

ENTERED
Office of Proceedings
March 15, 2016
Part of
Public Record

CLARK HILL

Eric M. Hocky
T 215.640.8523
F 215.640.8501
Email: ehocky@clarkhill.com

Clark Hill PLC
One Commerce Square
2005 Market Street
Suite 1000
Philadelphia, PA 19103
T 215.640.8500
F 215.640.8501
clarkhill.com

March 15, 2016

VIA E-FILING

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20024

Re: STB Docket No. FD 36011
Cayuga County Industrial Development Agency, et al - Acquisition Exemption -
Finger Lakes Railway Corp.

STB Docket No. FD 36012
Finger lakes Railway Corp. - Acquisition and Operation Exemption -
Cayuga County Industrial Development Agency, et al

Dear Ms. Brown:

Enclosed for e-filing in the above-referenced dockets are a joint notice of exemption filed in FD 36011 by Cayuga County Industrial Development Agency, Onondaga County Industrial Development Agency, Ontario County Industrial Development Agency, Schuyler County Industrial Development Agency, and Yates County Industrial Development Agency (the "Agencies"), and in FD 36012 by Finger Lakes Railway Corp. ("FGLK"). Also enclosed (as confidential documents) are the authorizations for payment of the respective applicable filing fee of \$1,900 for each docket.

In FD 36011, the Agencies are also filing a Motion to Dismiss requesting that the Board find that the Agencies will not become carriers as a result of the transactions. If the Board grants the Motion to Dismiss, then Board should also find that the Agencies filed the Notice of Exemption as a "governmental entity" and that the filing fee be waived (refunded) in accordance with the Board's policy as set forth in 49 CFR 1002.2(e)(1).

204275052

FEE RECEIVED
March 15, 2016
SURFACE
TRANSPORTATION BOARD

FILED
March 15, 2016
SURFACE
TRANSPORTATION BOARD

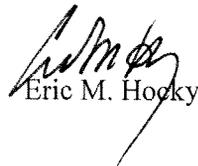
Cynthia T. Brown
March 15, 2016
Page 2

In FD 36012, FGLK is also filing a Request for Waiver of the advanced notice to labor requirements.

Please let me know if there are any questions regarding these filings. Thank you for your assistance.

Respectfully,

CLARK HILL PLC


Eric M. Hocky

EMH/e
Encls.

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. FD 36011

CAYUGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY;
ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY; ONTARIO
COUNTY INDUSTRIAL DEVELOPMENT AGENCY; SCHUYLER
COUNTY INDUSTRIAL DEVELOPMENT AGENCY; AND YATES
COUNTY INDUSTRIAL DEVELOPMENT AGENCY
– ACQUISITION EXEMPTION –
FINGER LAKES RAILWAY CORP.

VERIFIED NOTICE OF EXEMPTION
UNDER 49 U.S.C. §10901

STB DOCKET NO. FD 36012

FINGER LAKES RAILWAY CORP.
– ACQUISITION AND OPERATION EXEMPTION –
CAYUGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY;
ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY; ONTARIO
COUNTY INDUSTRIAL DEVELOPMENT AGENCY; SCHUYLER
COUNTY INDUSTRIAL DEVELOPMENT AGENCY; AND YATES
COUNTY INDUSTRIAL DEVELOPMENT AGENCY

VERIFIED NOTICE OF EXEMPTION
UNDER 49 U.S.C. §10902

ERIC M. HOCKY
CLARK HILL PLC
One Commerce Square
2005 Market Street, Suite 1000
Philadelphia, PA 19103
(215) 640-8500
ehocky@clarkhill.com

Dated: March 15, 2016

Attorneys for Applicants

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. FD 36011

CAYUGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY;
ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY; ONTARIO
COUNTY INDUSTRIAL DEVELOPMENT AGENCY; SCHUYLER
COUNTY INDUSTRIAL DEVELOPMENT AGENCY; AND YATES
COUNTY INDUSTRIAL DEVELOPMENT AGENCY
– ACQUISITION EXEMPTION –
FINGER LAKES RAILWAY CORP.

