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[Contains Color Map]

BEFORE THE  
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35762



SOUTH CAROLINA DIVISION OF PUBLIC RAILWAYS, D/B/A PALMETTO RAILWAYS  
-- INTRA-CORPORATE FAMILY TRANSACTION EXEMPTION --  
THE PORT UTILITIES COMMISSION OF CHARLESTON, S.C.,  
PORT TERMINAL RAILROAD OF SOUTH CAROLINA AND  
EAST COOPER AND BERKELEY RAILROAD COMPANY

ENTERED  
Office of Proceedings

AUG 30 2013

Public Record

VERIFIED NOTICE OF EXEMPTION  
PURSUANT TO 49 C.F.R. § 1180.2(d)(3)

**RECEIVED**  
AUG 30 2013  
SURFACE  
TRANSPORTATION BOARD

Derek F. Dean  
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147 Wappoo Creek Drive  
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Charleston, SC 29412  
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**FILED**  
AUG 30 REC'D  
SURFACE  
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William C. Sippel  
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ATTORNEYS FOR SOUTH CAROLINA  
DIVISION OF PUBLIC RAILWAYS,  
D/B/A PALMETTO RAILWAYS

Dated: August 29, 2013

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BEFORE THE  
SURFACE TRANSPORTATION BOARD

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-- INTRA-CORPORATE FAMILY TRANSACTION EXEMPTION --  
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**VERIFIED NOTICE OF EXEMPTION  
PURSUANT TO 49 C.F.R. § 1180.2(d)(3)**

South Carolina Division of Public Railways, d/b/a Palmetto Railways ("SCPR") hereby files this verified notice of exemption under 49 C.F.R. § 1180.2(d)(3) for an intra-corporate family transaction in which SCPR's existing operations conducted under the regulatory auspices of The Port Utilities Commission of Charleston, S.C. ("PUCC"), Port Terminal Railroad of South Carolina ("PTR") and East Cooper and Berkeley Railroad Company ("ECB") will be consolidated into a single enterprise and operated under the trade name "Palmetto Railways." The proposed transaction will clarify ambiguities regarding the regulatory status of PUCC, PTR and ECB, and simplify administrative and marketing matters for SCPR without have any adverse effect on the rail services that SCPR provides as a public entity of the State of South Carolina.

In accordance with the requirements of 49 C.F.R. § 1180.4(g), SCPR, PUCC, PTR and ECB submit the following information:

**Description of the Proposed Transaction: 49 C.F.R. § 1180.6(a)(1)(i)**

SCPR is a division of the South Carolina Department of Commerce. It was created on July 1, 1993 to assume the functions of the South Carolina Public Railways

Commission (the "Railways Commission"). See S.C. Code §§ 13-1-1310, et seq. SCPR owns the rail trackage and other physical assets of PUCC, PTR and ECB, and employs the workers on those railroads. SCPR plainly concedes its own rail carrier status, and its predecessor agency obtained Interstate Commerce Commission ("ICC") operating authority in 1973. PUCC, PTR and ECB do not exist as separate, formal corporate or governmental entities, but have been variously considered as "unincorporated organizations" or "unincorporated public enterprises." Functionally they are the equivalent of divisions of SCPR. But PUCC, PTR and ECB have historically been treated as regulated entities, even after 1973, and each is arguably the certificated rail carrier for the rail lines associated with it.

PUCC was formed as an agency of the City of Charleston in the early 1920s to operate City-owned trackage as a common carrier.<sup>1</sup> See Application of Charleston Port Utilities Commission, 90 I.C.C. 743 (1924). On March 16, 1947, the City-owned trackage was transferred to the South Carolina State Ports Authority ("SCSPA"), and SCSPA continued to operate the trackage under the auspices of PUCC.<sup>2</sup>

In 1956, PTR obtained authority in its own name to operate trackage owned by SCSPA in North Charleston. Port Terminal Railroad of South Carolina Operation, 295 I.C.C. 819 (not printed in full, August 6, 1956). PTR was described as an "unincorporated organization" created by SCSPA to "operate as a switching railroad . . ." Id. at 2.

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<sup>1</sup> PUCC was created pursuant to what is now S.C. Code § 54-5-10, et seq., which authorized cities with more than 50,000 residents to acquire port and terminal facilities and established port utilities commissions in such cities to operate the properties on behalf of the cities. These statutory provisions were no longer applicable to PUCC once the City ceased to own the PUCC trackage in 1947.

