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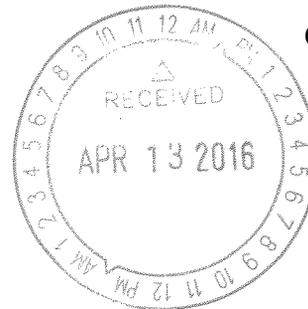
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April 12, 2016

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VIA FEDEX

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



ENTERED
Office of Proceedings
April 13, 2016
Part of
Public Record

Re: STB Docket No. FD 36022
Finger Lakes Railway Corp - Acquisition and Operation Exemption -
Seneca County Industrial Development Agency

STB Docket No. FD 36023
Seneca County Industrial Development Agency - Lease Acquisition Exemption -
Finger Lakes Railway Corp.

STB Docket No. FD 36024
Finger lakes Railway Corp. - Sublease and Operation Exemption -
Seneca County Industrial Development Agency

Dear Ms. Brown:

Enclosed for filing in the above-referenced dockets are the original and 10 copies of a joint notice of exemption filed in FD 36022 by Finger Lakes Railway Corp. ("FGLK"), in FD 36023 by Seneca County Industrial Development Agency (the "Agency"), and in FD 36023 by FGLK. Also enclosed are three checks in the amount of \$1900 each for the applicable filing fee in each of the dockets.

FILED
April 13, 2016
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
April 13, 2016
SURFACE
TRANSPORTATION BOARD

Cynthia T. Brown
April 12, 2016
Page 2

In FD 36023, the Agency is also filing the original and 10 copies of 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 Agency 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).

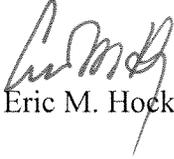
In FD 36022 and FD 36024, FGLK is also filing the original and 10 copies a Request for Waiver of the advanced notice to labor requirements.

I have provided an extra copy of this letter which I would ask you date-stamp to indicate receipt of all of the above, and return to me in the self-addressed, stamped envelope provided.

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

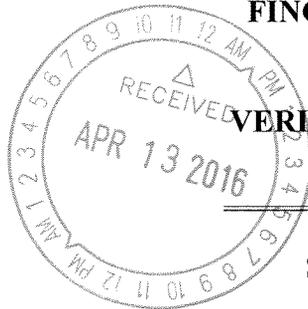
STB DOCKET NO. FD 36022

FINGER LAKES RAILWAY CORP.
– ACQUISITION AND OPERATION EXEMPTION –
SENECA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

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

STB DOCKET NO. FD 36023

SENECA COUNTY INDUSTRIAL DEVELOPMENT AGENCY
– LEASE ACQUISITION EXEMPTION –
FINGER LAKES RAILWAY CORP.



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

STB DOCKET NO. FD 36024

FINGER LAKES RAILWAY CORP.
– SUBLEASE AND OPERATION EXEMPTION –
SENECA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

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

ERIC M. HOCKY
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(215) 640-8500
ehocky@clarkhill.com

Dated: April 12, 2016

Attorneys for Applicants

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. FD 36022

FINGER LAKES RAILWAY CORP.
– ACQUISITION AND OPERATION EXEMPTION –
SENECA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

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

STB DOCKET NO. FD 36023

SENECA COUNTY INDUSTRIAL DEVELOPMENT AGENCY
– LEASE ACQUISITION EXEMPTION –
FINGER LAKES RAILWAY CORP.

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

STB DOCKET NO. FD 36024

FINGER LAKES RAILWAY CORP.
– SUBLEASE AND OPERATION EXEMPTION –
SENECA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

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

Seneca County Industrial Development Agency, a non-carrier public agency (“Agency”), and Finger Lakes Railway Corp. (“FGLK”), an existing Class III carrier, 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 Agency 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 Agency for financial purposes only; and

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

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

Because the Agency is 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 Agency is simultaneously filing in STB Docket No. FD 36023, a Motion to Dismiss its Notice of Exemption on the grounds that it will not become a carrier 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.