VERIFIED NOTICE OF EXEMPTION
UNDER 49 U.S.C. §10901

STB DOCKET NO. FD 36012

FINGER LAKES RAILWAY CORP.
– ACQUISITION AND OPERATION EXEMPTION –
CAYUGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY;
ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY; ONTARIO
COUNTY INDUSTRIAL DEVELOPMENT AGENCY; SCHUYLER
COUNTY INDUSTRIAL DEVELOPMENT AGENCY; AND YATES
COUNTY INDUSTRIAL DEVELOPMENT AGENCY

VERIFIED NOTICE OF EXEMPTION
UNDER 49 U.S.C. §10902

Cayuga County Industrial Development Agency, Onondaga County Industrial Development Agency, Ontario County Industrial Development Agency, Schuyler County Industrial Development Agency, and Yates County Industrial Development Agency, each being non-carrier public agencies (individually, an “Agency” and collectively, the “Agencies”), and Finger Lakes Railway Corp., an existing Class III carrier (“FGLK”), hereby file this joint Notice

of Exemption under 49 U.S.C. §10901 and 49 U.S.C. §10902, respectively¹, to exempt from regulation the following transactions that are potentially subject to the Board's jurisdiction:

(a) the transfer by the Agencies to FGLK of the title to the rail lines described herein (the "Rail Lines"); and

(b) the lease of the Rail Lines by FGLK to the Agencies for financial purposes only; and

(c) the sublease of the Rail Lines by the Agencies to FGLK for maintenance and operation of the Rail Lines.

A map showing the Rail Lines is attached hereto as Exhibit A.

Because the Agencies are not acquiring any common carrier obligations with respect to the Rail Lines, and because FGLK will be retaining ultimate title to the Rail Lines, the Agencies are simultaneously filing a Motion to Dismiss their Notice of Exemption on the grounds that they will not become carriers under the Board's precedents, namely *State of Maine, Department of Transportation – Acquisition and Operation Exemption – Maine Central Railroad*, 8 ICC 2d 835 (1991) ("*State of Maine*") and its progeny.

¹ One of the Agencies, Onondaga County Industrial Development Agency ("OCIDA"), is a non-operating carrier that owns other rail lines not involved in these transactions. See *Onondaga County Industrial Development Agency – acquisition and Operation Exemption – Lines of Consolidated Rail Corporation*, ICC Finance Docket No. 32287 (served July 7, 1994) (petition to revoke denied). The New York Susquehanna & Western Railway Corp. currently provides the freight service over the other rail lines. See *The New York, Susquehanna and Western Railway Corporation--Trackage Rights Exemption--Onondaga County Industrial Development Agency and Consolidated Rail Corporation*, STB Finance Docket No. 32772 (served August 7, 2001) (petition to revoke denied). OCIDA believes that in this proceeding it should be treated as a non-carrier filing for an exemption from 49 U.S.C. §10901 because it is not providing transportation. Cf. *Railway Labor Executives' Association v ICC*, 784 F.2d 959, 968-969 (9th Cir. (1986) (confirming that a non-operating carrier is not treated as a carrier for common control analysis under 49 U.S.C. §11343 purposes because it is not "providing transportation). If the Board disagrees, OCIDA requests that its notice be treated as a request for an exemption from 49 U.S.C. §10902. All of the required information has been provided.

Background of the Transactions

FGLK originally was authorized to acquire and operate the Rail Lines by the issuance of an exemption issued by the Interstate Commerce Commission (“ICC”). *Finger Lakes Railway Corp. – Acquisition and Operation Exemption – Consolidated Rail Corporation*, Finance Docket No. 32574 (served October 14, 1994).² FGLK closed on the acquisition with Consolidated Rail Corporation (“Conrail”) in July, 1995, and immediately transferred title to the Rail Lines to the Agencies, and leased back the Rail Lines from the Agencies. The transactions with the Agencies were entered into and structured for financing purposes – to allow the railroad property and facilities to be exempt from local and state taxes, and to allow FGLK to pay a negotiated “payment in lieu of taxes” (“PILOT”). FGLK retained the right to terminate the lease at any time, and to take back title to the railroad property. FGLK retained all of the common carrier obligations with respect to the lines; the Agencies, although the nominal owners of the railroad property, never held themselves out to provide railroad service over the Railroad Lines. At the time, FGLK and the Agencies believed that since the Agencies were not acquiring any common carrier rights or obligations, no ICC approvals or exemptions were necessary in order to enter into the financing arrangement.³ The Agencies and FGLK have now agreed to extend the existing PILOT arrangements (with some minor adjustments), and to change the overall structure so that FGLK will be the title holder to the railroad property and Rail Lines, FGLK will lease

² In addition to the Rail Lines that are the subject of this proceeding, FGLK also received authority to acquire and operate some additional rail lines located in Seneca County. FGLK is currently still negotiating with Seneca County Industrial Development Agency regarding a similar extension and restructuring of the PILOT arrangements there, but no final agreements have yet been reached.

