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May 20, 2022
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FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

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May 20, 2022

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20024

Re: **FD 36596**
Delaware and Raritan River Railroad, LLC — Operation Exemption —
Consolidated Rail Corporation and New Jersey Transit Corporation

FD 36597
Kean Burenga and Chesapeake and Delaware, LLC — Continuance in
Control Exemption — Delaware and Raritan River Railroad, LLC

FD 36598
Delaware and Raritan River Railroad, LLC — Modified Rail Certificate

Dear Ms. Brown:

Enclosed for filing in the above-captioned proceedings are a **Verified Notice of Exemption of Delaware and Raritan River Railroad, LLC pursuant to 49 C.F.R. Part 1150, subpart D**, a **Verified Notice of Exemption of Kean Burenga and Chesapeake and Delaware, LLC pursuant to 49 C.F.R. § 1180.2(d)(2)**, a **Notice of Delaware and Raritan River Railroad, LLC for Modified Certificate of Public Convenience and Necessity pursuant to 49 C.F.R. Part 1150, subpart C**, and a **Motion for Protective Order**, all dated May 20, 2022. Payment of the appropriate filing fees was made through www.pay.gov.

FILED
May 20, 2022
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
May 20, 2022
SURFACE
TRANSPORTATION BOARD

FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

Ms. Cynthia T. Brown

May 20, 2022

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If you have any questions regarding these filings, please feel free to contact me.
Thank you for your assistance on this matter.

Respectfully submitted,

By: /s/ *R. A. Wimbish*

Robert A. Wimbish

Thomas J. Healey

Attorneys for Chesapeake and Delaware, LLC,

Kean Burenga, and Delaware and Raritan

River Railroad, LLC

cc: Association of American Railroads (pursuant to 49 C.F.R. § 1150.21)

RAW:th

Enclosure

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36596

DELAWARE AND RARITAN RIVER RAILROAD, LLC
– OPERATION EXEMPTION –
CONSOLIDATED RAIL CORPORATION AND
NEW JERSEY TRANSIT CORPORATION

**VERIFIED NOTICE OF EXEMPTION OF
DELAWARE AND RARITAN RIVER RAILROAD, LLC
PURSUANT TO 49 C.F.R. PART 1150, SUBPART D**

Robert A. Wimbish
Thomas J. Healey
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
rwimbish@fletcher-sippel.com
(312) 252-1500

**ATTORNEYS FOR DELAWARE AND
RARITAN RIVER RAILROAD, LLC**

Dated: May 20, 2022

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36596

DELAWARE AND RARITAN RIVER RAILROAD, LLC
– OPERATION EXEMPTION –
CONSOLIDATED RAIL CORPORATION AND
NEW JERSEY TRANSIT CORPORATION

**VERIFIED NOTICE OF EXEMPTION OF
DELAWARE AND RARITAN RIVER RAILROAD, LLC
PURSUANT TO 49 C.F.R. PART 1150, SUBPART D**

Pursuant to 49 C.F.R. Part 1150, subpart D, Delaware and Raritan River Railroad, LLC (“DRRR”), a non-carrier, hereby files this Verified Notice of Exemption (the “Notice”) to operate as a common carrier over rail certain lines (the “Lines”) owned by New Jersey Transit Corporation (“NJT”) and Consolidated Rail Corporation (“Conrail”), all located in the State of New Jersey.¹ Based upon projected annual revenues, DRRR expects to be a Class III rail carrier following consummation of the transaction proposed herein.

In accordance with the requirements of 49 C.F.R. § 1150.33, DRRR submits the following information:

¹ Simultaneously with this Notice, Kean Burenga, an individual and non-carrier, and Chesapeake and Delaware, LLC, a non-carrier holding company, have filed a notice of exemption for authorization to continue in control of DRRR once DRRR becomes a railroad common carrier. *See Kean Burenga and Chesapeake and Delaware, LLC – Continuance in Control Exemption – Delaware and Raritan River Railroad, LLC*, FD 36597 (“*Burenga/C&D – Control*”).

