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May 20, 2022
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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
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FLETCHER & SIPPEL LLC

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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 36597

KEAN BURENGA AND CHESAPEAKE AND DELAWARE, LLC
-- CONTINUANCE IN CONTROL EXEMPTION --
DELAWARE AND RARITAN RIVER RAILROAD, LLC

**VERIFIED NOTICE OF EXEMPTION OF
KEAN BURENGA AND CHESAPEAKE AND DELAWARE, LLC
PURSUANT TO 49 C.F.R. § 1180.2(d)(2)**

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**ATTORNEYS FOR KEAN BURENGA
AND CHESAPEAKE AND DELAWARE, LLC**

Dated: May 20, 2022

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36597

KEAN BURENGA AND CHESAPEAKE AND DELAWARE, LLC
-- CONTINUANCE IN CONTROL EXEMPTION --
DELAWARE AND RARITAN RIVER RAILROAD, LLC

**VERIFIED NOTICE OF EXEMPTION OF
KEAN BURENGA AND CHESAPEAKE AND DELAWARE, LLC
PURSUANT TO 49 C.F.R. § 1180.2(d)(2)**

Kean Burenga (“Burenga”), an individual and non-carrier, and Chesapeake and Delaware, LLC (“CAD”), a non-carrier holding company, hereby file this notice of exemption under 49 C.F.R. § 1180.2(d)(2) to continue in control of Delaware and Raritan River Railroad, LLC (“DRRR”), a non-carrier established to operate over certain lines owned by New Jersey Transit Corporation, an instrumentality of the State of New Jersey (“NJT”), and to operate pursuant to lease certain lines owned by Consolidated Rail Corporation (“Conrail”). The involved lines are located in Middlesex, Monmouth, and Ocean Counties, New Jersey.

In accordance with the requirements of 49 C.F.R. § 1180.4(g), Burenga and CAD submit the following information:

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

Burenga and CAD are non-carriers. CAD currently controls two Class III railroads, Dover and Rockaway River Railroad, LLC (“DRRV”) and Dover and Delaware River Railroad, LLC (“DDRR”) – collectively, the “CAD Railroads.” *Kean Burenga and Chesapeake and Delaware, LLC – Continuance in Control Exemption – Dover and Delaware River Railroad,*

LLC, FD 36259 (STB served Feb. 15, 2019) (“*Control*”). The lines of DRRV and DRRR are shown on the map attached hereto as Exhibit A.

Burenga has authority to control the following four Class III railroads: Belvidere & Delaware River Railway Company, Inc. (“BDRV”), Black River & Western Corp. (“BRW”), DRRR, and DRRV (collectively, the “Burenga Railroads”). *Id.*¹ Each of those four carriers operate in New Jersey, and are shown on the map attached hereto as Exhibit A. DRRR, the principal subject of this proceeding, is a CAD-controlled noncarrier. DRRR is concurrently filing – (i) a notice of exemption under 49 C.F.R. Part 1150, subpart D to operate as a common carrier over certain Conrail and NJT-owned lines pursuant to *Delaware and Raritan River Railroad, LLC — Operation Exemption — Consolidated Rail Corporation and New Jersey Transit Corporation*, FD 36596; and (ii) a notice for a modified rail certificate of public convenience and necessity to operate a connecting NJT-owned line segment pursuant to *Delaware and Raritan River Railroad, LLC – Modified Rail Certificate*, FD 36598. DRRR will become a Class III common carrier subject to 49 U.S.C. Subtitle IV, Chapter 105 upon its commencement of the proposed operations. The lines to be operated by DRRR, all of which are in New Jersey, are shown on Exhibit B.

¹ Burenga holds 100% of BDRV’s stock, leaving him unquestionably in control of that rail carrier. And he has more recently acquired a controlling interest in BRW. Burenga currently possesses a minority equity interest in DRRR and DRRV, although he is a director for both railroads, and currently holds a management position in each. The Board has extended to Burenga permissive authority to control the Burenga Railroads, but has never found definitively that Burenga actually possesses a controlling interest in BRW, DRRR, and DRRV, or in any combination of those three, to necessitate Board control authorization. *Control*, 2. Burenga will assume a similar minority stake in DRRR, and will hold a like directorship in, and management position with, DRRR. In keeping with *Control*, Burenga seeks permissive control authority for DRRR out of an abundance of caution.

