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304750

June 10, 2022

ENTERED
Office of Proceedings
June 10, 2022
Part of
Public Record

Via E-Filing

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

**Re: SMS Rail Service, Inc. – Change in Operator Exemption Including Acquisition
by Lease – Salem Branch Line in Salem and Gloucester Counties, New Jersey,
STB Docket No. FD-36529**

Dear Ms. Brown:

Enclosed is the Verified Notice of Exemption Under 49 C.F.R. § 1150.41 for SMS Rail Service, Inc. (“SMS”) to replace Class III rail carriers as operators of 19.4 linear miles of rail lines owned by Salem County, New Jersey, located primarily in Salem County, New Jersey and in part in Gloucester County, New Jersey, and known as the “Salem Branch Line”.

Thank you for your assistance in this regard. If you have any questions, please contact me at my mobile number 215-880-6913.

Respectfully,

BERKOWITZ KLEIN, LLP

/s/ Robert A. Klein

Robert A. Klein
Attorney for SMS Rail Service, Inc.

FILED
Encl. June 10, 2022
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
June 10, 2022
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

SMS RAIL SERVICE, INC.	)	
ACQUISITION AND OPERATION	)	FINANCE DOCKET
EXEMPTION – RAIL LINE OF THE	)	
COUNTY OF SALEM, NEW JERSEY	)	NO. 36529
IN SALEM COUNTY, NJ	)	

NOTICE OF EXEMPTION UNDER 49 C.F.R. § 1150.41

SMS RAIL SERVICE, INC.
513 Sharptown Road
Logan Township, NJ 08085

Applicant

ROBERT A. KLEIN, ESQUIRE
BERKOWITZ KLEIN, LLP
629 B Swedesford Road
Swedesford Corporate Center
Malvern, PA 19355-1530
O: (610) 889-3200, ext. 2
C: (215) 880-6913
E: rak@berklein.com

Attorney for Applicant

DATE FILED: June 10, 2022

BEFORE THE
SURFACE TRANSPORTATION BOARD

SMS RAIL SERVICE, INC.	)	
ACQUISITION AND OPERATION	)	FINANCE DOCKET
EXEMPTION – RAIL LINE OF THE	)	
COUNTY OF SALEM, NEW JERSEY	)	NO. 36529
IN SALEM COUNTY, NJ	)	

VERIFIED NOTICE OF EXEMPTION UNDER 49 C.F.R. § 1150.41

Pursuant to 49 C.F.R. § 1150.41 *et seq.*, SMS RAIL SERVICE, INC. (“SMS”), a Class III rail carrier, hereby provides notice of its class exemption from 49 U.S.C. § 10902 for its acquisition by lease from THE COUNTY OF SALEM, NEW JERSEY, a political subdivision of the State of New Jersey (“SALEM COUNTY”), to replace Class III rail carriers, U S Rail Corporation (“U S Rail”) and J.P. Rail, Inc. d/b/a Southern Railroad Company of New Jersey (“J.P. Rail”), as operators of a rail line which comprises approximately nineteen and four-tenths (19.4) linear miles of rail lines (inclusive of approximately the eight-tenths (0.8) mile of sidings, passing and yard tracks, and the one and two-tenths (1.2) mile spur known as the Glass House Branch between milepost 0.0 and milepost 1.2 in Salem City, New Jersey), on property owned by SALEM COUNTY known as the Salem Branch Line located primarily in SALEM COUNTY and in part in Gloucester County, New Jersey, between approximately milepost 11.0 in Swedesboro, New Jersey and approximately milepost 28.4 in the Salem Rail Yard in Salem City, New Jersey (the “Rail Line”). The transaction will not yield five million dollars or more of revenue, and as a result of the transaction, SMS will not become a Class I or Class II rail carrier. A map of the Rail Line is attached to this Notice as **Appendix 1**.

BACKGROUND

SALEM COUNTY is the owner of the property and right-of-way comprising the Salem Branch Line and the Rail Line thereon. “The Rail Line has been underutilized for decades, with rail traffic of only approximately two to three railcars per year over the last five to six years” and “is presently out of service due to lack of maintenance, including significant washouts and undermining of track bed[,] requir[ing] considerable investment in repairs and improvements in order to attract active and robust commerce in the County along and on the Line.” Correspondence from SALEM COUNTY to Cynthia T. Brown, Chief, Section of Administration, Office of Proceedings, Surface Transportation Board (“Board” or “STB”), dated May 9, 2022 (“County’s May 9th letter”) at p. 1, attached to this Notice as **Appendix 2**. *See also* Declaration of Robert A. Klein, Esquire (“Klein Decl.”) ¶¶ 3-4, attached to this Notice as **Appendix 3**. SALEM COUNTY “is desirous of adding [such] commerce,” which it intends to do by, among other things, “a proposed change in operators” from U S Rail and J.P. Rail to an established operator, the Applicant SMS, which SALEM COUNTY has determined to be “capable of improving, maintaining, and providing service on the Rail Line.” County’s May 9th letter (**Appx. 2**) at p. 2.

SMS is in the business of operating and servicing a short line railroad and desires to provide rail service as a common carrier on the Salem Branch Line. SALEM COUNTY and SMS have entered into a Rail Line Service Agreement whereby SMS has acquired the Rail Line by lease and will operate the Rail Line, providing exclusive rail service on and along the Salem Branch Line pursuant to such Agreement. SALEM COUNTY, through its Board of County Commissioners (“Commissioners”), supports the proposed change in operators from U S Rail and J.P. Rail to SMS.