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

¹ Agency and FLGK are filing a joint notice because of the interrelationship of the various transactions. However, they understand that the Board will treat the notice in each docket as a separate proceeding.

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 in Seneca County to the Agency, and leased back the Rail Lines from the Agency. The transactions with the Agency 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 Rail Lines; the Agency, although the nominal owner of the railroad property, never held itself out to provide railroad service over the Railroad Lines. At the time, FGLK and the Agency believed that since the Agency was 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 Agency 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 to the Agency the property and Rail Lines located in Seneca County, and the 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 Agency will not hold

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 Cayuga County, Onondaga County, Ontario County and Schuyler County. The rail lines located in those Counties are the subject of similarly structured transactions and exemption notices filed by FGLK and the industrial development agencies in those Counties in STB Docket Nos. FD 36011, 36012 and 36021.

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.

itself out to provide any rail service, and is not leasing or acquiring any of the common carrier obligations with respect to the Rail Lines. Accordingly, the Agency does not believe that it should be considered as a carrier as a result of the transactions, and it is separately filing a motion to dismiss its 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 Agency Motion to Dismiss filed in STB Docket No. 36023, and the exemptions become effective.

Notice

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

- (a) The full name and address of each Applicant is 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 Agency and FLGK have entered in various agreements including a deed, lease, and amended and restated (sub)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 Rail Lines is FGLK, and it will continue as the operator after the transactions are closed.
- (e) Brief Summary of the Proposed Transaction:

Under the proposed transactions, (i) title to the Rail Lines will be transferred by the Agency back to FGLK, (ii) FGLK will lease the Rail Lines to the Agency to allow them to continue to qualify for the PILOT program, and (iii) the Agency 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) Auburn Secondary between MP 37.56 at the Seneca / Cayuga County line and MP 50.50 at or near Geneva, a distance of 12.94 miles; and
 - (B) Geneva Running Track between MP 342.80 at the Ontario / Seneca County line and MP 329.30 at or near Kendaia, a distance of 13.50 miles.
- (4) The total miles of Rail Line subject to the transactions are approximately 26.44 miles.
- (f) Attached as Exhibit A to this Notice of Exemption is a map of the Rail Lines.

(g) The Agency is not an operating railroad carrier, 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 Agency is a non-carrier, and pursuant to 49 U.S.C. §10901(c), approval of the transactions as they relate to the Agency 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 C are separate caption summaries for each of the three dockets as required by 49 C.F.R. §1150.34 and 49 C.F.R. §1150.44.

Conclusion

Accordingly, the Agency 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

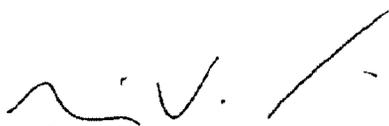
Dated: April 12, 2016

Attorneys for Applicants

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 April 11, 2016

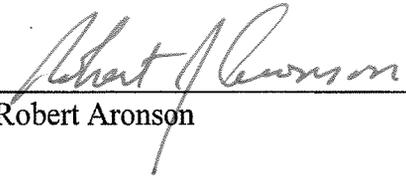


Michael V. Smith

VERIFICATION

I, Robert Aronson, Executive Director of Seneca 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.