Name and Address of Applicant: 49 C.F.R. § 1150.33(a)

The full name and address of the applicant is as follows:

Delaware and Raritan River Railroad, LLC
c/o Kean Burenga
20 Toad Lane
Ringoes, NJ 08551

Applicant's Representative: 49 C.F.R. § 1150.33(b)

DRRR's representative to whom correspondence regarding this transaction should be sent is as follows:

Robert A. Wimbish
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, IL 60606-3208
(312) 252-1500

Statement Concerning Agreement: 49 C.F.R. § 1150.33(c)

DRRR has entered into a three-party agreement with NJT and Conrail² (the "Agreement")³ under which DRRR will provide common carrier service on certain NJT-owned lines. In addition, DRRR has entered into a lease agreement (the "Lease") with Conrail, pursuant to which DRRR will lease and operate certain Conrail-owned line segments.

² NJT is granting the subject operating rights under the Agreement to DRRR. Conrail is a party to the Agreement because it holds, and will retain, its own operating rights on portions of the Freehold Branch and the Southern Secondary (defined herein). Conrail's consent to NJT's grant of operating rights to DRRR over these line segments is confirmed in the Agreement.

³ The Agreement is entitled as one for "trackage rights," which is technically not accurate as a matter of applicable law and regulation, since trackage rights are between railroad common carriers, and neither NJT nor DRRR (for the time being) is a common carrier. But even if the Board were to conclude that this transaction nevertheless involves DRRR's acquisition of trackage rights, then DRRR still would have properly invoked the Board's class exemption procedures at 49 CFR Part 1150, subpart D. *See Columbus and Steens Junction Railway, Inc. — Trackage Rights Exemption — Columbus and Greenville Railway Company*, FD 32800 (ICC served Nov. 24, 1995).

Because NJT is not a Board-regulated railroad common carrier, DRRR is filing an unredacted version of the Agreement under seal, subject to a simultaneously-filed motion for issuance of a protective order pursuant to 49 C.F.R. § 1104.14(b) in accordance with *Anthony Macrie – Continuance in Control Exemption – New Jersey Seashore Lines, Inc.*, FD 35296 (STB served Aug. 31, 2010) at 3. *See* Exhibit A.

Operator of the Property: 49 C.F.R. § 1150.33(d)

DRRR will operate and provide rail common carrier service to shippers accessed from the Lines.

Summary of the Transaction: 49 C.F.R. § 1150.33(e)

Pursuant to the aforementioned Agreement, DRRR will provide common carrier rail service over the following NJT-owned railroad line segments:

(i) two portions of the Freehold Secondary, between Freehold, NJ (approximately milepost 17.1+/-) and Howell, NJ (approximately milepost 20.3+/-), and between a point west of Yellowbrook Road near Farmingdale, NJ (approximately milepost 22.3+/-) and Farmingdale, NJ (approximately milepost 24.6+/-) (both line segments are referred to collectively as the “Freehold Branch”) – a total distance of approximately 5.5 route miles;⁴ and

(ii) a portion of the Southern Branch between Red Bank, NJ (approximately milepost 38.1+/-) and South Lakewood, NJ (approximately milepost 63.0+/-) (the “Southern Secondary”) – a total distance of approximately 24.9 route miles.

⁴ DRRR will also commence operations over the intervening NJT-owned line segment between Howell (approximately milepost 20.3+/-) to a point west of Yellowbrook Road near Farmingdale (approximately milepost 22.3+/-) (known as the “Gap Segment”) pursuant to *Delaware and Raritan River Railroad, LLC – Modified Rail Certificate*, FD 36598.

The southeastern end of the Freehold Branch connects with the Southern Secondary at Farmingdale, NJ.

In addition to the operating rights DRRR will secure from NJT, DRRR also will, pursuant to its Lease arrangement with Conrail, operate the following Conrail-owned railroad line segments:

(i) The portion of the Freehold Secondary from and including the switch for the east and west legs of the Jamesburg wye and the grade crossing of Gatzmer Avenue in Jamesburg, NJ (approximately milepost 5.6+/-), southeast to the end of Conrail's ownership at the west side of Broad Street (approximately milepost 17.1+/-), in Freehold, NJ – a total distance of approximately 11.5 route miles;

(ii) The portion of the Southern Secondary, from the beginning of Conrail's ownership at South Lakewood, NJ (approximately milepost 63.0 +/-) to the end of Conrail's ownership at Lakehurst, NJ (approximately milepost 66.0 +/-) – a total distance of approximately 3.0 route miles; and

(iii) The Toms River Industrial Track, from the connection with the Southern Secondary at or near Lakehurst (approximately milepost 65.9+/- on the Southern Secondary) to the end of Conrail's ownership of regulated main line track near Toms River, NJ (approximately milepost 5.0+/-) – a total distance of approximately 5.0 route miles.