INFORMATION REQUIRED BY 49 C.F.R. § 1150.43

(a) The full name and address of the Class III rail carrier applicant:

Applicant is SMS Rail Service, Inc., 513 Sharptown Road, Logan Township, NJ 08085.

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

Applicant's attorney is Robert A. Klein, Esquire, Berkowitz Klein, LLP, 629 B Swedesford Road, Swedesford Corporate Center, Malvern, PA 19355-1530, Off. (610) 889-3200, ext. 2, and Cell (215) 880-6913.

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

An agreement has been entered into between SMS and SALEM COUNTY by which SMS has acquired the Rail Line by lease and will operate the Rail Line exclusively. Previously, J.P. Rail had an operating agreement with SALEM COUNTY for these operations and had been granted the rights to operate the Rail Line. *See JP Rail, Inc. d/b/a Southern R.R. Co. of N.J.—Notice of Exemption—Operation of Salem Branch Rail Line in Salem County, N.J.*, FD 32700 (ICC served Oct. 10, 1995). However, operator issues hindered development of commerce on the Rail Line.” County’s May 9th letter (**Appx. 2**) at p. 2. In 2009, “[t]his led to an assignment of J.P. Rail’s rights and obligations to U S Rail.” *Id.* *See also U S Rail Corp. of N.J.—Lease Exemption—County of Salem, N.J.*, FD 35310 (STB served Nov. 27, 2009), and *U S Rail Corp.—Operation Exemption—U.S. Rail Corp. of N.J.*, FD 35317 (STB served Nov. 27, 2009). Nevertheless, “these issues were not rectified” and “[a]s a result [SALEM COUNTY] terminated its relationship with U S Rail on January 10, 2012 and reassigned the contract to operate the Rail Line [back] to J.P. Rail on February 1, 2012.” *Id.* *See also JP Rail, Inc. d/b/a Southern Railroad Company of New Jersey—*

Operation Exemption—Rail Line in Salem County, N.J., FD 35596 (STB served Feb. 29, 2012). The issues still continued to not be rectified and J.P. Rail’s contract with SALEM COUNTY has since terminated. *See* County’s May 9th letter (**Appx. 2**) at pp. 1-2. As set forth below, J.P. Rail has consented to the proposed change in operators and discontinuance of its operating authority. *Id.* at p. 2.

SALEM COUNTY, as owner of record of the Rail Line, agrees to this change in operators from U S Rail and J.P. Rail to SMS, and for SMS to have sole and exclusive rights to operate on the Rail Line. County’s May 9th letter (**Appx. 2**) at pp. 1-2.

Regarding J.P. Rail, the Commissioners, on behalf of SALEM COUNTY, have entered a stipulation with J.P. Rail by which J.P. Rail has consented to the discontinuance of its operator authority on the Line and the change in operators to SMS, effective immediately. *See* correspondence from SALEM COUNTY to J.P. Rail, dated April 19, 2022, containing such stipulation executed by J.P. Rail, attached to the correspondence from SALEM COUNTY to the Board (**Appendix 2**); Klein Decl. (**Appx. 3**) ¶¶ 3-5.

Regarding U S Rail, after exhaustive and extensive efforts, the company has been unreachable. The undersigned counsel for SMS has undertaken a reasonable investigation regarding U S Rail, including reviewing past decisions of the Board regarding U S Rail in matters involving the Rail Line, and having had several conversations with the company’s counsel of record in those matters regarding the status of U S Rail, as well as reviewing U S Rail’s filings with the Secretary of State of the State of Ohio (its state of incorporation), conferring with a representative of the Office of the Ohio Secretary of State (“OSOS”), searching the internet using the company’s name, and unsuccessful efforts to reach the company by phone at its listed number in Toledo, Ohio (419-720-7588), and through its web address (www.usrailcorp.com). Klein Decl.

(**Appx. 3**) ¶ 6.a.-e. SMS’s undersigned counsel has confirmed that U S Rail’s owner and president, Gabriel D. Hall, passed away in 2018, and that the afore-mentioned counsel for U S Rail has had no contact with the company since at least that time, previously had no active matters with the company for some years, and has no current contact information for the company. *Id.* ¶ 7.a.-b.

The records of the OSOS show that U S Rail was incorporated on November 17, 1993 in Ohio and is assigned Ohio entity number 857501. Klein Decl. (**Appx. 3**) ¶ 7.c. and Exhibit A thereto. The last filing by U S Rail with the OSOS was a Certificate of Amendment by Directors, filed April 22, 2011, noting a resolution had been adopted by the company’s directors pursuant to Ohio Revised Code § 1701.70(B)(6), changing the company name to U S Rail Corporation of Ohio with a registered address at 7846 W. Central Avenue, Toledo, Ohio 43617. *Id.* ¶ 7.d. and Exhibit B thereto. Moreover, the Office of the OSOS has informed the undersigned counsel for SMS that Ohio requires no annual filing or annual fees for “for profit” corporations such as U S Rail, and no filing of any kind in order for the company to continue to be listed as active on the OSOS’s records. *Id.* ¶ 7.e. Therefore, unless U S Rail had filed with the OSOS a record indicating it is not active or the OSOS received a similar notification, the OSOS would have no notice of the company’s change in status. *Id.* There have been no filings of any kind by U S Rail with the Office of the OSOS since April 22, 2011, and no change of address or registered agent for the company since 2007. *Id.*; Resolution of U S Rail, dated March 24, 2007, attached to the Certificate of Amendment by Directors (Klein Decl. (**Appx. 3**) Ex. B).