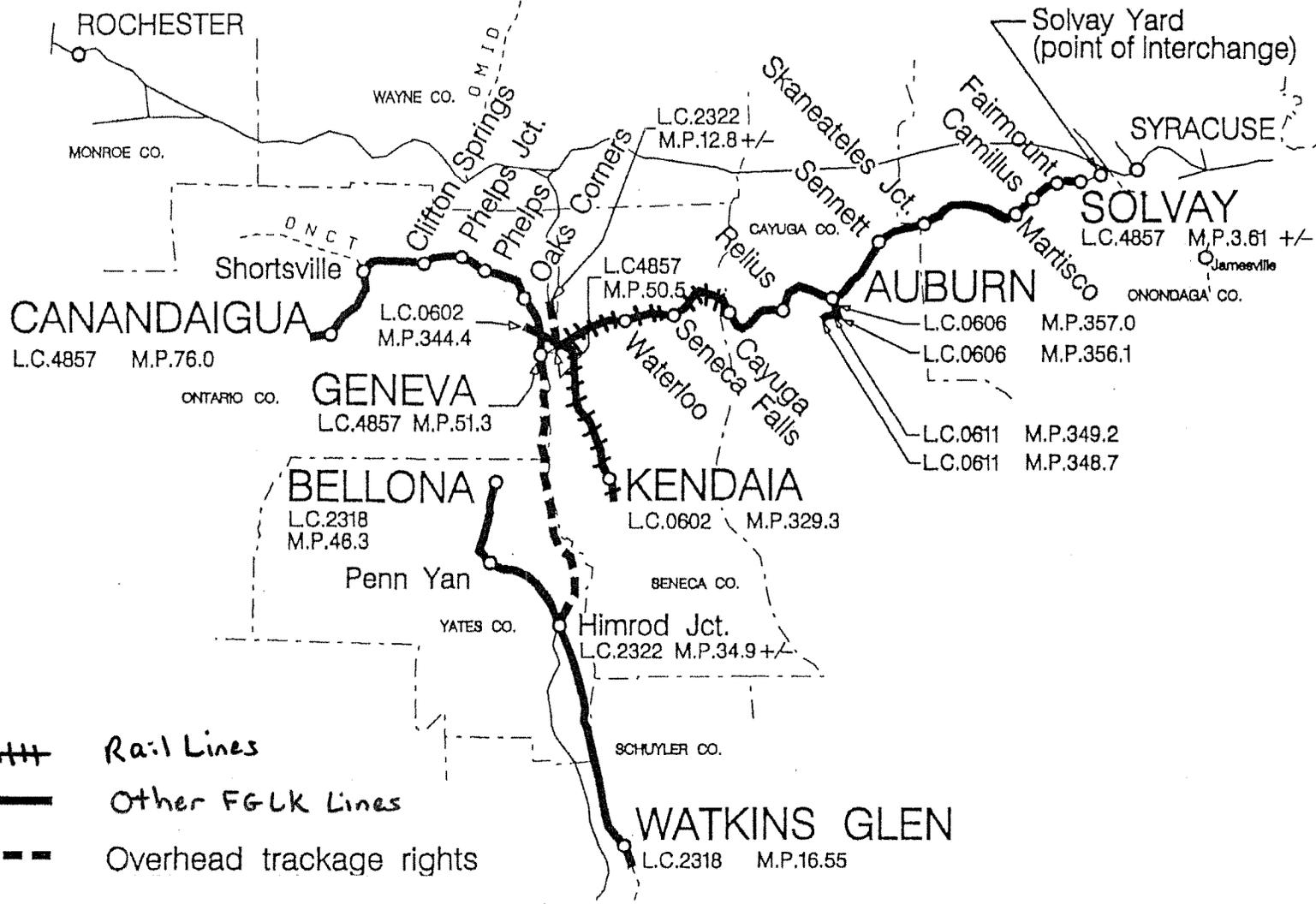
Executed on March 24, 2016



Robert Aronson

EXHIBIT A

MAP



- +++++ Rail Lines
- Other FGLK Lines
- Overhead trackage rights
- Other CRC lines
- Other RR lines
- County line

GENEVA CLUSTER

NEW YORK

" 8/31/04
 " 7/26/04
 " 8/23/04
 REVISED 5/0/04
 geneva.dgn 14/04

EXHIBIT B

NAME AND ADDRESS OF APPLICANTS

Seneca County Industrial Development Agency
Attn: Robert Aronson
One DiPronio Drive
Waterloo, NY 13165

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

EXHIBIT C
CAPTION SUMMARY

STB DOCKET NO. FD 36022

**FINGER LAKES RAILWAY CORP.
– ACQUISITION AND OPERATION EXEMPTION –
SENECA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

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

Finger Lakes Railway Corp. (“FGLK”), a Class III rail carrier, has filed a Notice of Exemption under 49 USC § 10902 and 49 CFR § 1150.41 to acquire from Seneca County Industrial Development Agency (the “Agency”), and operate, approximately 26.44 miles of rail lines in Seneca County, New York State, described as follows: (A) Auburn Secondary between MP 37.56 at the Seneca / Cayuga County line and MP 50.50 at or near Geneva; and (B) Geneva Running Track between MP 342.80 at the Ontario / Seneca County line and MP 329.30 at or near Kendaia. FGLK and the Agency state that the Agency currently owns the rail lines, but FGLK is responsible for all railroad operations over the rail lines.

