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August 12, 2016

241286

The Honorable Ann K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

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

Via Federal Express.

FD 36058

Re: Jersey Marine Rail, LLC
Exemption

Dear Secretary Quinlan:

Enclosed please find the original and ten copies of an exemption and of a caption summary for filing by Jersey Marine Rail LLC, a non-carrier as well as my check for \$1,900 for the filing fee. Also enclosed please find a CD containing the same.

Thank you for your attention to this matter.

Very truly yours,

John F. McHugh

FEE RECEIVED
August 15, 2016
SURFACE
TRANSPORTATION BOARD

FILED
August 15, 2016
SURFACE
TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



FINANCE DOCKET NO. 36058

JERSEY MARINE RAIL, LLC

EXEMPTION PURSUANT TO 49 CFR 1150.31

a. Jersey Marine Rail, LLC (hereinafter "JMR") a non-carrier seeks to restore rail service to a port facility located near where the Rahway River flows into the Arthur Kill in Linden, N.J. To accomplish that, JMR, has filed a notice of exemption pursuant to 49 CFR Section 1150.31 to commence the operation of common carrier rail service on restored and rehabilitated tracks on land and existing tracks leased for 20 years by Linden Marine, LLC ("LM") with extensions adding up to a total of 50 years, which lease has been assigned to JMR, all within the City of Linden, NJ. Specifically, the tracks on the western side of the property will run along a segment of rail comprising the Sound Shore Line and will involve rehabilitation and restoration of existing tracks, all within the former railroad right of way. The tracks reaching into the middle of the property are former private rail spurs which will be rehabilitated. An interchange with Conrail will be on the property, or as established by Conrail. JMR anticipates commencement of rail operations only on the LM lands. Customers on the LM property were formerly served by Conrail. Conrail will continue to have overhead rights on the line in the event it chooses to restore service to shippers south of the Rahway River. There are no mileposts on the track involved. JMR will offer common carrier transportation to the public.

The exemption seeks authority to operate a railroad consisting of all or a part of the existing or restored trackage, described herein, by JMR as a common carrier. This transaction does not contemplate the construction of track or facilities except within a former railroad right of way which is now part of the assigned LM leasehold and rehabilitation of existing private railroad spurs on the assigned LM leasehold. JMR does not seek authority to operate beyond the limits of its leasehold

b. JMR is represented by:

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c. JMR will provide common carrier rail services, including transloading services, to the public. JMR will be obtaining all required Federal, State and local permits, licenses and approvals to develop any facilities which require them.

d. The name of the rail service operator will be Jersey Marine Rail, LLC, which has obtained a lease of all the lands and existing tracks in issue..

e. JMR will be a common carrier.

1. The address of common carrier which last provided service on the Sound Shore Line and the LM property is: Conrail, 1717 Arch Street, Philadelphia, PA 19103.

2. The track to be operated will be that existing on the leasehold including:

(a) tracks extending from a point on the property line, which point is located 700' south of Conrail's existing switch into the Kinder Morgan Yard, to the Rahway River;

(b) 4 tracks within the former Conrail right of way on the Sound Shore Line segment of 815' each, all of which are within the LM leasehold;

(c) a spur ending in 2 tracks which, with their single lead, are 800' each; and

(d) a spur totaling approximately about 900'.

Rehabilitation will commence upon approval, operation will commence as track becomes serviceable.

3. The total miles of the main line described will be approximately one mile, There are no mileposts on this line.

f. A map of the property:



g. Applicant certifies that its projected revenues will not exceed those which would qualify it as a class III carrier.