In addition, a search of the STB record yielded no filings with the STB on behalf of U S Rail Corporation of Ohio. *Id.* ¶ 7.f. An internet search of the company name, U S Rail Corporation of Ohio, yielded the same address for the company as its registered address (7846 W. Central Avenue, Toledo, Ohio 43617), which is shown to be “permanently closed”, and the company’s

web address (www.usrailcorp.com), which appears is no longer accessible. *Id.* ¶ 7.g.-h. and Exhibits C and D thereto.

Further, SMS has been unable to confirm that U S Rail presently has any operations in the region. Klein Decl. (**Appx. 3**) ¶ 8. SALEM COUNTY, through its Commissioners, states in its correspondence to the Board that “[t]o the best of [its Commissioners’] knowledge, U S Rail maintains no operations, equipment, locomotives, or employees in [SALEM COUNTY].” County’s May 9th letter (**Appx. 2**) at p. 2. Therefore, it appears that there are no railroad employees of U S Rail that will be affected by the proposed discontinuance and change of operators. Klein Decl. (**Appx. 3**) ¶ 8. Nevertheless, out of an abundance of caution, the Caption Summary, referred to below and attached hereto as **Appendix 5**, contains notice advising the employees of U S Rail, as well as J.P. Rail, of the proposed change in railroad operators.

(d) The operator of the property:

SMS will operate the Rail Line.

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

(1) The name and address of the railroad transferring the subject property to the Class III rail carrier applicant:

The lessor of the Rail Line to SMS is SALEM COUNTY, 110 Fifth Street, Suite 400, Salem, NJ 08079.

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

The transaction provides for SMS to acquire the Rail Line by lease. SMS will commence service and operation of the Rail Line upon the effective date of this Notice of Exemption.

(3) The mileposts of the subject property, including any branch lines:

The Rail Line includes approximately nineteen and four-tenths (19.4) linear miles of rail lines (inclusive of approximately the eight-tenths (0.8) mile of sidings, passing and yard tracks,

and the one and two-tenths (1.2) mile spur known as the Glass House Branch between milepost 0.0 and milepost 1.2 in Salem City, New Jersey), on property owned by SALEM COUNTY known as the Salem Branch Line located primarily in SALEM COUNTY and in part in Gloucester County, New Jersey between approximately milepost 11.0 in Swedesboro, New Jersey and approximately milepost 28.4 in the Salem Rail Yard in Salem City, New Jersey.

(4) The total route miles being acquired.

Approximately nineteen and four-tenths (19.4) linear miles of rail lines.

(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**.

(g) A certificate that applicant's projected revenues as a result of the transaction will not result in the creation of a Class II or Class I rail carrier so as to require processing under Sec. 1150.45.

The required certificate is contained in the Verification of Mr. Jeffrey L. Sutch, President of SMS, which is attached to this Notice as **Appendix 4**.

(h) Interchange Commitments. (1) The filing party must certify whether or not a proposed acquisition or operation of a rail line involves a provision or agreement that may limit future interchange with a third-party connecting carrier, whether by outright prohibition, per-car penalty, adjustment in the purchase price or rental, positive economic inducement, or other means ("interchange commitment").

The proposed acquisition and operation of the Rail Line does not involve any provision or agreement that may limit future interchange commitments.

CAPTION SUMMARY

The caption summary required by 49 C.F.R. § 1150.44 is attached to this Notice as **Appendix 5**.

ENVIRONMENTAL AND HISTORIC MATTERS

By virtue of 49 C.F.R. § 1105.6(c)(1), no environmental assessment is required in conjunction with the proposed acquisition and operation. Also, by virtue of 49 C.F.R. § 1105.8(b)(1), no historic reporting is required.

LABOR PROTECTION

By virtue of 49 U.S.C. § 10902, no labor protective conditions are to be imposed in conjunction with this Notice.

ANNUAL REVENUES

The certificate required by 49 C.F.R. § 1150.43(g) (SMS's projected revenues as a result of the transaction will not result in the creation of a Class II or Class I rail carrier so as to require processing under 49 C.F.R. § 1150.45), is contained in **Appendix 4** attached to this Notice.

VERIFICATION

A general verification of all factual assertions in this Notice is contained in **Appendix 4**.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, within 16 days after the filing of this Notice, the Director of the Board's Office of Proceedings should arrange for publication of notice of the filing of this Notice in the Federal Register.