The transaction is related to the transactions that are the subject of the proceedings in STB Docket Nos. FD 36023 and 36024.

FGLK has certified that the proposed transaction does not include an interchange commitment.

FGLK states that its projected revenues as a result of the transaction would exceed \$5 million. Under 49 C.F.R. §1150.42(e), FGLK would usually be required to provide notice to labor, and certify to the Board that it has done so, at least 60 days in advance. However, FGLK has separately filed a request for waiver of the advanced notice to labor requirements.

The Notice is filed under 49 C.F.R. §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.

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

**SENECA COUNTY INDUSTRIAL DEVELOPMENT AGENCY
– LEASE ACQUISITION EXEMPTION –
FINGER LAKES RAILWAY CORP.**

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

Seneca County Industrial Development Agency (the “Agency”), a non-carrier, has filed a Notice of Exemption under 49 USC § 10901 and 49 CFR § 1150.31 to lease from Finger Lakes Railway Corp. (“FGLK”), a Class III rail carrier, approximately 26.44 miles of rail lines in Seneca County, New York State, described as follows: (A) Auburn Secondary between MP 37.56 at the Seneca / Cayuga County line and MP 50.50 at or near Geneva; and (B) Geneva Running Track between MP 342.80 at the Ontario / Seneca County line and MP 329.30 at or near Kendaia.

The transaction is related to the transactions that are the subject of the proceedings in STB Docket Nos. FD 36021 and 36023.

The Agency certifies that it will not operate over the rail lines and that the transaction will not result in the creation of a Class I or Class II carrier. The Agency further states that FGLK is a Class III carrier.

The Agency has certified that the proposed transaction does not include an interchange commitment.

The Agency states that it will not hold itself out to provide any rail service, and that it is not acquiring any of the common carrier obligations with respect to the rail lines. The Agency maintains that FGLK will continue to be the sole provider of railroad services and will have the rights necessary to operate those services. The Agency states that it will be precluded from

materially interfering with FGLK's common carrier obligations. Accordingly, the Agency has separately filed a motion to dismiss its Notice of Exemption on the grounds that the transaction does not require authorization from the Board.

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

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

STB DOCKET NO. FD 36024

**FINGER LAKES RAILWAY CORP.
– SUBLEASE AND OPERATION EXEMPTION –
SENECA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

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

Finger Lakes Railway Corp. (“FGLK”), a Class III rail carrier, has filed a Notice of Exemption under 49 USC § 10902 and 49 CFR § 1150.41 to sublease from Seneca County Industrial Development Agency (the “Agency”), and operate, approximately 26.44 miles of rail lines in Seneca County, New York State, described as follows: (A) Auburn Secondary between MP 37.56 at the Seneca / Cayuga County line and MP 50.50 at or near Geneva; and (B) Geneva Running Track between MP 342.80 at the Ontario / Seneca County line and MP 329.30 at or near Kendaia. FGLK and the Agency state that FGLK currently leases the rail lines from the Agency, and that FGLK is responsible for all railroad operations over the rail lines.

The transaction is related to the transactions that are the subject of the proceedings in STB Docket Nos. FD 36022 and 36023.

FGLK has certified that the proposed transaction does not include an interchange commitment.

FGLK states that its projected revenues as a result of the transaction would exceed \$5 million. Under 49 C.F.R. §1150.42(e), FGLK would usually be required to provide notice to labor, and certify to the Board that it has done so, at least 60 days in advance. However, FGLK has separately filed a request for waiver of the advanced notice to labor requirements.

The Notice is filed under 49 C.F.R. §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.

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