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SERVICE DATE – LATE RELEASE OCTOBER 14, 2016

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36062

LEHIGH RAILWAY, LLC—LEASE EXEMPTION CONTAINING INTERCHANGE  
COMMITMENT—NORFOLK SOUTHERN RAILWAY COMPANY

Decided: October 14, 2016

Lehigh Railway, LLC (LRWY), a Class III rail carrier, filed a verified notice of exemption under 49 C.F.R. § 1150.41 to continue to lease from Norfolk Southern Railway Company (NSR), and to operate, approximately 56.0 miles of rail line between milepost IS 269.5 at Athens, Pa., and milepost IS 213.5 at Mehoopany, Pa., in Bradford and Wyoming Counties, Pa., including any sidings, sidetracks, yards, or facilities presently owned by NSR that are accessed via the line (the Line). LRWY explained that it had entered into an amended lease agreement with NSR, which renewed the original lease agreement entered into by the parties on October 28, 2008. Notice of the exemption was served and published in the Federal Register on September 30, 2016 (81 Fed. Reg. 67,419). The exemption is scheduled to become effective on October 15, 2016.

On October 7, 2016, Reading Blue Mountain & Northern Railroad Company (RBMN) filed a petition to reject LRWY's notice of exemption, or alternatively to stay the effective date of the notice. According to RBMN, it entered into a confidential agreement with NSR in 2014, in which NSR agreed not to renew the LRWY lease unless the lease required LRWY to provide haulage for RBMN under standard industry terms. RBMN states that, while it has been advised that LRWY has agreed in the amended lease to provide haulage for RBMN, the commitment does not start until January 1, 2019, instead of immediately upon the renewal, and NSR has not required, and LRWY has not agreed to provide, the haulage at a standard industry rate. According to RBMN, through its agreement with RBMN, NSR restricted its authority to enter into any lease renewal with LRWY without first satisfying the requirements of the agreement with RBMN. Thus, RBMN requests that the Board not allow the amended lease to take effect—either by rejecting the notice without prejudice to LRWY's filing of a new notice once the preconditions have been satisfied, or by staying the effective date of the notice—until and unless the haulage agreement is finalized.

On October 12, 2016, LRWY filed a reply urging the Board to deny RBMN's petition. LRWY asserts that RBMN has failed to show that LRWY's notice is false or misleading and argues that RBMN's purported contractual dispute with NSR is not a valid reason for the Board to reject the notice filed by LRWY in this proceeding. According to LRWY, the Board does not have jurisdiction over the agreement between RBMN and NSR or the claim that RBMN asserts against NSR. LRWY further states that RBMN has no relevant agreement with LRWY and no

claim against LRWY. According to LRWY, the Board has no jurisdiction over the haulage rate negotiations between RBMN and LRWY, and the finalization of a haulage agreement between RBMN and LRWY is not a “pre-condition” to the effectiveness of the lease amendment entered into between LRWY and NSR. Additionally, LRWY argues that the Board should deny RBMN’s stay petition and its request for a housekeeping stay, because RBMN has failed to demonstrate that it is likely to prevail on the merits, that it would suffer irreparable harm, or that a stay is in the public interest. LRWY asserts that a housekeeping stay is likewise unwarranted because there are no disputed facts or difficult legal or policy issues presented.

## DISCUSSION AND CONCLUSIONS

The Board will deny the petition to reject LRWY’s notice of exemption, or alternatively to stay the effective date of the notice. RBMN does not allege that LRWY’s verified notice is false or misleading, and there is no indication that LRWY has failed to comply with the requirements for the exemption. Instead, RBMN contends that NSR was not authorized to enter into the amended lease with LRWY, because NSR has not arranged for LRWY to provide haulage under standard industry terms, including a standard industry rate, as NSR agreed to do in its confidential agreement with RBMN. That dispute, however, is a contractual one. The Board’s exemption authority is permissive, and the Board does not typically resolve contract disputes. The contractual dispute between RBMN and NSR is a matter for another forum to decide and need not be resolved before the Board’s permissive authority is allowed to take effect. See Wis. Cent. Ltd.—Trackage Rights Exemption—Lines of Union Pac. R.R. & Ill. Cent. R.R., FD 35992 (STB served Mar. 4, 2016) (citing BNSF Ry.—Trackage Rights Exemption—Union Pac. R.R., FD 35601, slip op. at 5-6 (STB served Sept. 11, 2013)). The authorization granted by the Board through this exemption does not constitute a ruling on the parties’ contractual rights. Id. (citing Rock & Rail, Inc.—Acquis. & Operation Exemption—Burlington N. & Santa Fe Ry., FD 33738, slip op. at 2 n.2 (STB served Apr. 30, 1999)).

### It is ordered:

1. RBMN’s petition to reject LRWY’s notice of exemption, or alternatively to stay the effective date of the notice, is denied.
2. This decision is effective on its service date.

By the Board, Daniel R. Elliott III, Chairman.