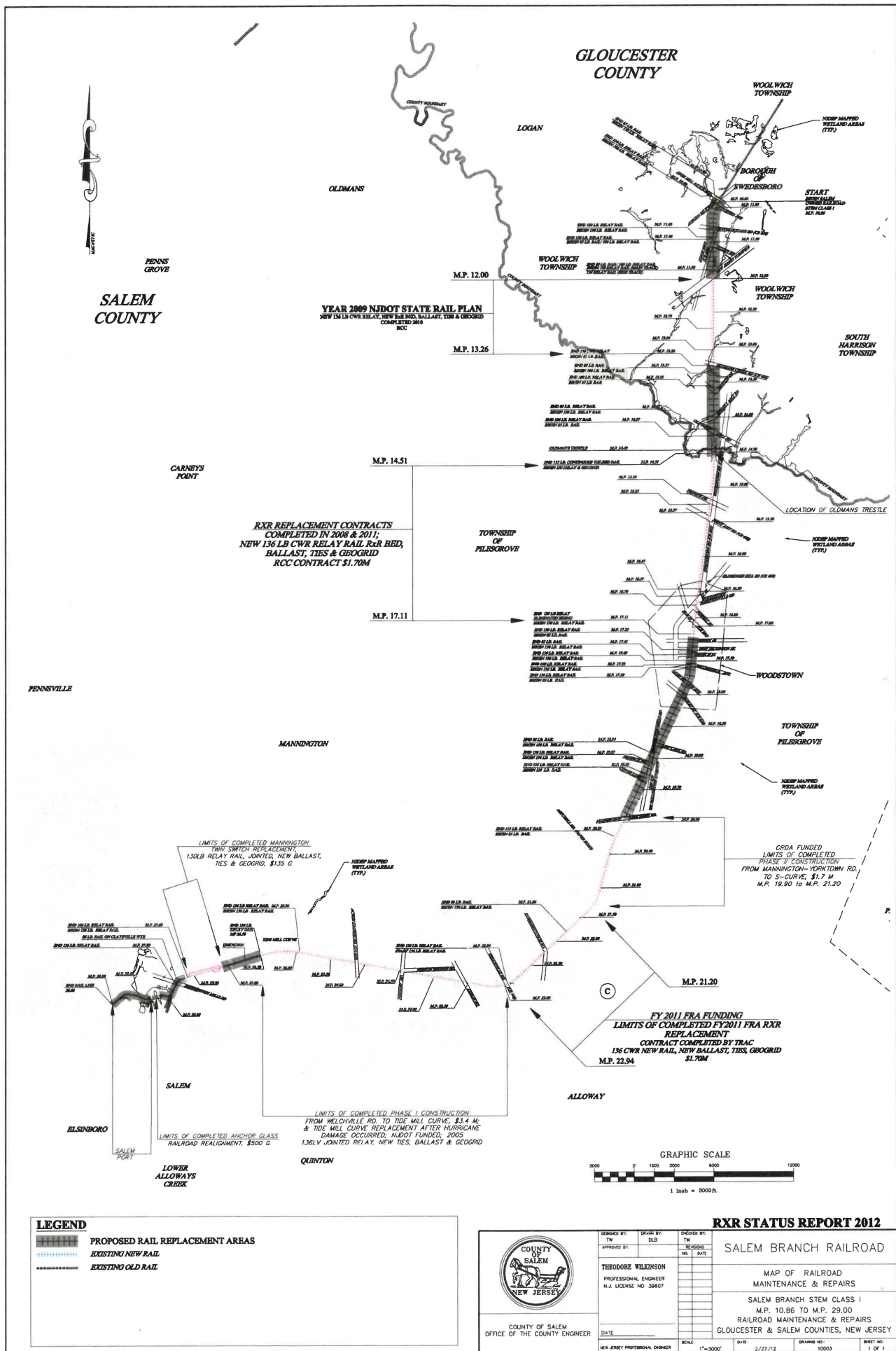
Respectfully submitted,

SMS RAIL SERVICE, INC.
513 Sharptown Road
Logan Township, NJ 08085
Applicant

ROBERT A. KLEIN, ESQUIRE
Berkowitz Klein, LLP
629 B Swedesford Road
Swedesford Corporate Center
Malvern, PA 19355-1530
O: (610) 889-3200, ext. 2
C: (215) 880-6913
E: rak@berklein.com
Attorney for Applicant

DATE FILED: June 10, 2022

APPENDIX 1



LEGEND

PROPOSED RAIL REPLACEMENT AREAS

EXISTING NEW RAIL

EXISTING OLD RAIL



COUNTY OF SALEM
OFFICE OF THE COUNTY ENGINEER

DESIGNED BY:	THE	DRAWN BY:	DLB	CHECKED BY:	WJS
APPROVED BY:		REVISIONS	NO.	DATE	
THEODORE WILKINSON					
PROFESSIONAL ENGINEER					
N.J. LICENSE NO. 36607					
DATE:		SCALE:	1"=3000'	DATE:	2/27/12
NEW JERSEY PROFESSIONAL ENGINEER		SCALE:	1"=3000'	DATE:	2/27/12

RXR STATUS REPORT 2012

SALEM BRANCH RAILROAD

MAP OF RAILROAD
MAINTENANCE & REPAIRS
SALEM BRANCH STEM CLASS I
M.P. 10.86 TO M.P. 29.00
RAILROAD MAINTENANCE & REPAIRS
GLOUCESTER & SALEM COUNTIES, NEW JERSEY

DATE	2/27/12	DRAWING NO.	10003	SHEET NO.	1 OF 1
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APPENDIX 2



Board of County Commissioners

BEN H. LAURY, P.E.
Commissioner Director

FIFTH STREET OFFICE COMPLEX
110 FIFTH STREET, SUITE 400
SALEM, NEW JERSEY 08079

Office: 856-935-7510, Ext. 8204
Fax: 856-935-9102

May 9, 2022

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Re: SMS Rail Service, Inc.—Change in Operator Exemption Including Acquisition
by Lease—SMS Rail Service, Inc., STB Docket No. FD 36529

Dear Ms. Brown:

The Salem County Board of Chosen Commissioners hereby provides this letter of support in favor of SMS Rail Service, Inc.'s ("SMS") Verified Notice of Exemption Under 49 C.F.R. § 1150.41 *et seq.* ("Notice"), regarding a proposed change in railroad operators to SMS of the rail line comprising 19.4 linear miles of rail on property known as the Salem Branch Line located in Salem County, New Jersey ("Rail Line" or "Line").

Salem County (the "County") is the owner of the property and right-of-way comprising the Salem Branch Line and the Rail Line thereon. The Rail Line has been underutilized for decades, with rail traffic of only approximately two to three railcars per year over the last five to six years. The Line is presently out of service due to lack of maintenance, including significant washouts and undermining track bed. As a result, the Line requires considerable investment in repairs and improvements in order to attract active and robust commerce in the County along and on the Line.