³ The Applicants understand that current practice before the Board would suggest that parties get affirmative confirmation from the Board (either through a petition for declaratory order, or through a motion to dismiss) that a proposed transaction is not subject to the Board’s jurisdiction.

each Agency the property and Rail Lines located in the county served by the Agency, and each Agency will then sublease the property and Rail Lines to FGLK. Again, the structure has been established solely to facilitate the PILOT arrangements – FGLK will be solely responsible for all railroad operations, including all common carrier service and for maintaining the tracks; the Agencies will not hold themselves out to provide any rail service, and are not leasing or acquiring any of the common carrier obligations with respect to the Rail Lines. Accordingly, the Agencies do not believe that they should be considered as carriers as a result of the transactions, and they are separately filing a motion to dismiss their exemption. Documents for the transactions have been executed and are being held in escrow. The parties will not release the documents from escrow until after the Board has ruled on the motion to dismiss.

Notice

In accordance with 49 C.F.R. §1150.33 and §1150.43, the Agencies and FGLK hereby provide the following information:

- (a) The full name and address of each of the Applicants are shown on Exhibit B.
- (b) The name, address and telephone number of the representative of Applicants who should receive correspondence are: Eric M. Hocky, Clark Hill PLC, One Commerce Square, 2005 Market Street, Suite 1000, Philadelphia, PA 19103; (215) 640-8500.
- (c) The Agencies and FLGK have entered in various agreements including a deed, lease and amended and restated lease. The agreements are being held in escrow pending the Board's action on this Notice of Exemption and on the Motion to Dismiss.
- (d) The current operator of the tracks is FGLK, and it will continue as the operator after the transactions are closed.
- (e) Brief Summary of the Proposed Transaction:

Under the proposed transaction, (i) title to the Rail Lines will be transferred by the Agencies back to FGLK, (ii) FGLK will lease the Rail Lines to the Agencies to allow them to continue to qualify for the PILOT program, and (iii) the Agencies will sublease the Rail Lines to FGLK. FGLK will continue as the operator of the Rail Lines, and will have the rights necessary to operate them and fulfill its common carrier obligations with respect to the Rail Lines, while maintaining the benefits of being exempt from local and state taxes and subject to the negotiated PILOT arrangements.

- (1) The name and address of the railroad transferring the tracks: FGLK is the only railroad involved in the proposed transaction. Currently, FGLK is the nominal lessee operator of the Rail Lines, and after the transaction it will be both the owner of the Rail Lines, and the sub-lessee operator of the Rail Lines. FGLK's address is 68 Border City Rd., Geneva, NY 14556.
- (2) The parties propose to consummate the transaction no sooner than the effective date of this Notice of Exemption, thirty days after the filing, and only after the Board has ruled on the Motion to Dismiss.
- (3) The Rail Lines that are the subject of the transactions are described as follows:
 - (A) Watkins Glen Industrial Track between MP 41.35 at or near Penn Yan and MP 16.55 at or near Watkins Glen, in Schuyler and Yates Counties, a distance of 24.8 miles;
 - (B) Canandaigua Secondary between MP 76.00 at or near Canandaigua and MP 51.30 at or near Geneva, in Ontario County, a distance of 24.70 miles;
 - (C) Auburn Secondary between MP 37.56 at the Seneca / Cayuga County line and MP 3.61 at or near Solvay Yard, in Cayuga County, a distance of 33.95 miles;

- (D) Geneva Running Track between MP 344.40 at or near Geneva and MP 342.8 at the Ontario / Seneca County line, in Ontario County, a distance of 1.6 miles;
- (E) Lehigh & Northern Industrial Track between MP 349.20 and MP 348.70 at or near Auburn, in Cayuga County, a distance of 0.90 miles;
- (F) Auburn & Ithaca Industrial Track between MP 349.20 and MP 348.70 at or near Auburn, in Cayuga County, a distance of 0.50 miles.

(4) The total miles of Rail Line subject to the transactions are approximately 86.45 miles.

