

SERVICE DATE – FEBRUARY 15, 2023

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36644

MID-ATLANTIC GATEWAY LLC—LEASE AND OPERATION EXEMPTION—CERTAIN  
RAIL LINE ASSETS OF J.P. RAIL, INC. D/B/A SOUTHERN RR COMPANY OF NEW  
JERSEY

Digest:<sup>1</sup> The Board declines to institute a proceeding to determine whether to revoke the exemption granting Mid-Atlantic Gateway LLC the authority to lease and operate a portion of a rail line owned by J.P. Rail, Inc. d/b/a Southern RR Company of New Jersey.

Decided: February 14, 2023

In this decision, for the reasons discussed below, the Board will decline to institute a revocation proceeding to address the petition to revoke filed by J.P. Rail, Inc. d/b/a Southern RR Company of New Jersey (J.P. Rail). Pursuant to 49 U.S.C. § 10502(d), the Board’s decision will be published in the Federal Register.

BACKGROUND

On October 28, 2022, Mid-Atlantic Gateway LLC (MAG) filed a verified notice of exemption under 49 C.F.R. § 1150.31 to acquire by lease and operate over approximately 0.12 miles (634 linear feet) of track, located between mileposts 56.99 and 56.87 on the Pleasantville Branch Line in Atlantic County, N.J., owned by J.P. Rail. The verified notice stated that MAG had reached an agreement “in principle” with J.P. Rail under which MAG would acquire by lease and operate over the Line, and that MAG would hold itself out to provide common carrier rail freight service pursuant to the agreement. Notice of the exemption was served and published in the Federal Register on November 10, 2022 (87 Fed. Reg. 67,990), and the exemption became effective on November 27, 2022.

On November 18, 2022, J.P. Rail filed a short letter petitioning the Board to revoke the lease and operation exemption and stating that “[t]he parties have not reached an agreement to acquire by lease and operate over the line at this time.” (Pet. 1.) MAG did not file a response.

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<sup>1</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol’y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

## DISCUSSION AND CONCLUSIONS

The notice of exemption here has already become effective, as no party sought a stay. Under 49 U.S.C. § 10502(d), an already-effective exemption may be revoked, in whole or in part, if regulation is necessary to carry out the rail transportation policy of 49 U.S.C. § 10101. Furthermore, pursuant to § 10502(d), the Board shall, within 90 days after receipt of a request for revocation, determine whether to begin an appropriate proceeding. The party seeking revocation bears the burden of showing that regulation is necessary to carry out the rail transportation policy. See 49 C.F.R. § 1121.4(f). A petition to revoke must be based on reasonable, specific concerns that demonstrate that reconsideration of the exemption is warranted and more detailed scrutiny of the transaction is necessary. Grand Elk R.R.—Lease & Operation Exemption—Norfolk S. Ry., FD 35187, slip op. at 2 (STB served July 13, 2009). Finally, if the Board decides not to begin a proceeding to revoke a class exemption, the reasons for the decision shall be published in the Federal Register.

J.P. Rail does not articulate reasonable, specific concerns with the notice of exemption and does not argue why Board regulation is necessary to carry out any particular provision of the rail transportation policy. It states only that “[t]he parties have not reached an agreement to acquire by lease and operate over the line at this time.” (Pet. 1.) This lone statement, however, does not demonstrate that more detailed scrutiny of the transaction is required. There is no requirement that a party have a final agreement in place before obtaining a class exemption. Moreover, the authority granted under a notice of exemption is permissive and cannot be exercised unless the parties agree to go forward with the transaction. See Chi., Lake Shore & S. Bend Ry.—Acquis. & Operation Exemption—Norfolk S. Ry., FD 34960, slip op. at 4 (STB served Feb. 14, 2008). The grant of the exemption here does not require the parties to complete the transaction, and revoking the exemption is not necessary simply because the parties have not reached a final agreement to go forward.<sup>2</sup>

Accordingly, the Board will decline to institute a revocation proceeding to address J.P. Rail’s petition.

It is ordered:

1. The Board declines to institute a proceeding to address J.P. Rail’s petition for revocation.

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<sup>2</sup> This is not a situation where there are questions whether the proposed acquisition would involve an actual agreement, as that term is understood, to transfer an existing rail line. See, e.g., James Riffin—Acquis. and Operation Exemption—In York Cnty., Pa., FD 36548 (STB served April 21, 2022) (rejecting a notice of exemption where there were questions concerning whether there was an actual agreement to transfer an existing rail line), pet. for reconsideration pending. In Riffin, the Board rejected a notice of exemption because, inter alia, it was unclear whether the rail line still existed on the property at issue (i.e., whether the line had been abandoned), whether the previous rail carrier owner and operator understood that a rail line might still exist on the property, and whether a determination in a quiet title action could constitute an agreement. Id. None of those concerns exist here.

2. This decision will be published in the Federal Register.

3. This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.