Collectively, the operating rights DRRR will acquire from NJT (including the line segment that is the subject of the related modified certificate filing) and the lease rights DRRR will acquire from Conrail will allow DRRR to operate a contiguous rail system (the Lines) forming a capital "Y," from Jamesburg on the northeast through Freehold to Farmingdale, and from Red

Bank south through Farmingdale to Lakehurst (and the connection to the Toms River Industrial Track), with the two tracks connecting at Farmingdale, as shown on Exhibit B.

The Lines are comprised of approximately 49.9 route miles of trackage from Jamesburg, NJ to Farmingdale, NJ (excluding the Gap Segment) and from Red Bank NJ to Lakehurst NJ, plus the Toms River Industrial Track. Under the terms of the Agreement and Lease, and subject to the class exemption procedures that DRRR has invoked, DRRR will commence common carrier operations over the Lines on or after the effectiveness of the subject class exemption (and on or after the effectiveness of the *Burenga/C&D – Control* exemption).

The complete name and address of the owners of the Lines are as follows:

New Jersey Transit Corporation
c/o New Jersey Transit Rail Operations, Inc.
1 Penn Plaza East
Newark, NJ 07105

Consolidated Rail Corporation
Two Logan Square
100 North 18th Street
Suite 825
Philadelphia, PA 19103

DRRR intends to commence common carrier operations over the Lines on or after June 19, 2022.

Map: 49 C.F.R. § 1150.33(f)

A map showing the Lines is attached as Exhibit B to this Notice.

Certificate of Class III Status: 49 C.F.R. § 1150.33(g)

Certification in accordance with the provisions of 49 C.F.R. § 1150.33(g) (establishing that DRRR would qualify as a Class III carrier) is attached as Exhibit C.

Interchange Commitments: 49 C.F.R. § 1150.33(h)

The proposed transaction does not involve—and the Agreement and Lease do not include—any provision, restriction or agreement that would limit future interchange with a third-party connecting carrier.

Advance Notice: 49 C.F.R. § 1150.32(e)

DRRR's projected annual revenue is not expected to exceed \$5 million, and, accordingly, the advance notice requirements of 49 C.F.R. § 1150.32(e) are inapplicable to this transaction. See Certification and Verification attached as Exhibit C.

Environmental and Historic Preservation Data: 49 C.F.R. § 1105

Under 49 C.F.R. § 1105.6(c)(1)(i), DRRR's proposed operations on the Lines is exempt from environmental reporting requirements. The proposed transaction will not result in significant changes in operations on the Lines, i.e., changes that exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5).

Under 49 C.F.R. § 1105.8(b)(1), DRRR's proposed operation of the Lines also is exempt from historic preservation reporting requirements. The proposed transaction is for the purpose of restored rail service. Separate Surface Transportation Board approval would be required to discontinue any service and there are no plans to dispose of or alter properties subject to Board jurisdiction that are fifty years old or older.

Caption Summary: 49 C.F.R. § 1150.34

A caption summary in appropriate form is attached as Exhibit D to this Notice.

Respectfully submitted,

By: /s/ *R. A. Wimbish*

Robert A. Wimbish
Thomas J. Healey
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
rwimbish@fletcher-sippel.com
(312) 252-1500

**ATTORNEYS FOR DELAWARE AND
RARITAN RIVER RAILROAD, LLC**

Dated: May 20, 2022

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36596

DELAWARE AND RARITAN RIVER RAILROAD, LLC
– OPERATION EXEMPTION –
CONSOLIDATED RAIL CORPORATION AND
NEW JERSEY TRANSIT CORPORATION

CONFIDENTIAL EXHIBIT A

AGREEMENT AMONG
NEW JERSEY TRANSIT CORPORATION,
CONSOLIDATED RAIL CORPORATION,
AND
DELAWARE AND RARITAN RIVER RAILROAD, LLC