(f) Attached as Exhibit A to this Notice of Exemption is a map of the Rail Lines.

(g) The Agencies are not operating railroad carriers, and will not operate the Rail Lines. FGLK is a Class III carrier. The transaction will not result in the creation of a Class II or Class I rail carrier.

(h) Applicants certify that the transaction agreements do *not* include an interchange commitment.

(i) FGLK's revenues after the transaction will be in excess of \$5,000,000. However, because FGLK has been the sole railroad operator of the Rail Lines since 1995, FGLK is separately asking for a waiver of the notice to labor that would otherwise be applicable under 49 C.F.R. § 1150.42(e).

Labor Protection

The Agencies are non-carriers, and pursuant to 49 U.S.C. §10901(c), approval of the transactions as they relate to the Agencies may not be subjected to labor protection conditions. FGLK is a Class III carrier, and pursuant to 49 U.S.C. §10902(c), approval of the transactions as they relate to FGLK may not be subjected to labor protection conditions.

Environmental and Historic Reports

The transactions provide for continued rail operations that will not result in changes in carrier operations that will exceed the thresholds established in 49 C.F.R. §1105.7(e)(4) or (5). Further Board approval is required for FGLK to abandon the tracks, or alter properties subject to the Board's jurisdiction that are 50 years old or older. Accordingly, no environmental or historic documentation is required. *See* 49 C.F.R. §1105.6(c)(2); 49 C.F.R. §1105.8(b)(1).

Caption Summary

Attached hereto as Exhibit B is the caption summary required by 49 C.F.R. §1150.34 and 49 C.F.R. §1150.44.

Conclusion

Accordingly, the Agencies and FGLK request that the Board issue an exemption notice reflecting the information set forth herein.

Respectfully submitted,


ERIC M. HOCKY
CLARK HILL PLC
One Commerce Square
2005 Market Street, Suite 1000
Philadelphia, PA 19103
(215) 640-8500

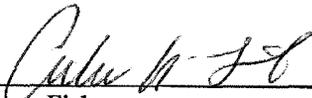
Dated: March 15, 2016

Attorneys for Applicants

VERIFICATION

I, Andrew Fish, Executive Director of Cayuga County Industrial Development Agency, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on February 11, 2016

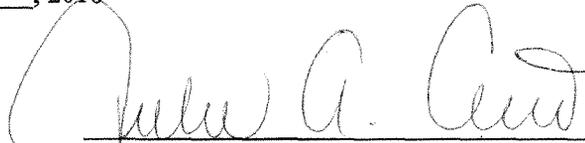


Andrew Fish

VERIFICATION

I, Julie Cerio, Executive Director of Onondaga County Industrial Development Agency, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on February 12, 2016

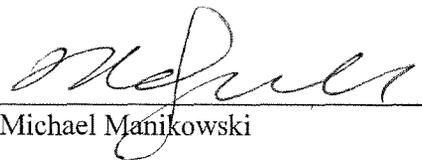


Julie Cerio

VERIFICATION

I, Michael Manikowski, Executive Director of Ontario County Industrial Development Agency, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on February 12, 2016



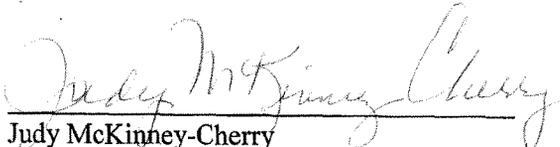
Michael Manikowski

VERIFICATION

I, Judy McKinney-Cherry, Chief Executive Officer of Schuyler County Industrial Development Agency, verify under penalty of perjury that the foregoing is true and correct.

Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on 2/11, 2016

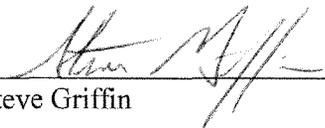


Judy McKinney-Cherry

VERIFICATION

I, Steve Griffin, Chief Executive Officer of Yates County Industrial Development Agency, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on February 12, 2016

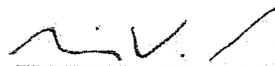


Steve Griffin

VERIFICATION

I, Michael V. Smith, President of Finger Lakes Railway Corp., verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

