

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

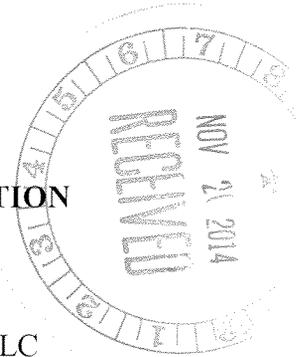
**ENTERED  
Office of Proceedings  
November 20, 2014  
Part of  
Public Record**

R Bult Rail Lines, LLC

)  
)

Finance Docket Number: FD 35878

**VERIFIED NOTICES OF EXEMPTION  
UNDER 49 C.F.R. § 1150.31**



By: David C. Dillon  
Dillon & Nash, Ltd.  
111 West Washington Street  
Suite 719  
Chicago, Illinois 60602  
(312) 782-9025

R Bult Rail Lines, LLC

*Attorney for Applicant  
in Finance Docket No. 35878*

*Applicant in Finance Docket No. FD 35878*

DATE FILED: November 19, 2014

**FEE RECEIVED  
November 20, 2014  
SURFACE  
TRANSPORTATION BOARD**

**FILED  
November 20, 2014  
SURFACE  
TRANSPORTATION BOARD**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

R Bult Rail Lines, LLC

)  
)  
)

Finance Docket Number: FD 35878

**VERIFIED NOTICE OF EXEMPTION  
UNDER 49 C.F.R. § 1150.31**

Pursuant to 49 C.F.R. § 1150.31, *et. seq.* and 49 U.S.C. § 10502(a), R Bult Rail Lines, LLC (RBRL), a noncarrier, hereby provides verified notice of exemption from 49 U.S.C. § 10901 for RBRL's acquisition by lease from Marigold Land Company, LLC. (Marigold), and operation of approximately 0.46 mile of railroad right-of-way and trackage and transloading facilities currently owned by Marigold, LLC, in Chicago, Illinois ("Chicago Transload Facility trackage"). The Chicago Transload Facility trackage is more specifically described and depicted in Appendix 1-A (description) and Appendix 1-B (map) attached to this notice.

**THE CHICAGO TERMINAL RAILROAD TRACKAGE IS A LINE OF RAILROAD THAT QUALIFIES FOR THE CLASS EXEMPTION FROM 49 U.S.C. § 10901, RATHER THAN TRACK EXCEPTED FROM BOARD ACQUISITION AND OPERATION AUTHORITY UNDER § 10906**

Marigold Land Company, LLC owns the Chicago Transload Facility trackage. The trackage is used in conjunction with interchanging to and from Canadian National Railroad, carloads of inbound sugars and corn sweetener for transloading into trucks for final delivery, and it also provides service to industry located on adjoining parcel. The latter service is performed by using a track which runs through the Chicago Transload Facility onto the adjoining industry's trackage.

There is currently 5,280 linear feet of track located on the Chicago Transload Facility.

In these circumstances, the Chicago Transload Facility trackage is properly considered to be a line of railroad under 49 U.S.C. § 10901 pursuant to the Board's tenant-use test, rather than spur, switching or side tracks excepted from Board authority over their acquisition and operation by virtue of 49 U.S.C. § 10906. The tenant-use test is described in the Board's decision denying reconsideration in *Effingham Railroad Company - Petition for Declaratory Order - Construction at Effingham, IL*, STB Docket No. 41986 and embraced proceedings, 1998 STB LEXIS 253, decision served September 18, 1998; *aff'd sub nom. United Transp. Union v. Surface Transportation Board.*, 183 F.3d 606 (7<sup>th</sup> Cir. 1999).

In that case, as here pertinent, Agracel Corporation transloaded beer from rail to truck at a warehouse that it operated in an industrial park at Effingham, IL. Agracel owned approximately 206 feet of right-of-way and track that extended between its warehouse and trackage owned and operated by Conrail. Previously, Conrail had operated over the Agracel trackage to provide service to Agracel. It was proposed that Effingham Railroad Company (ERRC), a noncarrier, substitute for Conrail as provider of the rail service over the Agracel trackage. ERRC filed a notice of exemption under 49 C.F.R. § 1150.31 for its operation over that trackage. The United Transportation Union (UTU) contended that the Board lacked authority over the proposed operation because Agracel trackage is spur, switching or side track excepted from Board operation authority under 49 U.S.C. § 10906.

In finding that the Agracel trackage was a line of railroad under 49 U.S.C. § 10901, the Board said (1998 STB LEXIS 253, at 8-9 (emphasis in original)):

...(I)n those cases where a tenant railroad's intended use of a track segment is different from the use made by the railroad owning the track, we have determined that the tenant's use, rather than the character of the trackage itself, is controlling with regard to its own operations, subject to consideration of the purpose and effect of the construction under *Texas & Pacific* (citations omitted).

In the initial notice, even under its new approach, ERRC became the operator of a line of track connecting Conrail to the site of the industrial park. Conrail clearly had operated this short track segment as an exempt siding or spur. However, because it was ERRC's initial railroad operation, this track segment became ERRC's entire line of railroad and was not, as to ERRC, a siding or spur. This small piece of trackage initiated ERRC's service from a connection or interchange point with Conrail to a shipper's facility within the industrial park. Thus ERRC's becoming the operator was the proper subject of the initial notice of exemption and was not statutorily exempt under section 10906.

It is apparent from the Board's decision in that case that the tenant-use test also applies when a new rail carrier is using trackage pursuant to an operating agreement rather than a lease, and when the prior use of the track was by a third-party carrier rather than by the shipper-owner of the trackage. In upholding the Board's decision in that case, the reviewing court held that it was reasonable for the Board to classify the trackage by virtue of the tenant's use. *United Transp. Union vs. Surface Transportation Bd.*, *supra*. 193 F.3d at 614. *Accord: Chicago Rail Link LLC - Lease & Oper. - Union Pacific R.R. Co.*, 2 S.T.B. 534 (1997), *aff'd sub nom. United Transp. Union - Illinois v. Surface Transp.*, 169 F.3d 474 (7<sup>th</sup> Cir. 1999).

Inasmuch as the subject transaction will be RBRL's initial railroad acquisition, and the Chicago Transload Facility trackage will constitute the entire line of railroad of RBRL, it follows that the Chicago Transload Facility trackage is a line of railroad under 49 U.S.C. § 10901, rather than spur, switching or side tracks excepted from Board acquisition and operation authority by virtue of 49 U.S.C. § 10906.

**INFORMATION REQUIRED BY 49 C.F.R. § 1150.33**

(a) *The full name and address of the applicant;*

The full name and address of the applicant in Finance Docket Number 35878 is R Bult Rail Lines, LLC, 7020 Cline Avenue, Hammond, Indiana, 46323.

(b) *The name, address, and telephone number of the representative of the applicant who should receive correspondence;*

RBRL representative is David C. Dillon, Dillon & Nash, Ltd., Attorneys at Law, 111 West Washington Street, Suite 1023, Chicago, Illinois, 60602, 312-782-9025.

(c) *A statement that an agreement has been reached or details when an agreement will be reached;*

An agreement between Marigold Land Company, LLC and R Bult Rail Lines, LLC concerning the Chicago Transload Facility trackage will be reached within thirty (30) days, and an agreement in principle has been reached.

(d) *The operator of the property;*

RBRL will be the operator of the property.

(e) *A brief summary of the proposed transaction, including:*

(1) *The name and address of the railroad transferring the subject property,*

The above entity in Finance Docket Number 35878 is , Marigold Land Company, LLC, a non-railroad corporation, 7202 Cline Avenue, Hammond, Indiana, 46323.

(2) *The proposed time schedule for consummation of the transaction,*

Operations are proposed to be consummated on or about January 1, 2015.

(3) *The mile-posts of the subject property, including any branch lines, and*

The Chicago Transload Facility trackage is not described by milepost numbers. That trackage is described and depicted in Appendix 1-A and 1-B attached to this Notice.

(4) *The total route miles being acquired;*

A total of approximately 5,280 feet/ 0.46 mile of trackage is to be operated under an operating agreement.

(f) *A map that clearly indicates the area to be served, including origins, termini, stations, cities, counties, and States:*

The required map is attached to this Notice as Appendix 1-B.