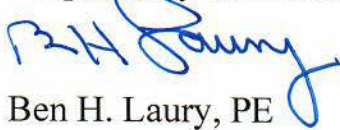
Salem County
DISCOVER THE
POSSIBILITIES

The County is desirous of adding commerce, which it intends to do by a proposed change in railroad operators, from J.P. Rail, Inc. d/b/a Southern Railroad Company of New Jersey ("J.P. Rail") and U S Rail Corporation ("U S Rail") to an established operator, who we have determined should be SMS. We believe SMS is capable of improving, maintaining, and providing service on the Rail Line that will help attract and develop the active and robust commerce the County desires. To do so, the County has agreed to terms of a Rail Line Service Agreement with SMS, whereby SMS will operate the Rail Line once its operating authority is received from the Surface Transportation Board ("STB"), consistent with the Notice. In conjunction with this Agreement, the County has also agreed to provide this support for the proposed change in operators from J.P. Rail and U S Rail and to SMS. The background leading to this transaction is summarized below.

From about October 2009 to about January 2012, operator issues hindered development of commerce on the Rail Line. This led to an assignment of J.P. Rail's rights and obligations to U S Rail. However, these issues were not rectified. In particular, U S Rail failed to meet its obligations to shippers and the County and to make an investment in the Rail Line to maintain it in accordance with requisite safety standards. This led to significant impairment of the Line and created a burden on the public. Effectively, there was barely any commerce on the Line during this period. As a result, the County terminated its relationship with U S Rail on January 10, 2012 and reassigned the contract to operate the Rail Line to J.P. Rail on February 1, 2012. Since February 1, 2012, U S Rail has had no presence in or around the County and the Rail Line. To the best of our knowledge, U S Rail maintains no operations, equipment, locomotives, or employees in the County. The County is unaware of whether U S Rail is active elsewhere. In conjunction with the current transaction, the County has entered into the attached Stipulation with J.P. Rail by which J.P. Rail consents to discontinuance of its operating authority on the Rail Line and to the change in operators to SMS. We respectfully request that the Board approve the change of operators on the Rail Line to SMS.

If you have any questions concerning this matter, please contact us at the address in the above letterhead.

Respectfully Submitted,



Ben H. Laury, PE
Salem County Commissioner Director



Board of County Commissioners

BEN H. LAURY, P.E.
Commissioner Director

FIFTH STREET OFFICE COMPLEX
110 FIFTH STREET, SUITE 400
SALEM, NEW JERSEY 08079

Office: 856-935-7510, Ext. 8204
Fax: 856-935-9102

April 19, 2022

Mr. Michael Foglietta
President and CEO
J.P. Rail, Inc. d/b/a Southern Railroad Company of New Jersey
212 Spring Road
Hammonton, NJ 08037

Re: SMS Rail Service, Inc.—Change in Operator Exemption Including Acquisition by Lease—SMS
Rail Service, Inc., STB Docket No. FD 36529

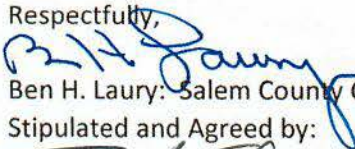
Dear Mr. Foglietta:

The Salem County Board of Chosen Commissioners is writing to request and confirm that J.P. Rail, Inc. d/b/a Southern Railroad Company of New Jersey ("J.P. Rail") consents and stipulates to 1) the discontinuance of its operator authority on the rail line known as the Salem Branch Line located in Salem County and Gloucester County, New Jersey comprising of approximately 18.38 linear miles from approximately MP 10.86 (Auburn Road) in Swedesboro, NJ to approximately MP 28.4 in the City of Salem, NJ and the Port Industrial Track of approximately .84 miles in the City of Salem, ("Rail Line" or "Line"), and 2) a change in railroad operators of the Rail Line to SMS Rail Service, Inc. ("SMS").

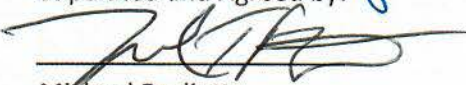
Please confirm that J.P. Rail consents and stipulates to the discontinuance of its operator authority on the Rail Line and the change in railroad operators to SMS, and that Salem County may so represent to the Surface Transportation Board ("STB"), including that a copy of this letter may be provided to the STB in support of the discontinuance of J.P. Rail's operator authority and the change in operators to SMS, by signing on the signature line below.

Thank you for your cooperation.

Respectfully,


Ben H. Laury: Salem County Commissioner Director

Stipulated and Agreed by:


Michael Foglietta
President and CEO

J.P. Rail, Inc. d/b/a Southern Railroad Company of New Jersey

Salem County
DISCOVER THE
POSSIBILITIES

APPENDIX 3

BEFORE THE
SURFACE TRANSPORTATION BOARD

SMS RAIL SERVICE, INC.	)	
ACQUISITION AND OPERATION	)	FINANCE DOCKET
EXEMPTION – RAIL LINE OF THE	)	
COUNTY OF SALEM, NEW JERSEY	)	NO. 36529
IN SALEM COUNTY, NJ	)	

DECLARATION OF ROBERT A. KLEIN, ESQUIRE

I, Robert A. Klein, under the pains and penalties of perjury, state as follows:

1. I am a lawyer in good standing in the District of Columbia, the State of New Jersey, the Commonwealth of Massachusetts, and the Commonwealth of Pennsylvania. I represent SMS Rail Service, Inc. (“SMS”), a Class III rail carrier in the above matter before the Surface Transportation Board (“Board”), filed under Finance Docket No. 36529.

