratoga states that the Tahawus Line currently is private track owned by NL Industries, Inc. (NL), an industrial concern which is selling the line to Saratoga in the very near future.² The rail

¹ Saratoga is a limited liability company, wholly owned by San Luis & Rio Grande Railroad (SLRG). SLRG is a Class III rail carrier and a subsidiary of Permian Basin Railways, Inc. (Permian), which in turn is owned by Iowa Pacific Holdings, LLC (IPH). IPH and Permian formed Saratoga for the purpose of operating the entire Tahawus Line between Newcomb, N.Y., on the north and Saratoga Springs, N.Y., on the south, interchanging traffic with the Delaware & Hudson Railway Company, Inc. d/b/a Canadian Pacific (CP) at Saratoga Springs. In 2 previous proceedings, the Board authorized Saratoga to operate between Saratoga Springs and North Creek. See Saratoga & N. Creek Ry.—Acquis. & Operation Exemption—Del. & Hudson Ry., Docket No. FD 35500 (STB served June 1, 2011) and Saratoga & N. Creek Ry., LLC—Operation Exemption—Warren Cnty., N.Y., Docket No. FD 35500 (Sub-No. 1) (STB served June 1, 2011).

² Saratoga states that the subject trackage is exempt from Board regulation and has never been operated in common carrier service and therefore it does not need any Board authority to acquire this trackage as such property is outside the Board's jurisdiction. Saratoga cites B. Willis, C.P.A., Inc.—Petition for Declaratory Order, FD No. 34013 (STB served Oct. 3, 2001) (B. Willis), aff'd sub nom. B. Willis, C.P.A., Inc. v. STB, 51 Fed Appx. 321 (D.C. Cir. 2002) in support of this proposition. Saratoga states that it has executed an agreement to acquire the line from NL and that it anticipates consummating the acquisition before the exemption in this proceeding becomes effective.

line extends between the existing connection with Saratoga at milepost NC 0.0 at North Creek, N.Y., and its terminus at milepost NC 29.71 at Newcomb. Saratoga intends to provide common carrier rail service over the subject line connecting to its existing trackage at North Creek and extending to its connection with CP at Saratoga Springs.

Saratoga certifies that as a result of this transaction its projected annual revenues will not exceed \$5 million and will not result in Saratoga becoming a Class I or Class II rail carrier.

Saratoga states that it intends to consummate the transaction at least 30 days from the effective date of the exemption (around late November 2011). The earliest this transaction can be consummated is November 24, 2011, the effective date of the exemption (30 days after the exemption was filed).

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. Stay petitions must be filed no later than November 17, 2011 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD No. 35559, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on John D. Heffner, Strasburger & Price, 1700 K Street, N.W., Suite 640, Washington, DC 20006.

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Decided: November 4, 2011.

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