Pursuant to a written agreement with NJT and Conrail², DRRR will exercise operating rights over the following NJT lines:³

(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”);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”).

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

² NJT is granting the subject operating rights to DRRR pursuant to the terms of a three-party, written agreement (the “Agreement”). Conrail is the third 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 NJT has requested that Burenga and CAD include the following informational statement in this proceeding: “NJT does not have any common carrier obligations on the Freehold Branch or the Southern Secondary (collectively, the “Subject Trackage”). NJT and Conrail are parties to a 1984 Trackage Rights Agreement, as amended several times (the ‘1984 Agreement’). The 1984 Agreement provides the terms and conditions for Conrail’s provision of freight service over the NJT rail properties over which Conrail retained an exclusive freight easement, including the Subject Trackage. The 1984 Agreement permits NJT the right to grant other parties access to the Subject Trackage.” Because this statement goes beyond the scope of the applicable class exemption eligibility requirements, and because Mr. Burenga does not have adequate knowledge of the facts set forth in the foregoing passage, Mr. Burenga’s verification of this Notice does not extend to the foregoing quote.

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 the aforementioned notice of modified certificate proceeding under FD 36598.

In addition to the operating rights secured from NJT, DRR will lease from Conrail and operate the following 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;

(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 +/-); and

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

Collectively, the operating rights granted to DRRR by NJT and the lease rights granted to DRRR by Conrail will allow DRRR to operate a contiguous rail system 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 full names and addresses of the Applicants herein are as follows:

Kean Burenga
20 Toad Lane
Ringo, NJ 08551

and

Chesapeake and Delaware, LLC
c/o Cathrin Banks
24006 Old Meadow Road
Seaford, DE 19973

The proposed control transaction: (a) would not connect DRRR with any of the Burenga Railroads; (b) is not part of a plan by Burenga or CAD to connect DRRR to any of the Burenga Railroads, or to connect any of the Burenga Railroads to one another; and it (c) does not involve a Class I carrier. Accordingly, the proposed transaction satisfies the class exemption criteria at 49 C.F.R. § 1180.2(d)(2).

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

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

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

Burenga and CAD intend to consummate the proposed transaction and continue in control of DRRR upon DRRR's commencement of common carrier operations on or after the effective date of this exemption and the exemption invoked in FD 36596, anticipated to be June 19, 2022.⁵

⁵ While DRRR's concurrently-filed modified certificate authority for operation of the Gap Segment is deemed to become effective as of the date of filing (May 20, 2022) pursuant to 49 C.F.R. § 1150.23(a), DRRR does not intend to commence modified certificate operations over the Gap Segment until such time as the FD 36596 exemption and the subject continuance in control exemption become effective, such that DRR's common carrier operations under FD 36596 and the modified certificate notice would commence simultaneously.

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

The transaction will promote Burenga's and CAD's investment objectives, and sustain the Burenga Railroads' efficiency, financial strength, and ability to meet shipper needs.

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

Burenga and CAD are non-carriers, and their business addresses are supplied above. DRRR, and the existing Burenga Railroads are located entirely in New Jersey.

Maps: 49 C.F.R. § 1180.6(a)(6)

A map showing generally the location of the Burenga Railroads is attached hereto as Exhibit A. A map showing generally the location of DRRR is attached hereto as Exhibit B.

Agreement: 49 C.F.R. § 1180.6(a)(7)(ii)

CAD already controls DRRR, currently a non-carrier, and Burenga may possess a controlling interest. No agreement is contemplated or necessary for CAD (or for Burenga) to continue in control of DRRR once DRRR becomes a railroad common carrier.