2. I make this declaration in support of the Verified Notice of Exemption, pursuant to 49 C.F.R. § 1150.41, of SMS’s class exemption from 49 U.S.C. § 10902 for its acquisition by lease from the County of Salem, New Jersey, a political subdivision of the State of New Jersey (“Salem County”), to replace Class III rail carriers, U S Rail Corporation (“U S Rail”) and J.P. Rail, Inc. d/b/a Southern Railroad Company of New Jersey (“J.P. Rail”) (the “Verified Notice”), as operators of the rail line described in the Verified Notice (the “Rail Line”).

3. Attached to the Verified Notice as **Appendix 2** is a true and correct copy of a letter from the Board of County Commissioners of Salem County, New Jersey (“Commissioners”), addressed to Cynthia T. Brown, Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, dated May 9, 2022, together with an attached separate letter from the Commissioners to Michael Foglietta, President and CEO of J.P. Rail, dated April 19, 2022. These

letters were provided to my client, SMS, for submission to Ms. Brown and the Surface Transportation Board (“Board” or “STB”) regarding SMS’s Verified Notice.

4. The Commissioners’ letter to Ms. Brown indicates that a history of operator issues hindering development of commerce on the Rail Line and the Line’s maintenance led to multiple assignments of rights back and forth between J.P. Rail and U S Rail over a decade ago. The Commissioners state in their letter to Ms. Brown that, dating back to “February 1, 2012, U S Rail has had no presence in or around the County and the Rail Line.” It has been more than a decade since Salem County’s relationship with U S Rail was terminated on January 10, 2012. As set forth below, after exhaustive and extensive efforts, U S Rail has been unreachable.

5. More recently, as confirmed by the above-referenced April 19, 2022 letter executed by J.P. Rail and the Commissioners, J.P. Rail has “consent[ed] and stipulate[d] to the discontinuance of its operator authority on the Rail Line and the change in railroad operators to SMS.”

6. In regard to U S Rail, based on a reasonable investigation, I have found that the company is unreachable. My investigation included:

a. Reviewing past decisions of the Board regarding U S Rail in matters involving the Rail Line, and having had several conversations regarding the status of U S Rail with U S Rail’s counsel of record in those matters, Eric M. Hocky, Esquire of the law firm Clark Hill PLC in Philadelphia, Pennsylvania, the most recent of which occurred on June 7, 2022. *See JP Rail, Inc. d/b/a Southern Railroad Company of New Jersey—Operation Exemption—Rail Line in Salem County, N.J.*, FD 35596 (STB served Feb. 29, 2012); *U S Rail Corp.—Operation Exemption—U.S. Rail Corp. of N.J.*, FD 35317 (STB

served Nov. 27, 2009); *U S Rail Corp. of N.J.—Lease Exemption—County of Salem, N.J.*, FD 35310 (STB served Nov. 27, 2009);

b. Reviewing U S Rail’s filings with the Secretary of State of the State of Ohio (U S Rail’s state of incorporation);

c. A telephone conversation on June 9, 2022, with a representative of the Office of the Secretary of State of Ohio regarding U S Rail’s status and filings with that Office;

d. Searching the internet using the company’s name; and

e. Unsuccessful efforts to reach the company by phone at its listed number in Toledo, Ohio, 419-720-7588, and through its web address, www.usrailcorp.com.

7. The following are the results of my investigation:

a. Mr. Hocky confirmed that U S Rail’s owner and president, Gabriel D. Hall, passed away in 2018, that he has had no contact with the company since at least that time, previously had no active matters with the company for some years, and has no current contact information for the company;

b. Attorney Hocky confirmed his last involvement on behalf of U S Rail was in regard to the Rail Line, in the matters before the Board cited in paragraph 6.a. above;

c. The records of the Ohio Secretary of State show that U S Rail was incorporated on November 17, 1993 in Ohio and is assigned Ohio entity number 857501. See results of a business name search on the website of the Ohio Secretary of State, a true and correct copy of which is attached hereto as Exhibit A;

d. The last filing by U S Rail with the Ohio Secretary of State was a Certificate of Amendment by Directors, filed April 22, 2011 (*see* Ex. A), noting a resolution had been

adopted by the company's directors pursuant to Ohio Revised Code § 1701.70(B)(6), changing the company name to U S Rail Corporation of Ohio with a registered address at 7846 W. Central Avenue, Toledo, Ohio 43617. *See* the Certificate of Amendment by Directors, a true and correct copy of which is attached hereto as Exhibit B;

e. I was informed during a conversation with a representative of the Office of the Ohio Secretary of State ("OSOS") on June 9, 2022, that Ohio requires no annual filing or annual fees for "for profit" corporations such as U S Rail, and no filing of any kind in order for the company to continue to be listed as active on the OSOS's records. According to the OSOS representative, unless U S Rail had filed with the OSOS a record indicating it is not active or the OSOS received a similar notification, the OSOS would have no notice of the company's change in status. The representative confirmed that there have been no filings of any kind by U S Rail with the Office of the OSOS since April 22, 2011, and no change of address or registered agent for the company since 2007. *See* the Resolution of U S Rail, dated March 24, 2007, attached to the Certificate of Amendment by Directors (Ex. B).

f. A search of the STB record yielded no filings with the STB on behalf of U S Rail Corporation of Ohio;

g. An internet search of the company name, U S Rail Corporation of Ohio, yielded the same address for the company as its registered address referenced above, 7846 W. Central Avenue, Toledo, Ohio 43617, which is shown to be "permanently closed", and the company's web address, www.usrailcorp.com. *See, e.g.*, results of internet search of the company name, a true and correct copy of which is attached hereto as Exhibit C; and

h. An internet search of the company's web address, www.usrailcorp.com, yielded a message indicating that the website is no longer accessible. See results of the search of the web address, www.usrailcorp.com, a true and correct copy of which is attached as Exhibit D.