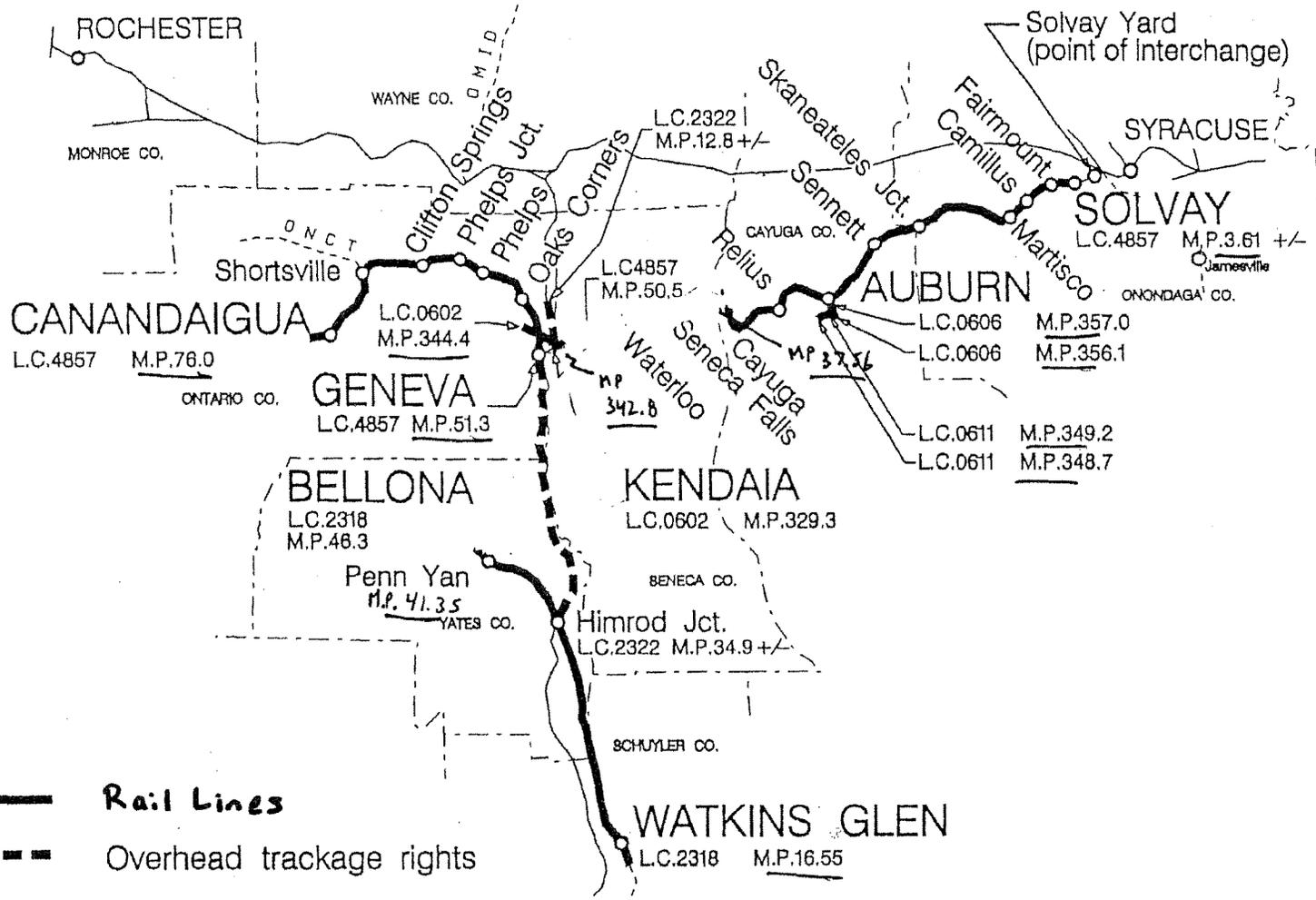
Executed on March ~~14~~ 2016



Michael V. Smith

EXHIBIT A

MAP



-  Rail Lines
-  Overhead trackage rights

-  Other CRC lines
-  Other RR lines
-  County line

GENEVA CLUSTER

NEW YORK

8/31/94
 7/26/94
 8/23/94
 REVISED 6/9/94
 geneva.dgn 14/94

EXHIBIT B

NAME AND ADDRESS OF APPLICANTS

Cayuga County Industrial Development Agency
Attn: Andrew Fish
2 State Street
Auburn, New York 13021

Onondaga County Industrial Development Agency
Attn: Julie Cerio, Executive Director
333 West Washington Street, Suite 130
Syracuse, NY 13202