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

The proposed transaction involves the control of one new Class III rail carrier by one or more entities that have authority to control other, existing Class III carriers, and it involves no Class I or II rail carriers. Accordingly, this transaction is not subject to the imposition of labor protection conditions. *See* 49 U.S.C. § 11326(c).

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

Under 49 C.F.R. § 1105.6(c)(2)(i) and (ii), the proposed control transaction is exempt from environmental reporting requirements. Burenga's and CAD's respective authority

to control DRRR will not result in significant changes in carrier operations, *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)(3), the proposed continuance in control transaction also is exempt from historic preservation reporting requirements. The proposed transaction will not substantially change the level of maintenance of any railroad property.

Interchange Commitments: 49 C.F.R. § 1180.4(g)(4)

The proposed control transaction does not involve the acquisition or operation of a rail line, and, thus, the provisions of 49 C.F.R. § 1180.4(g)(4) are inapplicable. In any event, the agreements governing the transactions that are the subject of the DRRR exemption filings in FD 36596 and FD 36598 do not include any provision restricting DRRR's interchange of traffic with a third-party connecting carrier.

Respectfully submitted,

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

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**ATTORNEYS FOR KEAN BIRENGA AND
CHESAPEAKE AND DELAWARE, LLC**

Dated: May 20, 2022

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36597

**KEAN BURENGA AND CHESAPEAKE AND DELAWARE, LLC
-- CONTINUANCE IN CONTROL EXEMPTION --
DELAWARE AND RARITAN RIVER RAILROAD, LLC**

EXHIBIT A

MAP OF THE BURENGA RAILROADS

The map displays the Delaware River region, including parts of Pennsylvania and New Jersey. Key railroads are highlighted with colored lines: the Dover and Delaware River Railroad (DD) in green, the Dover and Rockaway River Railroad (DRRV) in blue, the Belvidere & Delaware River Railway (BDRV) in purple, and the Black River & Western Railroad (BRW) in orange. Major towns and cities shown include Washington, Port Murray, Rockport, Hackettstown, Netcong, Roxbury, Wharton, Rockaway, Mountain View, Denville, Morristown, Summit, Gladstone, Flemington, Three Bridges, Ringoes, and Milford. The map also shows various highways, including I-80, I-206, I-78, and I-95. A legend in the bottom right corner identifies the railroads by color. The map is sourced from Google Maps.



- | | |
|---|---|
| Dover and Delaware River Railroad (DD) |  |
| Dover and Rockaway River Rail Road (DDRV) |  |
| Belvidere & Delaware River Railway (BDRV) |  |
| Black River & Western Railroad (BRW) |  |