8. Further, it does not appear that U S Rail presently has any operations in the region where the Rail Line is located. The Commissioners state in their letter to Ms. Brown, dated May 9, 2022 (attached to the Verified Notice as **Appendix 2**), that “[t]o the best of [their] knowledge, U S Rail maintains no operations, equipment, locomotives, or employees in [Salem] County.” Therefore, it appears that there are no railroad employees of U S Rail that will be affected by the proposed discontinuance and change of operators.

Signed under the pains and penalties of perjury this 10th day of June, 2022.

/s/ Robert A. Klein
Robert A. Klein, Esq.

EXHIBIT A

Entity#: 857501
Filing Type: CORPORATION FOR PROFIT
Original Filing Date: 11/17/1993
Location: TOLEDO
Business Name: U S RAIL CORPORATION OF OHIO

Status: Active
Exp. Date: -

Agent/Registrant Information

DANIELLE HALL
7846 W, CENTRAL AVENUE
TOLEDO OH 43617
10/12/2007
Active

Filings

Filing Type	Date of Filing	Document ID
DOMESTIC ARTICLES/FOR PROFIT	11/17/1993	9310_0107
AGENT NAME/ADDRESS TAX UPDATE	01/08/1999	AGNTUPDT
AGENT NAME/ADDRESS TAX UPDATE	02/01/1999	AGNTUPDT
AGENT NAME/ADDRESS TAX UPDATE	04/07/1999	AGNTUPDT
DOMESTIC/AMENDMENT TO ARTICLES	07/03/2007	200718602006
DOMESTIC AGENT SUBSEQUENT APPOINTMENT	10/12/2007	200728502046
CANCELLED BY TAX DEPT W/NOTIFICATION	04/21/2009	200911174994
DOMESTIC/REINSTATEMENT	04/02/2010	201009700764
DOMESTIC/AMENDMENT TO ARTICLES	04/22/2011	201111500838

Prior Business Names

Thu Jun 09 2022

Prior Business Name	Effective Date
THE GREAT MIAMI & SCIOTO RAILWAY COMPANY	07/03/2007
US RAIL CORPORATION	04/22/2011

UNITED STATES OF AMERICA
STATE OF OHIO
OFFICE OF SECRETARY OF STATE

I, Frank LaRose, Secretary of State of the State of Ohio, do hereby certify that this is a list of all records approved on this business entity and in the custody of the Secretary of State.



Witness my hand and the seal of the Secretary of State at Columbus, Ohio this 9th of June, A.D. 2022

Ohio Secretary of State

A handwritten signature in blue ink, reading "Frank LaRose".

EXHIBIT B



DATE: 04/26/2011	DOCUMENT ID 201111500838	DESCRIPTION DOMESTIC/AMENDMENT TO ARTICLES (AMD)	FILING 50.00	EXPED .00	PENALTY	CERT .00	COPY .00
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Receipt

This is not a bill. Please do not remit payment.

U.S. RAIL CORPORATION
7846 W CENTRAL AVE
TOLEDO, OH 43617

STATE OF OHIO CERTIFICATE

Ohio Secretary of State, Jon Husted**857501**

It is hereby certified that the Secretary of State of Ohio has custody of the business records for

U S RAIL CORPORATION OF OHIO

and, that said business records show the filing and recording of:

Document(s)

DOMESTIC/AMENDMENT TO ARTICLES

Document No(s):

201111500838

United States of America
State of Ohio
Office of the Secretary of State

Witness my hand and the seal of
the Secretary of State at Columbus,
Ohio this 22nd day of April, A.D.
2011.

Ohio Secretary of State



Prescribed by:

The Ohio Secretary of State

Central Ohio: (614) 466-3910

Toll Free: 1-877-SOS-FILE (1-877-767-3453)

www.sos.state.oh.us

e-mail: busserv@sos.state.oh.us

Expedite this Form: (Select One)

Mail Form to one of the Following:

☐ Yes PO Box 1390
Columbus, OH 43216
*** Requires an additional fee of \$100 ***

☒ No PO Box 1329
Columbus, OH 43216

**Certificate of Amendment by Directors
or Incorporators to Articles
(Domestic)**

Filing Fee \$50.00

(CHECK ONLY ONE (1) BOX)

(1) ☐ Amendment by Directors	(2) ☐ Amendment by Incorporators
☒ Amended by Directors (123-AMDD)	☐ Amended by Incorporators (124-AMDI)

Complete the general information in this section for the box checked above.

Name of Corporation U S RAIL CorporationCharter Number 857501

☐ Please check if additional provisions attached hereto are incorporated herein and made a part of these articles of organization.

Complete the information in this section if box (1) is checked.

Name and Title of Officer Gabriel D. Hall President
(name) (title)

(CHECK ONLY ONE (1) BOX)

☒ A meeting of the directors was duly called and held on March 24, 2007
(Date)

☐ In an writing signed by all the Directors pursuant to section 1701.54 of the ORC

The following resolution was adopted pursuant to section 1701.70(B) (6) of the ORC:
(Insert proper paragraph number)

that the current name of the Corporation- U S RAIL Corporation hereby
changed to U S RAIL Corporation of Ohio; And, be it further RESOLVED, that the principal
place of business is hereby changed to 7846 W. Central Avenue, Toledo, Ohio 43617. This
resolution shall be effective immediately. The Secretary is directed to give notice of the Name
Change to all affected persons.

Complete the information in this section if box (2) is checked.

