

Docket No. FD 36612

REVOLUTION RAIL HOLDING COMPANY, LLC
—ACQUISITION EXEMPTION—
SARATOGA AND NORTH CREEK RAILWAY, LLC

ENTERED
Office of Proceedings
September 7, 2022
Part of
Public Record

REQUEST OF CHAPTER 11
TRUSTEE OF SAN LUIS & RIO
GRANDE RAILROAD FOR EXPEDITED DECISION
BY THE SURFACE TRANSPORTATION BOARD

William A. Brandt, Jr., solely in his capacity as the chapter 11 trustee (the “Trustee”) for the bankruptcy estate of the San Luis & Rio Grande Railroad, Inc. (“SLRG”), the parent of Saratoga and North Creek Railway, LLC (“SNCR”), by and through counsel, hereby files his request for expedited consideration and approval of the Verified Notice of Exemption (the “Verified Notice”) filed by Revolution Rail Holding Company, LLC (“RRHC”).

On September 10, 2018, the New York State Department of Environmental Conservation (the “Department”) filed an application under 49 U.S.C. § 10903 requesting a third-party, or “adverse,” abandonment of the Line by SNCR. *See N.Y. State Dep’t of Env’t Conservation—Adverse Aban.—Saratoga & N. Creek Ry. in Town of Johnsbury, N.Y. (June 2021 Decision)*, AB 1261, slip op. at 1 (STB served June 21, 2021). Subsequently, on March 30, 2020, SNCR filed a Chapter 11 (voluntary) bankruptcy petition in the U.S. Bankruptcy Court for the District of Colorado (the “Bankruptcy Court”). *Id.*; *see also In re Saratoga & N. Creek Ry.*, Case No. 20-12313-TBM (Bankr. D. Colo.).

On April 20, 2022, RRHC, a noncarrier, filed the Verified Notice under 49 C.F.R. § 1150.31 to acquire from SNCR approximately 29.71 miles of rail line between milepost NC 0.0 at North Creek, N.Y., and its terminus at milepost NC 29.71 near the former Tahawus Mine, as well as approximately 2.97 miles of passing tracks and siding (the “Line”).

RRHC’s verified notice states that a bankruptcy auction was held on March 3, 2022, in which RRHC participated along with other bidders. (Verified Notice 4.) According to RRHC, it was notified on April 4, 2022, that it was the successful bidder and it subsequently entered into an Amended Asset Purchase Agreement (the “Agreement”) with the Trustee to purchase SNCR’s right, title and interest in and to its assets, including the Line. (*See id.* at 5, 8- 9, Ex. B, Ex. C.) RRHC states that it has plans to reactivate rail service on the Line and that certain shippers have expressed interest in receiving freight rail service. (*Id.* at 7-8.) RRHC further states that it has approached SMS Rail Service, Inc. (“SMS”), a Class III rail carrier, about the possibility of SMS providing freight rail service on the Line, and that SMS has agreed. (*Id.*) RRHC states, however, that, in the event the Department’s adverse abandonment application is granted, it would enter into a trail use agreement for the Line under the National Trails System Act (“Trails Act”). (*Id.* at 8.)

At the request of the Department and for the reasons described in its May 19, 2022 order, the Board stayed the effective date of the exemption and directed that the Department and RRHC file a joint status report by June 21, 2022.

The Department and RRHC negotiated a mutually satisfactory railcar storage agreement. The Department represented to the Board that the Department will withdraw the third-party abandonment application that is the subject of Docket No. AB 1261 once the sale of the Line to RRHC closes.

The sale of the Line to RRHC cannot close until and until the Board approves the RRHC's Verified Notice. Accordingly, the Trustee, in his capacity as Chapter 11 Trustee for the bankruptcy estate of SLRG, the parent of SNCR, respectfully requests the Board consider expedited approval of RRHC's Verified Notice. The Trustee submits time is of the essence for closing on the sale of the Line to RRHC and the bankruptcy estate of SNCR, SLRG and the debtors' respective creditors will be harmed by unnecessary or prolonged delays in approval of RRHC's Verified Notice.

The creditors of the SNCR estate voted overwhelmingly in favor of a plan of reorganization which was premised upon the payment of their claims through the sale of SNCR's assets. The Bankruptcy Court approved the plan on January 13, 2022. To date, there has been no distribution to unsecured creditors under the plan because the sale of the Line to RRHC cannot close without Board approval. The SNCR estate continues to accrue post-petition taxes and interest on all unsecured claims while awaiting Board approval. Accordingly, the Trustee respectfully requests that the Board approve RRHC's Verified Notice which was filed over four months ago.

Dated: September 7, 2022

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CERTIFICATE OF SERVICE

I hereby certify that on September 7, 2022, I caused a true and correct copy of the **REQUEST OF CHAPTER 11 TRUSTEE OF SAN LUIS & RIO GRANDE RAILROAD FOR EXPEDITED DECISION BY THE SURFACE TRANSPORTATION BOARD** to be filed electronically with the Surface Transportation Board's E-Filing System and sent via First-Class mail to the following Parties of Record:

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