BEFORE THE
SURFACE TRANSPORTATION BOARD

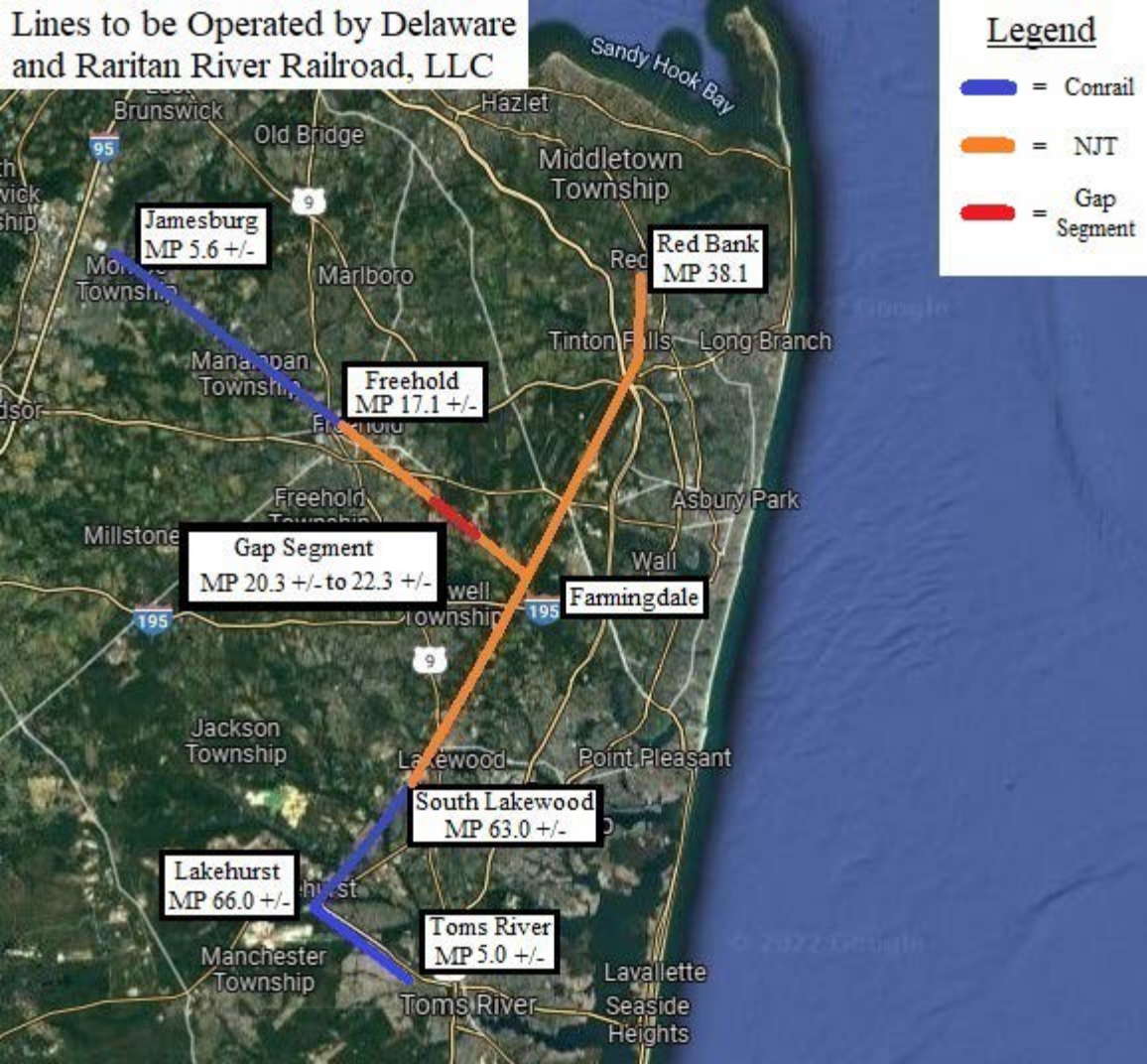
FD 36597

**KEAN BURENGA AND CHESAPEAKE AND DELAWARE, LLC
-- CONTINUANCE IN CONTROL EXEMPTION --
DELAWARE AND RARITAN RIVER RAILROAD, LLC**

EXHIBIT B

MAP OF DELAWARE AND RARITAN RIVER, LLC

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



BEFORE THE
SURFACE TRANSPORTATION BOARD

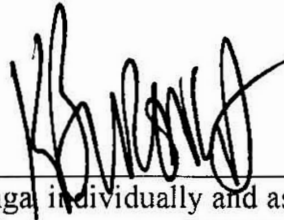
FD 36597

**KEAN BURENGA AND CHESAPEAKE AND DELAWARE, LLC
-- CONTINUANCE IN CONTROL EXEMPTION --
DELAWARE AND RARITAN RIVER RAILROAD, LLC**

VERIFICATION

VERIFICATION

I, Kean Burenga, individually and as President of Chesapeake and Delaware, LLC, verify under penalty of perjury under the laws of the United States that I have knowledge of the matters contained herein as they pertain to myself and to Chesapeake and Delaware, LLC, that the statements contained herein are true and correct to the best of my knowledge, information and belief, and further, I certify that I am qualified and authorized to provide this verification.

A handwritten signature in black ink, appearing to read 'K Burenga', is written over a horizontal line.

Kean Burenga, individually and as
President of Chesapeake and Delaware, LLC

Dated: May 20, 2022