WE, the undersigned, being all of the incorporators of the above named corporation, do certify that the subscriptions to shares have not been received and the initial directors are not named in the articles. We hereby have elected to amend the articles as follows:

REQUIRED
Must be authenticated (signed)
by an authorized representative
(See Instructions)

Authorized Representative

(Print Name)

Date

Authorized Representative

(Print Name)

Date

Authorized Representative

(Print Name)

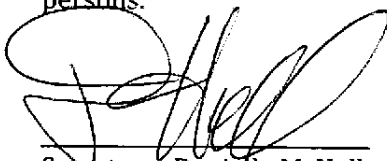
Date

Shareholders Meeting
March 24, 2007

RESOLUTION

At a meeting held on March 24, 2007, all Shareholders being present, motion by D. hall, supported by K. Hall and by unanimous vote the following Resolution is adopted:

RESOLVED that the current name of the Corporation- Great Miami and Scioto Railway Co. is hereby changed to U S RAIL Corporation of Ohio; And, be it further RESOLVED, that the principal place of business in hereby changed to 7846 W. Central Avenue, Toledo, Ohio 43617. This resolution shall be effective immediately. The Secretary is directed to give notice of the Name Change to all affected persons.


Secretary- Danielle M. Hall

The foregoing resolution is a true rendition of the meeting of the Shareholders on the above date.

EXHIBIT C

Rail Development Commission - Ohio



<https://rail.ohio.gov/wps/portal/gov/ordc/home> ▼

The ORDC's mission is to plan, promote, and implement the improved movement of goods and people faster and safer on a **rail transportation** network connecting **Ohio** to the nation and the...

US Rail Corporation of Ohio | Better Business Bureau® ...



<https://www.bbb.org/us/oh/toledo/profile/railroad...>

This organization is not BBB accredited. **Railroad** Contractors in Toledo, **OH**. See BBB rating, reviews, complaints, & more.

EXHIBIT D

Forbidden

You don't have permission to access this resource.

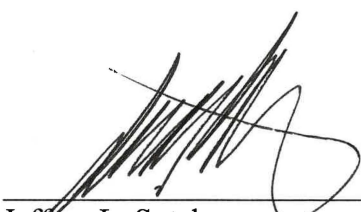
Apache/2.4.51 Server at www.usrailcorp.com Port 80

APPENDIX 4

APPENDIX 4

VERIFICATION

JEFFREY L. SUTCH, being duly sworn, states that he is President of SMS Rail Service, Inc. ("SMS"); that he has read the foregoing Notice of Exemption under 49 C.F.R. § 1150.41 being filed by SMS; that the projected annual revenue of the rail line being acquired by lease and operated by SMS as a result of the transaction will not be five million dollars or more; that SMS's projected revenues as a result of the transaction will not result in the creation of a Class II or Class I rail carrier so as to require processing under 49 C.F.R. § 1150.45; that the proposed acquisition and operation of the rail line does not involve any provision or agreement that may limit future interchange commitments as defined in 49 C.F.R. § 1150.43(h); and that all allegations of fact contained in SMS's Notice of Exemption are true and correct.



Jeffrey L. Sutch

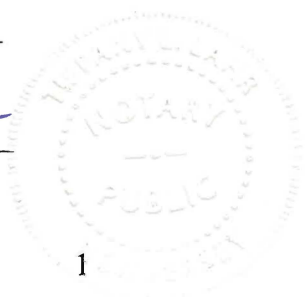
STATE OF NEW JERSEY)
) SS:
COUNTY OF GLOUCESTER)

SUBSCRIBED and SWORN to before me
this 10th day of June, 2022.



Notary Public

My Commission expires: 10/2/2025



APPENDIX 5

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

Notice of Exemption

FINANCE DOCKET NO. 36529

SMS RAIL SERVICE, INC. –
ACQUISITION AND OPERATION EXEMPTION –
RAIL LINE OF SALEM COUNTY, NEW JERSEY, IN SALEM COUNTY, NJ

SMS Rail Service, Inc. (“SMS”), a Class III rail carrier, has filed a Notice of Exemption to acquire by lease from Salem County, New Jersey, and operate a rail line which comprises approximately nineteen and four-tenths (19.4) linear miles of rail lines (inclusive of approximately the eight-tenths (0.8) mile of sidings, passing and yard tracks, and the one and two-tenths (1.2) mile spur known as the Glass House Branch between milepost 0.0 and milepost 1.2 in Salem City, New Jersey), on property owned by SALEM COUNTY known as the Salem Branch Line located primarily in SALEM COUNTY and in part in Gloucester County, New Jersey between approximately milepost 11.0 in Swedesboro, New Jersey and approximately milepost 28.4 in the Salem Rail Yard in Salem City, New Jersey. Comments must be filed with the Board and be served on SMS’s attorney, Robert A. Klein, Esquire, Berkowitz Klein, LLP, 629 B Swedesford Road, Swedesford Corporate Center, Malvern, PA 19355-1530, Tel. 610-889-3200, ext. 2, Cell 215-880-6913, Email: rak@berklein.com.

The Notice proposes a change in railroad operators on the Rail Line from U S Rail Corporation (“U S Rail”) and J.P. Rail, Inc. d/b/a Southern Railroad Company of New Jersey (“J.P. Rail”), to SMS, as to which J.P. Rail has agreed and stipulated. U S Rail reportedly has not maintained operations, equipment, locomotives, or employees on the Rail Line or in Salem County since in or about January 2012. Employees of U S Rail and J.P. Rail are hereby advised of the proposed change in railroad operators.

The Notice is filed under 49 C.F.R. § 1150.41. 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

Dated:
(SEAL)

Cynthia T. Brown
Chief, Section of Administration