<sup>2</sup> SCPR's files include partial correspondence from 1950 between SCSPA and the ICC's Bureau of Finance regarding PUCC's status and the 1947 transaction. It does not appear that regulatory authority was sought from the ICC in connection with the 1947 transaction.

In 1973, the Railways Commission obtained ICC authority to acquire the "tracks, yards, equipment, trackage rights, franchise, licenses, certificates, leases, agreements, and labor contracts" of PUC and PTR. South Carolina Public Railways Commission -- Acquisition -- The Port Utilities Commission of Charleston, South Carolina and the Port Terminal Railroad of South Carolina, Finance Docket No. 27254 (ICC served March 15, 1973). PUC and PTR were described as "subsidiaries" of SCSPA. Id. at 1. While the transaction seemed to contemplate that the Railways Commission would itself become the rail carrier on the involved rail lines, the Railways Commission's application also said that it was seeking authority "to operate, maintain and control [PUC and PTR] as Railroad Carriers governed by the Rules and Regulations of The Interstate Commerce Commission," and asserted that "No merger or consolidation is proposed. It is intended to continue to operate each switching railroad separately under the same names as presently operated." Finance Docket No. 27254, Application filed November 28, 1972, at 1, 2, 10. The Railways Commission's acquisition of PUC and PTR was consummated on August 1, 1973.

In 1977, ECB obtained authority in its own name to construct and operate an approximately 15-mile rail line from near Cordesville, South Carolina to near Charity Church, South Carolina, in an area north of Charleston. The East Cooper and Berkeley Railroad Company -- Construction and Operation -- A Line of Railroad Located in Berkeley County, South Carolina, Finance Docket No. 28100 (ICC served July 15, 1977). ECB was described as an "unincorporated public enterprise under the administration and total control of the South Carolina Public Railways Commission . . . ." Id. at 1. In 1995, ECB received further authority, again in its own name, to construct an approximately two-mile extension to its rail line. East

Cooper and Berkeley Railroad -- Construction and Operation Exemption -- In Berkeley County, SC, Finance Docket No. 32704 (ICC served December 13, 1995).<sup>3</sup>

A 1981 ICC demurrage decision described the Railways Commission as "an agency of the State of South Carolina [that] operates two terminal switching carriers in the Charleston, SC port area: [PUCC and PTR]." South Carolina Rys. Com. v. Seaboard Coast L. R., 365 I.C.C. 274 (1981).

Effective July 1, 1993, the rail assets and operations of PUCC, PTR and ECB were transferred from the Railways Commission to SCPR. No regulatory authority was sought or obtained in connection with that transaction.

In 2009, PTR sought exemption authority in its own name to operate an additional rail line on the former Charleston Naval Base. Port Terminal Railroad -- Operation Exemption -- Rail Line of the Charleston Naval Complex Redevelopment Authority, Finance Docket No. 35211 (STB served February 19, 2009). In that proceeding PTR was referred to as a "subsidiary" of SCPR.

Currently, SCPR's public tariff lists PUCC, PTR and ECB as "Participating Carriers," and states that such "carriers all fall within the absolute control and management of" SCPR. Freight Tariff SCPR 8001-K, effective October 15, 2012, Item 2.10.

SCPR now seeks to eliminate PUCC, PTR and ECB as separate rail carriers, and to operate and market all of its rail lines on a consolidated basis under the trade name "Palmetto Railways." While a simple name change for PUCC, PTR and ECB would not require STB approval, the foregoing discussion indicates that PUCC, PTR and ECB have been consistently

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<sup>3</sup> That decision stated that ECB is "wholly owned and operated by an agency of the State of South Carolina . . . ." Id. at 1.

treated as certificated rail carriers on their respective rail lines.<sup>4</sup> SCPR believes it is appropriate to obtain regulatory authority for the consolidation of any distinct common carrier interests that PUCC, PTR and ECB may possess into SCPR.

The proposed elimination of PUCC, PTR and ECB as separate rail carriers is a transaction within a corporate family that will not result in adverse changes in service levels, significant operational changes or any change in the competitive balance with carriers outside of the SCPR corporate family.

The full name and address of the applicants herein are as follows:

South Carolina Public Railways  
The Port Utilities Commission of Charleston, S.C.  
Port Terminal Railroad of South Carolina  
East Cooper and Berkeley Railroad Company  
540 East Bay Street  
Charleston, South Carolina 29403  
(843) 727-2067

Any questions concerning this Notice should be sent to SCPR's representative at the following address:

Thomas J. Litwiler  
Fletcher & Sippel LLC  
29 North Wacker Drive  
Suite 920  
Chicago, Illinois 60606-2832  
(312) 252-1500

**Proposed Time Schedule for Consummation: 49 C.F.R. § 1180.6(a)(1)(ii)**

SCPR intends to consummate the proposed intra-corporate family transaction on October 1, 2013.

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<sup>4</sup> That analysis is admittedly complicated by the fact that PUCC, PTR and ECB do not have corporate form in the ordinary sense, and by the 1973 ICC proceeding which seemed to contemplate that the Railways Commission would itself become the common carrier on the PUCC and PTR lines.

**Purpose Sought to Be Accomplished: 49 C.F.R. § 1180.6(a)(1)(iii)**

The proposed transaction will clarify the regulatory status of SCPR's rail operations and simplify various administrative and marketing functions.

**States in Which Applicants' Property is Located: 49 C.F.R. § 1180.6(a)(5)**

SCPR owns and PUCC, PTR and ECB operate over rail property in the state of South Carolina.

**Map - Exhibit 1: 49 C.F.R. § 1180.6(a)(6)**

A map showing the general location of the rail lines of PUCC, PTR and ECB is attached hereto as Exhibit 1.

**Agreement - Exhibit 2: 49 C.F.R. § 1180.6(a)(7)(ii)**

Because PUCC, PTR and ECB are not formal corporate entities, no agreement is necessary for their consolidation into SCPR. A draft of the operative document that SCPR intends to issue in connection with the proposed transaction is attached hereto as Exhibit 2.

**Labor Protective Conditions: 49 C.F.R. § 1180.4(g)(1)(i)**

Pursuant to 49 U.S.C. § 11326(c), no employee protective conditions may be imposed on this transaction. Whether considered individually or collectively, PUCC, PTR and ECB are currently Class III rail carriers, and SCPR will remain a Class III carrier after consummation of the proposed transaction. No other rail carriers are involved in the proposed transaction, which will have no effect on SCPR employees.

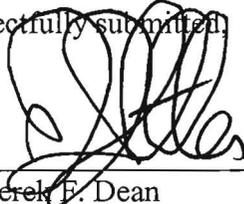
**Environmental and Historic Preservation Matters: 49 C.F.R. § 1180.4(g)(3)**

Under 49 C.F.R. § 1105.6(c)(2)(ii), the intra-corporate consolidation of PUCC, PTR and ECB into SCPR is exempt from environmental reporting requirements. The proposed transaction will not result in significant changes in current or future carrier operations, i.e., changes that exceed the thresholds of 49 C.F.R. § 1105.7(e)(4) or (5).

Under 49 C.F.R. § 1105.8(b)(2), the proposed intra-corporate family transaction also is exempt from historic preservation reporting requirements. The elimination of PUCC, PTR and ECB as separate rail carriers will not result in significant changes in existing or anticipated operations.

Respectfully submitted,

By: \_\_\_\_\_

  
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**ATTORNEYS FOR SOUTH CAROLINA  
DIVISION OF PUBLIC RAILWAYS,  
D/B/A PALMETTO RAILWAYS**

Dated: August 29, 2013



[Letterhead]

**NOTICE**

Effective October 1, 2013, The Port Utilities Commission of Charleston, S.C. (PUCC), Port Terminal Railroad of South Carolina (PTR) and East Cooper and Berkeley Railroad Company (ECB) are abolished as separate rail carriers, and any distinct common carrier interests and rights of PTR, PUCC and ECB are consolidated with and into the South Carolina Division of Public Railways, d/b/a Palmetto Railways.

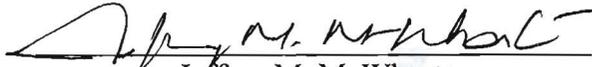
[Signed]

Jeffrey M. McWhorter  
President and Chief Executive Officer

VERIFICATION

State of South Carolina     )  
  )  
County of Charleston        )     SS:

Jeffrey M. McWhorter, being duly sworn, deposes and says that he is President and Chief Executive Officer of South Carolina Division of Public Railways, that he has read the foregoing Notice of Exemption and knows the facts asserted therein, and that the same are true as stated.

  
\_\_\_\_\_  
Jeffrey M. McWhorter

SUBSCRIBED AND SWORN TO  
before me this 28<sup>th</sup> day  
of August, 2013.

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

My Commission expires: 06-13-2021