BEFORE THE
SURFACE TRANSPORTATION BOARD

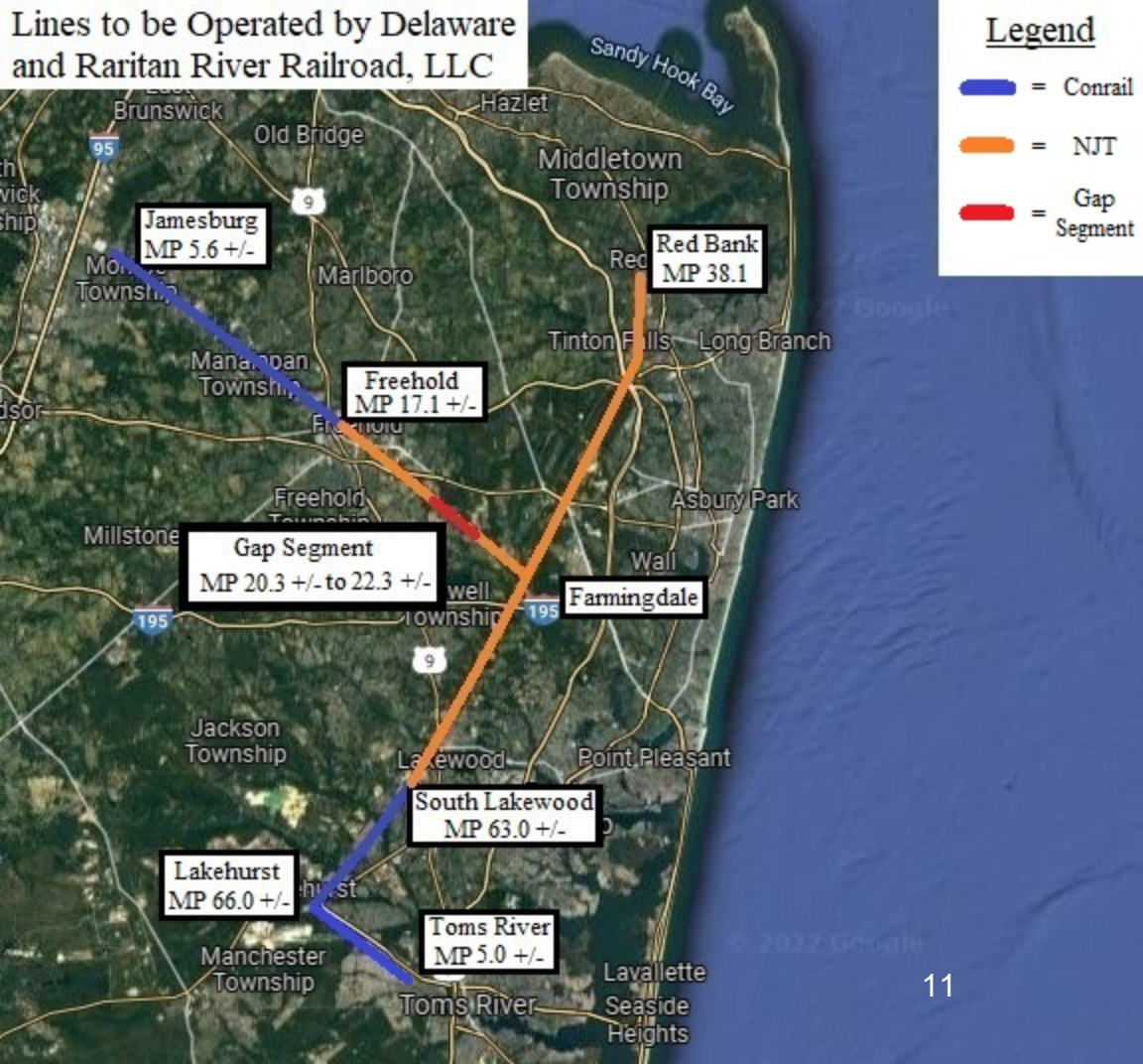
FD 36596

DELAWARE AND RARITAN RIVER RAILROAD, LLC
– OPERATION EXEMPTION –
CONSOLIDATED RAIL CORPORATION AND
NEW JERSEY TRANSIT CORPORATION

EXHIBIT B

MAP OF PROPOSED DRRR LINES

Lines to be Operated by Delaware and Raritan River Railroad, LLC



BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36596

DELAWARE AND RARITAN RIVER RAILROAD, LLC
– OPERATION EXEMPTION –
CONSOLIDATED RAIL CORPORATION AND
NEW JERSEY TRANSIT CORPORATION

