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SERVICE DATE – LATE RELEASE APRIL 5, 2013

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35725

MCM RAIL SERVICES LLC D/B/A BALTIMORE INDUSTRIAL RAILROAD—
OPERATION EXEMPTION—HRE SPARROWS POINT, LLC

Docket No. FD 35707¹

MCM RAIL SERVICES LLC—PETITION FOR RETROACTIVE EXEMPTION—IN
SPARROWS POINT, MD

Decided: April 5, 2013

On March 20, 2013, MCM Rail Services LLC, d/b/a Baltimore Industrial Railroad (MCM), a noncarrier, filed a verified notice of exemption (Notice) under 49 C.F.R. § 1150.31 to operate as a common carrier over an approximately 12-mile line of railroad in Sparrows Point, Baltimore County, Md. (the Line). Previously, on December 20, 2012, in MCM Rail Services LLC—Petition for Retroactive Exemption—In Sparrows Point, Md., FD 35707, MCM filed a petition for retroactive exemption (Petition) requesting essentially the same authority it requested in the Notice.² Although the Notice states that MCM is withdrawing the Petition, a withdrawal has not yet been filed.

The Petition raised a number of questions about the proposed exemption and related transactions,³ many of which MCM answers in the Notice. However, the proposed transaction continues to raise issues that must be addressed before the Board can properly evaluate the Notice and take further action in this matter. Important details remain outstanding about the apparent recent acquisition and current ownership of the Line by HRE Sparrows Point, LLC

¹ These proceedings are not consolidated; they are being considered together for administrative purposes.

² The Petition seeks retroactive authority and the Notice seeks prospective authority with confirmation from the Board that it will not pursue enforcement action against MCM for failure to obtain Board approval or exemption prior to beginning operations.

³ By decision served on March 20, 2013, the Board requested additional information from MCM in the Petition proceeding.

(HRE).⁴ The acquisition of an active rail line requires a license from the Board, and a Board license imposes a common carrier obligation. See N. Shore R.R.—Acquis. & Operation Exemption—PPL Susquehanna, LLC, FD 35377, slip op at 3 (STB served April 26, 2011); Anthony Macrie—Continuance in Control Exemption—N.J. Seashore Lines, Inc., FD 35296, slip op. at 3 (STB served Aug. 31, 2010).

Where a notice raises issues of concern to the Board, publication of that notice and effectiveness of the exemption may be held in abeyance to allow the applicant to provide an explanation through the filing of supplemental information. Before the Board can fully evaluate whether to grant MCM the requested operating authority, either 1) HRE must seek acquisition authority from the Board, or 2) MCM must provide an explanation as to why HRE need not do so and submit the operating agreement so that the Board may examine the relationship between HRE and MCM. See Anthony Macrie—N.J. Seashore Lines, Inc., slip op. at 3.

As discussed above, there are currently two proceedings pending before the Board that seek essentially the same authority. Unless it can explain why both the Notice and the Petition are necessary, MCM will need to decide which process it intends to use to seek authority from the Board; to supplement the record, as directed in that proceeding; and to withdraw the other filing. The Board notes that MCM seeks confirmation in its Notice that the Board will not pursue an enforcement action against MCM for operating without authority; typically, the Board has provided such confirmation in petition proceedings, not in the abbreviated context of a notice proceeding. See, e.g., New Brunswick Ry.—Continuance in Control Exemption—Me. N. Ry., FD 35520 et al., slip op. at 3 n.2 (STB served Sept. 26, 2011).

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

It is ordered:

1. MCM is directed to serve a copy of this decision on HRE so that it is received by HRE within 5 days after service date of this decision and to certify contemporaneously to the Board that it has done so.
2. HRE must seek Board authority, or MCM must explain why HRE need not do so and submit the operating agreement between HRE and MCM, by May 6, 2013, unless MCM timely withdraws the Notice. In the event that this matter is not timely addressed, the Notice will be dismissed.

⁴ MCM states that HRE acquired the Line as a result of the former owner's bankruptcy. MCM also states in the Notice that it understands HRE intends to file a Notice of Exemption to acquire and operate the Line, but HRE has not yet done so. Notice at 4 n.2.

3. The Notice in Docket No. FD 35725 is accepted, but its publication in the Federal Register, and the effectiveness of the exemption, will be held in abeyance pending MCM's response and further decision of the Board.

4. MCM is directed to either withdraw its Petition in Docket No. FD 35707 or withdraw the Notice in FD 35725, or to explain why both the Notice and the Petition are necessary.

5. This notice will be effective on its date of service.

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