(g) *A certificate that applicant's projected revenues do not exceed those that would qualify it as a Class III carrier.*

The required certificate is attached to this Notice as Appendix 2.

#### **CAPTION SUMMARY**

A caption summary required by 49 C.F.R. § 1150.34 for Finance Docket Number FD35878 is attached to this Notice as Appendix 3.

#### **ENVIRONMENTAL AND HISTORIC REPORT**

The proposed acquisition and operation do not require environmental and historic reporting. See 49 C.F.R. § 1105.6(c)(2)(i) and 49 C.F.R. § 1105.8(b)(1).

#### **LABOR PROTECTION**

Pursuant to 49 U.S.C. § 10901(c), labor protection requirements do not apply to this transaction.

**VERIFICATION**

The verification is attached to this Notice as Appendix 4.

**CONCLUSION AND REQUESTED RELIEF**

WHEREFORE, within 30 days of the filing of this Notice, the Director of the Board's Office of Proceedings should publish notices in the Federal Register of the filing of notices of exemption in Finance Docket No. 35878. See 49 C.F.R. § 1150.32(b).

Respectfully submitted,

By: David C. Dillon  
Dillon & Nash, Ltd.  
111 West Washington Street  
Suite 1023  
Chicago, Illinois 60602  
(312) 782-9025

R Bult Rail Lines, LLC

*Attorney for Applicant  
in Finance Docket No. FD 35878*

*Applicant in Finance Docket No. FD 35878*

DATE FILED: November 19, 2014

Finance Docket Number: FD 35878

Appendix 1-A

LENGTH OF R BULT RAIL LINES, LLC  
CHICAGO TRANSLOAD FACILITY

Total Track: 2,450 linear feet = 0.46 mile of track



**CERTIFICATION UNDER 49 C.F.R. § 1150.33(g)**

R Bult Rail Lines, LLC hereby certifies under 49 C.F.R. § 1150.33(g), that the projected revenues from the acquisition and operation proposed in this matter do not exceed those that would qualify it as a Class III rail carrier.



---

David C. Dillon  
*Authorized Representative of*  
*R Bult Rail Lines, LLC*

SUBSCRIBED AND SWORN TO before  
me this 12th of November, 2014.



Notary Public



**CAPTION SUMMARY**

SURFACE TRANSPORTATION BOARD

Notice of Exemption

FINANCE DOCKET NO. FD 35878

R BULT RAIL LINES, LLC  
- ACQUISITION EXEMPTION -  
RAIL LINE OF MARIGOLD LAND, LLC.  
AT CHICAGO TRANSLOAD FACILITY, CHICAGO, ILLINOIS

R Bult Rail Lines, LLC (RBRL), has filed a Notice of Exemption to acquire and operate from Marigold Land, LLC, a non-carrier, approximately 0.46 mile of right-of-way and trackage at Marigold Land, LLC's Chicago Transload Facility in Chicago, Illinois. Comments must be filed with the Board and be served on RBRL's representative, David C. Dillon, Dillon & Nash, Ltd., 111 W. Washington Street, Suite 1023, Chicago, IL, 60602, (312) 782-9025.

This 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.

By the Board

(Seal)

VERIFICATION

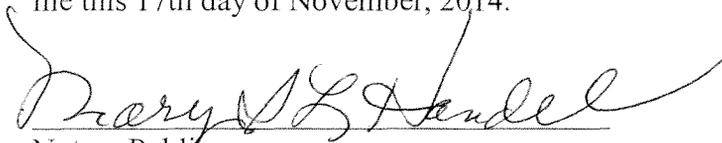
STATE OF ILLINOIS     )  
  )  
COUNTY OF COOK     )

David C. Dillon, being duly sworn, states that he is an attorney for R Bult Rail Lines, LLC; that he is familiar with the factual allegations made in the foregoing Notice of Exemption on behalf of RBRL; and that such allegations are true as stated.



\_\_\_\_\_  
David C. Dillon, Attorney for  
R Bult Rail Lines, LLC

SUBSCRIBED AND SWORN to before  
me this 17th day of November, 2014.

  
\_\_\_\_\_  
Notary Public