h. Petitioner seeks to create a class III carrier to restore local rail switching services on existing and restored common carrier tracks and private railroad spur tracks none of which are

now in service. As this transaction will not displace any railroad employees, labor protection is not required pursuant to 49 U.S.C. Section 11326(c). As all tracks and lands in issue are or were previously devoted to rail service and are on lands leased to JMR , and as no highway or rail traffic volumes generated will exceed the maximums set by regulation, petitioner believes that no environmental review is required . This petition is similar to Swanson Rail Transfer, LP—Declaratory Order—Swanson No. FD 35424 (June 14, 2011) which declared that a carrier seeking to reconstruct rail facilities on out-of-service rail properties formerly owned by a railroad did not need an environmental review. Here a non-carrier wishes to become a Class III carrier and then to improve existing tracks only three of which are former private sidings on its land and the rest are within the existing rail right of way, constituting a line of railway.. See Tex.& Pac. Ry. v. Gulf, Colo. & Santa Fe Ry., 270 U.S. 266, 278 (1925); BNSF Ry.—Petition for Declaratory Order, FD 35164 et al., slip op. at 8 (STB served May 20, 2009); Union Pac. R.R.—Petition for Declaratory Order—Rehabilitation of Mo.-Kan.-Tex. R.R. Between Jude & Ogden Junction, Tex., 3 S.T.B. 646 (1998); Denver & Rio Grande W. R.R.—Joint Constr. Project—Relocation Over Burlington N. R.R., 4 I.C.C.2d 95, 97 (1987). This proposal, as did Swanson's, supra, constitutes a combination of (1) an improvement of existing facilities; and (2) the rehabilitation of ancillary spur track within the meaning of § 10906. Therefore, petitioner believes these 2 limitations mean that no prior approval is required from the Board for the proposed actions and within the right of way on its leasehold once this exemption becomes effective.

i. This Exemption seeks creation of a Class III carrier to rehabilitate and operate rail common carrier service within the boundaries of a former rail line as well as on an unused

segment of line reaching out of service tracks on industrial land on JMR's leasehold adjacent to the Rahway River near the Arthur Kill, all within Linden, New Jersey. As the transaction does not result in significant changes in carrier operations on the line (i.e., changes nor exceed the thresholds established in section 1105.7(e) (4) or (5)), and is essentially the restoration of rail service on lands formerly used for such purposes by Conrail and the predecessor to LM, petitioner believes that the transaction, qualifies for a 'categorical exclusion' and classification under 49 C.F.R. Section 1105.6(c)(2) and (4), and therefore, petitioner believes that neither an Environmental Report nor a Historic Report should be required.

Dated: New York, NY
August __, 2016

Respectfully Submitted,

John F. McHugh
233 Broadway
Suite 2320
New York, NY 10279
212-483-0875

VERIFICATION

John F. McHugh declares pursuant to 28 U.S.C. 1746 that he is the attorney for Jersey Marine Rail, LLC and is authorized to make this declaration, and knows the representations hereinabove made in this Notice of Exemption are correct from his own knowledge and/or that he believes the information provided to be correct based upon the information known. The undersigned declares under penalty of perjury that the forgoing is true.

Dated, New York, NY
August ____, 2016



/s/ John F. McHugh

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. _____

JERSEY MARINE RAIL, LLC

NOTICE OF EXEMPTION

CAPTION SUMMARY

Jersey Marine Rail, LLC (hereinafter "JMR"), a non-carrier, has filed a notice of exemption pursuant to 49 CFR §11506.31. . to commence the operation as a rail common carrier on approximately one mile of rehabilitated tracks within a former Conrail right of way and on former private spurs all on land leased to JMR at the junction of the Rahway River and the Author Kill, all within the City of Linden, NJ. JMR anticipates commencement of rail operations confined to its leasehold as soon as sufficient track can be rehabilitated. The tracks were formerly operated by Conrail. Conrail will continue to have overhead rights should it wish to restore service to customers south of the Rahway River. There are no mileposts on the track in issue. JMR will offer common carrier transportation to the public. No railroad employees will be adversely affected by the Exemption.

Comments must be filed with the Board and served on:

John F. McHugh, Esq.
233 Broadway, Suite 2320
New York, N.Y. 10270
212-483-0875

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 this
transaction.

Dated, New York, N.Y.
August 12, 2016

_____/s/_____
John F. McHugh, Esq.
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