

DO

FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36676]

New Jersey Transit Corporation—Acquisition Exemption—Norfolk Southern Railway Company in the Counties of Morris and Warren, N.J.

The New Jersey Transit Corporation (NJ Transit), a noncarrier, has filed a verified notice of exemption under 49 C.F.R. § 1150.31 to acquire from Norfolk Southern Railway Company (NSR) an approximately 9.15-mile portion of the property commonly known as the Washington Secondary Track in Morris and Warren Counties, N.J., from milepost 48.1 to milepost 57.25 (the Line). NJ Transit states that, under the proposed transaction, it would acquire ownership of the Line and NSR would retain an exclusive freight easement preserving NSR's ability to operate freight service on the entire Washington Secondary Track.¹

NJ Transit states that usage of the Line will continue to be governed by the trackage rights agreement (the 1984 Agreement) between NJ Transit and NSR's predecessor, the Consolidated Rail Corporation.² According to NJ Transit, it is acquiring the property to support its commuter rail operations.

¹ NJ Transit also filed a motion to dismiss the notice of exemption on the grounds that the transaction does not require authorization from the Board. The motion to dismiss will be addressed in a subsequent Board decision.

² NJ Transit includes with its verified notice excerpts from the 1984 Agreement as well as documents implementing the current transaction.

NJ Transit certifies that the proposed transaction does not involve a provision or agreement that would limit future interchange with a third-party connecting carrier. NJ Transit also certifies that, because it will not conduct any rail carrier operations on the Line, its projected annual revenues will not exceed \$5 million and will not result in the creation of a Class I or Class II carrier.

NJ Transit states that it will consummate the proposed transaction following completion of the proceedings at the Board related to this notice and the related motion to dismiss. The earliest this transaction may be consummated is June 29, 2023, the effective date of the exemption (30 days after the verified notice of exemption 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 June 22, 2023 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36676, 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 NJ Transit's representative, Charles A. Spitulnik, Kaplan Kirsch & Rockwell LLP, 450 7th Avenue, Suite 1401, New York, NY 10123.

According to NJ Transit, this action is categorically excluded from environmental reporting requirements under 49 C.F.R. § 1105.6(c) and from historic preservation reporting requirements under 49 C.F.R. § 1105.8(b).

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

Decided: June 9, 2023.

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