EXHIBIT C

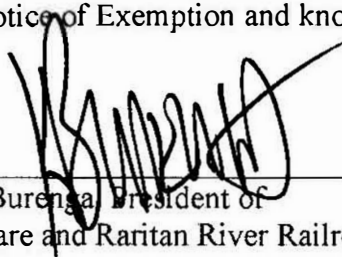
CERTIFICATION AND VERIFICATION

CERTIFICATION AND VERIFICATION

I, Kean Burenga, President of Delaware and Raritan River Railroad, LLC

("DRRR"), under penalty of perjury, certify and verify as follows:

1. I am authorized to provide this certification and verification on behalf of DRRR.
2. I certify that DRRR's annual rail revenues are not expected to exceed \$5 million, and that the transaction that is the subject of this exemption proceeding will not result in DRRR becoming Class I or II rail carrier under the thresholds set forth at 49 C.F.R. § 1201(11).
3. I verify that I have read the foregoing Notice of Exemption and know that the facts stated herein are true.



Kean Burenga, President of
Delaware and Raritan River Railroad, LLC

Dated: May 20, 2022

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36596

DELAWARE AND RARITAN RIVER RAILROAD, LLC
– OPERATION EXEMPTION –
CONSOLIDATED RAIL CORPORATION AND
NEW JERSEY TRANSIT CORPORATION

EXHIBIT D

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FD 36596

DELAWARE AND RARITAN RIVER RAILROAD, LLC
– OPERATION EXEMPTION –
CONSOLIDATED RAIL CORPORATION AND
NEW JERSEY TRANSIT CORPORATION

Delaware and Raritan River Railroad, LLC (“DRRR”), a non-carrier, has filed a Verified Notice of Exemption to operate approximately 49.9 miles of rail line (the “Lines”) as follows:

(i) two portions of the Freehold Secondary owned by New Jersey Transit Corporation (“NJT”), between Freehold, NJ (approximately milepost 17.1+/-) and Howell, NJ (approximately milepost 20.3+/-) and between a point west of Yellowbrook Road near Farmingdale, NJ (approximately milepost 22.3+/-) and Farmingdale, NJ (approximately milepost 24.6+/-) (both line segments are referred to collectively as the “Freehold Branch”) – a total distance of approximately 5.5 route miles;¹

(ii) a portion of the Southern Branch also owned by NJT between Red Bank, NJ (approximately milepost 38.1+/-) and South Lakewood, NJ (approximately milepost 63.0+/-) (the “Southern Secondary”) – a total distance of approximately 24.9 route miles;

¹ DRRR will also commence operations over the intervening NJT-owned line segment between Howell (approximately milepost 20.3+/-) to a point west of Yellowbrook Road near Farmingdale (approximately milepost 22.3+/-) (known as the “Gap Segment”) pursuant to *Delaware and Raritan River Railroad, LLC – Modified Rail Certificate*, FD 36598.

(iii) The portion of the Freehold Secondary owned by Consolidated Rail Corporation (“Conrail”) from and including the switch for the east and west legs of the Jamesburg wye and the grade crossing of Gatzmer Avenue in Jamesburg, NJ (approximately milepost 5.6+/-), southeast to the end of Conrail’s ownership at the west side of Broad Street (approximately milepost 17.1+/-), in Freehold, NJ – a total distance of approximately 11.5 route miles;

(iv) The portion of the Southern Secondary owned by Conrail, from the beginning of Conrail’s ownership at South Lakewood, NJ (approximately milepost 63.0 +/-) to the end of Conrail’s ownership at Lakehurst, NJ (approximately milepost 66.0 +/-) – a total distance of approximately 3.0 route miles; and

(v) The Toms River Industrial Track owned by Conrail, from the connection with the Southern Secondary at or near Lakehurst (approximately milepost 65.9+/- on the Southern Secondary) to the end of Conrail’s ownership of regulated main line track near Toms River, NJ (approximately milepost 5.0+/-) – a total distance of approximately 5.0 route miles.

DRRR expects to consummate the subject transaction and commence operations on the Lines on or after June 19, 2022.

Comments must be filed with the Board and served on:

Robert A. Wimbish
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

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.

Dated: _____, 2022

By the Board

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings