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SERVICE DATE – JANUARY 5, 2024

DO

FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36750]

Empire River Rail LLC—Operation Exemption—in Brooke County, W. Va.

Empire River Rail LLC (ERRA), a non-carrier controlled by Empire Diversified Energy, Inc. (Empire), has filed a verified notice of exemption under 49 CFR 1150.31 to assume common carrier operations over roughly 0.464 miles of railroad trackage located along the Ohio River in Brooke County, W. Va. (the Line.) The Line connects to Norfolk Southern Railway Company's Wells Industrial Track at approximately NSR milepost 3.6 and extends northward. The Line itself has no mileposts.

According to the verified notice, the Line is part of a logistics facility that boasts barge, warehousing, truck, transloading, and railroad service capabilities owned by Empire Trimodal Terminal LLC d/b/a Port of West Virginia (Port of West Virginia),¹ located in Follansbee, W. Va. The notice states that the Line currently is not a Board-regulated line of railroad but that the Port of West Virginia has chosen to arrange for the commencement of common carrier operations and has negotiated an operating agreement with ERRA that extends to ERRA the exclusive right to conduct common carrier service.

ERRA certifies that it's projected annual revenue is not expected to exceed \$5 million, and will not result in the creation of a Class II or Class I rail carrier. ERRA

¹ The notice states that like ERRA, the Port of West Virginia is a holding of Empire.

further certifies that it will not be contractually limited in its ability to interchange traffic with any third-party connecting carrier.

The earliest this transaction may be consummated is January 21, 2024, the effective date of the exemption (30 days after the verified notice was filed).

If the verified 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 effectiveness of the exemption. Petitions for stay must be filed no later than January 12, 2024 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36750, must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on ERRA's representative, Robert A. Wimbish, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606-3208.

According to ERRA, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at www.stb.gov.

Decided: January 2, 2024.

By the Board, Mai T. Dinh, Director, Office of Proceedings.