Ontario County Industrial Development Agency
Attn: Michael J. Manikowski, Executive Director
20 Ontario, St., Suite 16-B
Canandaigua, NY 14424

Schuyler County Industrial Development Agency
Attn: Judy McKinney-Cherry, CEO
910 South Decatur Street
Watkins Glen, New York 14891

Yates County Industrial Development Agency
Attn: Steve Griffin, CEO
1 Keuka Business Park
Penn Yan, NY 14527

Finger Lakes Railway Corp.
Attn: Michael V. Smith, President
68 Border City Rd.
Geneva, NY 14556

EXHIBIT C
CAPTION SUMMARY

STB DOCKET NO. FD 36011

**CAYUGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY;
ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY; ONTARIO
COUNTY INDUSTRIAL DEVELOPMENT AGENCY; SCHUYLER
COUNTY INDUSTRIAL DEVELOPMENT AGENCY; AND YATES
COUNTY INDUSTRIAL DEVELOPMENT AGENCY
– ACQUISITION EXEMPTION –
FINGER LAKES RAILWAY CORP.**

**VERIFIED NOTICE OF EXEMPTION
UNDER 49 U.S.C. §10901**

STB DOCKET NO. FD 36012

**FINGER LAKES RAILWAY CORP.
– ACQUISITION AND OPERATION EXEMPTION –
CAYUGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY;
ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY; ONTARIO
COUNTY INDUSTRIAL DEVELOPMENT AGENCY; SCHUYLER
COUNTY INDUSTRIAL DEVELOPMENT AGENCY; AND YATES
COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

**VERIFIED NOTICE OF EXEMPTION
UNDER 49 U.S.C. §10902**

Cayuga County Industrial Development Agency, Onondaga County Industrial Development Agency, Ontario County Industrial Development Agency, Schuyler County Industrial Development Agency, and Yates County Industrial Development Agency, each being non-carrier public agencies (collectively, the “Agencies”), and Finger Lakes Railway Corp., a Class III carrier (“FGLK”), have filed a joint Notice of Exemption under 49 USC § 10901 and 49 USC § 10902, respectively, to exempt from regulation the following transactions that are potentially subject to the Board’s jurisdiction: (a) the transfer by the Agencies to FGLK of the title to the rail lines described herein (the “Rail Lines”); and (b) the lease of the Rail Lines by

FGLK to the Agencies for financial purposes only; and (c) the sublease of the Rail Lines by the Agencies to FGLK for maintenance and common carrier operation of the Rail Lines. The Rail Lines, a total of 86.45 miles, are all located in New York State, and are described as follows:

- (A) Watkins Glen Industrial Track between MP 41.35 at or near Penn Yan and MP 16.55 at or near Watkins Glen, in Schuyler and Yates Counties, a distance of 24.8 miles;
- (B) Canandaigua Secondary between MP 76.00 at or near Canandaigua and MP 51.30 at or near Geneva, in Ontario County, a distance of 24.70 miles;
- (C) Auburn Secondary between MP 37.56 at the Seneca / Cayuga County line and MP 3.61 at or near Solvay Yard, in Cayuga County, a distance of 33.95 miles;
- (D) Geneva Running Track between MP 344.40 at or near Geneva and MP 342.8 at the Ontario / Seneca County line, in Ontario County, a distance of 1.6 miles;
- (E) Lehigh & Northern Industrial Track between MP 349.20 and MP 348.70 at or near Auburn, in Cayuga County, a distance of 0.90 miles;
- (F) Auburn & Ithaca Industrial Track between MP 349.20 and MP 348.70 at or near Auburn, in Cayuga County, a distance of 0.50 miles.

Comments must be filed with the Board and served on Applicants' representative, Eric M. Hocky, Esquire, Clark Hill. PLC, One Commerce Square, 2005 Market Street, Suite 1000, Philadelphia, PA 19103; (215) 640-8500.

The Agencies have separately filed a motion to dismiss their Notice of Exemption on the grounds that they will not become carriers as a result of the transactions since they will not operate the Rail Lines, nor will they have any ability to interfere with the operations by FGLK.

FGLK has separately filed a request for waiver of the advanced notice to labor requirements of 49 C.F.R. §1150.42(e).

The Notice is filed under 49 C.F.R. §1150.31 and §1150.41. 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.

