

SERVICE DATE – MARCH 29, 2024

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36761

RIVERSIDE RAIL, INC.—OPERATION EXEMPTION—TRACKS OF RIVERSIDE
INDUSTRIAL COMPLEX, INC. IN BUCKS COUNTY, PENNSYLVANIA

Decided: March 29, 2024

Riverside Rail, Inc. (Riverside), a noncarrier, filed a verified notice of exemption under 49 C.F.R. § 1150.31 to operate over approximately 4,665 feet of railroad tracks located within a 68 acre industrial park known as the Riverside Industrial Complex (Complex) in Bristol Township, Bucks County, Pa. Riverside states that the Complex is owned by its corporate parent affiliate, Riverside Industrial Complex, Inc. (Riverside Industrial). (Verified Notice 1-2.) Riverside notes that the Complex is adjacent to lines of railroad owned by the National Railroad Passenger Corporation (Amtrak) and that a public road separates the Complex from the Amtrak mainline. (*Id.* at 1.) The verified notice further states that Consolidated Railroad Corporation (Conrail) provided service to shippers within the park from 1986 to 2006 but that there has been no service in the Complex since 2006. (*Id.*) Riverside states that the physical connection of the tracks in the Complex to Amtrak’s mainline was removed in 2010, and that the public road crossing authority has been suspended and the track removed by Conrail in 2017. (*Id.* at 4.) The verified notice states that Riverside is entering into a track lease and operating agreement with Riverside Industrial that would give Riverside rights to operate and maintain the currently private track as a common carrier. (*Id.* at 2-3.) For the reasons discussed below, the verified notice will be rejected.

The verified notice was submitted under the class exemption procedures at 49 C.F.R. § 1150.31, which provide an expedited process for obtaining authority under 49 U.S.C. § 10901. The Board’s streamlined class exemption procedures are reserved for transactions involving routine, uncomplicated, and non-controversial matters. See, e.g., Spectrum RR Holdings, LLC—Operation Exemption—R.R. Line in Brookhaven, N.Y., FD 36376 et al., slip op. at 4 (STB served June 16, 2020). Notices raising unresolved issues or questions requiring considerable scrutiny may be rejected. See, e.g., Tri-City R.R.—Lease & Operation Exemption—N. Pac. Dev., LLC, FD 36170, slip op. at 1 (STB served March 21, 2018).

Here, various issues and questions surrounding the status of the track render this matter inappropriate for the class exemption procedures. As an initial matter, the current physical extent and condition of the track over which Riverside seeks to provide common carrier service is unclear. Riverside states that “the tracks within the Complex remained mostly in place, albeit in disrepair and buried in some places.” (Verified Notice 1.) This suggests that at least some of

the track within the Complex itself was removed. In addition, Riverside acknowledges that the connection to Amtrak's mainline, and therefore the interstate rail network, would need to be restored in some way to allow common carriage to commence. It further acknowledges that a public road crossing would need to be "reinstalled." While the Board has granted acquisition and operating authority over previously private lines of railroad, therefore bringing those lines under the Board's jurisdiction,¹ Riverside cites to no precedent that raised similar issues.

Given the uncertain status of the track within the Complex, use of the class exemption process is not appropriate in this circumstance. See Mass. Coastal R.R.—Acquis. & Operation Exemption—Bay Colony R.R., FD 36738, slip op. at 2 (STB served Dec. 15, 2023) (rejecting notice of exemption given uncertainty regarding status of the line); Providence & Worcester R.R.—Acquis. & Operation Exemption—Certain Rights of Consol. Rail Corp., FD 33132, slip op. at 1 (STB served Sept. 27, 1996) (noting that the notice of exemption procedure "is an inappropriate vehicle" for non-routine transactions); see also C&C R.R.—Operation Exemption—Centerpoint Props., L.L.C., FD 33990, slip op. at 2-3 (STB served July 30, 2019) (instituting proceeding to consider revoking notice of exemption for operating authority where questions were raised regarding whether track existed at the time of the notice). While this decision does not make a finding about whether Riverside needs more than operating authority to begin common carriage operations within the Complex, there is sufficient ambiguity to make granting authority to a new operator through the notice process inappropriate.

For the foregoing reasons, Riverside's verified notice will be rejected. The rejection does not preclude Riverside from seeking authority through a petition for exemption or an application, whether for operation or construction. However, any future pleading seeking authority from the Board for operating authority alone should explain, in detail, the status of the track in the Complex and what exactly Riverside must do to "rehabilitate" the track, as well as Riverside's basis for why construction authority is not required to begin common carriage.

It is ordered:

1. Riverside's verified notice of exemption is rejected.
2. This decision is effective on the date of service.

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

¹ Pioneer Rail & Transload of Hawthorne, Fla.—Operation Exemption—Line in Hawthorne, Fla., FD 36748 (STB served Jan. 12, 2024); Or. Indep. R.R.—Operation Exemption—in Polk Cnty., Or., FD 36442 (STB served Oct 7, 2020).