

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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FINANCE DOCKET NO. \_\_\_\_36047\_\_\_\_

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**JERSEY MARINE RAIL, LLC**

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**NOTICE OF EXEMPTION**

**CAPTION SUMMARY**

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240955

ENTERED  
Office of Proceedings  
June 22, 2016  
Part of  
Public Record

Jersey Marine Rail, LLC (hereinafter "JMR"), a non-carrier, has filed a notice of exemption pursuant to 49 CFR §1150. to commence the operation as a rail common carrier on restored and rehabilitated tracks over (i) a portion of a right-of-way on land owned by Conrail (known as "The Third Industrial Lead Track"), (ii) a right-of-way on lands owned by Conrail (known as "The Sound Shore Line") and (iii) a right-of-way on land leased to JMR at the junction of the Rahway River and the Author Kill, all within the City of Linden, NJ. A portion of the Third Industrial Lead Track has been leased by Conrail to Kinder Morgan, Inc. ("KMI") subject to a right of Conrail or any assignee of Conrail to continue to provide rail service to other potential customers. JMR intends to re-construct two additional tracks adjacent to the Third Industrial Lead Track within Conrail's former Tremley Yard to facilitate passage through the yard and will rehabilitate

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track along a portion of the Sound Shore Line between that yard and JMR's leasehold. JMR anticipates commencement of rail operations on JMR's leasehold at the end of the tracks here in issue as soon as necessary rehabilitation of track and construction of a by-pass track in Tremley Yard as well as terminal facilities on JMR's leasehold can be completed. The LM property was formerly served by Conrail. Conrail will continue to have overhead rights on the entire line to switch Kinder Morgan's cars and in the event it chooses to restore service to shippers 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.  
June 21, 2016

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

**BEFORE THE  
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**EXEMPTION**

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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 over (i) a portion of a right-of-way on land owned by Conrail (known as "The Third Industrial Lead Track"), (ii) a right-of-way on lands owned by Conrail (known as "The Sound Shore Line Segment") and (iii) a right-of-way 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. A portion of the Third Industrial Lead Track has been leased by Conrail to Kinder Morgan, Inc. ("KMI") subject to a right of Conrail or any assignee of Conrail to continue to provide rail service to other potential customers. JMR intends to re-construct an additional track adjacent to the Third Industrial Lead Track within Conrail's former Tremley Yard as well as along a portion of the Sound Shore Line between that yard and the LM property (the "Third Industrial Lead Track By-Pass") to increase capacity to accommodate projected additional traffic. The conditions regarding title to lands comprising a

portion of the Tremley Yard are unclear and JMR is currently seeking clarification via a title search. If title has changed and an adequate right of way has not been reserved, JMR will seek to acquire sufficient rights on the land within that yard to reinstall the Third Industrial Lead Track By-Pass. JMR anticipates commencement of rail operations on the LM lands at the end of the tracks here in issue. Customers on the LM property were formerly served by Conrail. Conrail will continue to have overhead rights on the entire line in the event it chooses to restore service to shippers south of the Rahway River. There are no mileposts on the track comprising these rights-of-ways. JMR will offer common carrier transportation to the public.

JMR is engaged in negotiations with Conrail with regard to assuming operating responsibility for the rights of way and operations in issue. The issue is the location of an interchange between Conrail and JMR on the properties described above. KMI is currently a private operator on shipper owned track adjacent to the Third Industrial Lead Track in issue here. KMI's operation is confined to KMI's own track and to the portion of the Third Industrial Lead Track leased to KMI, within the former yard. The Tremley Yard tracks and a portion of the Sound Shore Line Segment are currently used to switch KMI's traffic. Whether or not the contemplated transaction is completed, KMI's operation will continue.

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. While the scope of JMR's operation is conditioned on a final agreement with Conrail, JMR's operation from an interchange with Conrail onto the LM leasehold will proceed in any case. This petition is filed now rather than when the scope of the operation has been finally determined, to facilitate the more rapid development of the capacity needed to accommodate expected near term increases in demand for rail services in that area of Linden, New Jersey. This transaction does not contemplate the construction

of track or facilities except within a former yard, within existing rail rights of way and on an existing railroad right of way on the assigned LM 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 anticipates obtaining rights-of-ways (i) from Conrail on lands owned by Conrail, (ii) from either (a) Conrail on rights-of-way running to the benefit of Conrail and on lands transferred by Conrail or its predecessors to others, or (b) from assignees of Conrail, or its predecessor, the identity of whom will be revealed by a title search, and (iii) a Conrail reserved right of way on land and existing tracks owned by LM which JMR has obtained under an assignment of the LM lease. Although all titles have not yet been located, in all titles found in the Tremley Point area of Linden, NJ to date, Conrail reserved an easement to restore rail services on its conveyed lands and rights of way. But all titles have not yet been located.

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 main track to be operated will be all or part of a line extending from (i) The Third Industrial Lead Track at a point approximately 1,120' east of its switch off of Conrail's Chemical Coast Line, (ii) thence along two (to be constructed) Third Industrial Lead Track By Pass tracks to be 3,400' and 3,200', respectively for a total of 6,600' within the boundaries of the former Tremley Yard, (iii) thence approximately 3,500' along Conrail's Sound Shore Line Segment, and (iv) thence onto three (two to be rehabilitated and one to be constructed) JMR Yard Tracks which will be 1,732', 1,708' and 1,503', within the railroad right of way on the JMR leasehold respectively for a total of 4,943'. If JMR modifies its trackage based on changing market or operating considerations, it will inform the Board with appropriate filings.

The total of all tracks are 15,043 or about 2.84 miles. No tracks will extend beyond existing land presently or formerly devoted to common carrier rail service including transloading.

3. The total miles of the main line described will be approximately 1.65 miles, but based upon the final agreement with Conrail the operation may be further confined. 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 some of which are not now in service but which do not appear to have been 'abandoned'. 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 owned and/or controlled by railroads, and no highway or rail traffic volumes generated will exceed the maximums set by regulation, petitioner believes that no environmental review is required as a significant portion of the line is currently used to assemble KMI trains. 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 or relocate existing tracks constituting a line of railway without extending the territory the railroad now reaches as a part of its current owner, Conrail. 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). Pursuant to 49 U.S.C. § 10906, no Board authority is required for a carrier to construct ancillary “spur, industrial, team, switching, or side tracks.” This proposal, as did Swanson’s, supra, constitutes a

combination of (1) an improvement and relocation of existing facilities; and (2) the construction 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 in the Tremley Yard and within the right of way on its leasehold once this exemption becomes effective. Indeed, the construction of the by-pass tracks in the Yard contemplated is needed only to open or replace a main line track presently devoted to car storage and switching.

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 yard 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 a connecting track between Conrail and JMR on lands owned by these entities and for the common use of rail terminals and trackage rights; 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  
June 21, 2016

Respectfully Submitted,

/s/ \_\_\_\_\_  
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