

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36764

GREAT LAKES TERMINAL RAILROAD, LLC—ACQUISITION AND  
OPERATION EXEMPTION—NORFOLK SOUTHERN RAILWAY COMPANY, CRRC,  
AND THE OWNER ASSOCIATION

Decided: April 26, 2024

On March 29, 2024, Great Lakes Terminal Railroad, LLC (GLTRR), filed a verified notice of exemption under 49 C.F.R. § 1150.41 for an exemption from the provisions of 49 U.S.C. § 10902 to authorize GLTRR’s acquisition and operation of a transloading facility located in Chicago, Ill., and approximately 22,568 feet of track in and adjacent to that facility (the Line) from Norfolk Southern Railway (NSR), CRRC Sifang America Incorporated (CRRC), and Chicago Enterprise Center Owners’ Association (Owners’ Association). For the reasons explained below, GLTRR’s notice will be rejected.

BACKGROUND

According to GLTRR, the Line was previously owned by CenterPoint Chicago Enterprise, LLC (CenterPoint), and operated by GLTRR under a sublease between GLTRR and its affiliate, Great Lakes Reloading LLC (GLR), effective January 19, 2018.<sup>1</sup> (GLTRR Notice 4.) GLTRR asserts that a few months after the January 5, 2018 Decision, on April 30, 2018, Great Lakes Terminal Railroad, LLC (GLT), a noncarrier and an affiliate of GLTRR,<sup>2</sup> acquired the Line from CenterPoint and subsequently leased the Line to GLTRR for rail operations. (*Id.*) GLTRR claims that it mistakenly failed to file a notice of exemption for its new lease with GLT on the belief that because it had just received Board authority to operate under a sub-lease with GLR, no additional authority was necessary. (*Id.* at 4-5.) GLTRR states that neither GLTRR nor GLT intended to circumvent the Board’s jurisdiction and that “[o]nly recently did GLTRR come to the realization that it should have likely filed a lease amendment when GLT acquired the Line and entered into the new lease with GLTRR.” (*Id.* at 5.) GLTRR further states that from 2018 to the present, GLT has been the fee simple owner of the Line and

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<sup>1</sup> GLTRR’s authority to operate under the sublease with GLR was obtained through a notice of exemption. See Great Lakes Terminal R.R.—Lease & Operation Exemption—Rail Line of Great Lake Reloading, LLC (January 5, 2018 Decision), FD 36160 (STB served Jan. 5, 2018).

<sup>2</sup> GTRR states that the Transload Group, LLC (TTG) is the parent company of both GLTRR and GLT and that GLTRR is the only railroad in the TTG corporate family.

that GLTRR has been operator. (*Id.*) GLTRR requests that the Board grant, “on its own motion,” an individual exemption for after-the-fact authority for GLTRR to acquire by lease from GLT and operate the Line. (*Id.*)

According to GLTRR, at the time GLTRR originally sought authority to acquire and operate the Line, it was comprised of approximately 12,500 feet but since then, additional track was added at the transloading facility and today GLTR operates over 22,568 feet of track. (*Id.* at 3 n.2, 5.) GLTRR now seeks authority to continue operating over all 22,568 feet of track. (*Id.* at 5.) GLTRR explains that ownership of the Line is divided between GLT (owning 14,215 feet), CRRC (owning 850 feet), and the Owners’ Association (owning 7,503 feet). (*Id.*) GLTRR claims that it operates over CRRC’s track pursuant to easement rights it obtained in 2017 and operates over the Owners’ Association track pursuant to “a recorded [d]eclaration that gives GLTRR the right to utilize the Owner Association Rail Area,” which it entered into in 2018.<sup>3</sup> (*Id.* at 4 n.4, 9 n.11.) According to GLTRR, GLT will sell its segment of the Line (14,215 feet) to NSR and GLTRR will continue to operate over it under a new lease agreement with NSR.<sup>4</sup> (*Id.* at 5.)

## DISCUSSION AND CONCLUSIONS

The notice-of-exemption process is an expedited means of obtaining Board authorization for certain classes of transactions, as defined by the Board’s regulations, that ordinarily require minimal regulatory scrutiny. See Class Exemption for the Acquis. & Operation of Rail Lines Under 49 U.S.C. 10901, 1 I.C.C.2d 810, 811 (1985) (class exemptions are “designed to meet the need for expeditious handling of a large number of requests that are rarely opposed”). Class exemptions are intended for routine cases that do not raise unresolved issues or questions that require considerable scrutiny. See, e.g., ABC & D Recycling, Inc.—Lease & Operation Exemption—a Line of R.R. in Ware, Mass., FD 35397, slip op. at 4 (STB served Jan. 20, 2011); Tri-City R.R.—Lease & Operation Exemption—N. Pac. Dev, LLC, FD 36170, slip op. at 1 (STB served Mar. 21, 2018). As explained further below, this case is not routine and there are several unresolved issues and questions regarding the Line that require more scrutiny before the notice of exemption process proceeds.

First, GLTRR’s separate request for an after-the-fact, individual exemption for GLTRR’s April 2018 lease and operation is not the subject transaction of the verified notice of exemption. It is not routine to use a notice of exemption to seek after-the-fact authority for a prior transaction that is not the subject of the notice. In addition, the verified notice raises questions regarding GLTRR’s operations over CRRC’s track and the Owners’ Association’s track. In the January 5, 2018 Decision, GLTRR obtained Board authority to operate over 12,500 feet of track, which was owned entirely by CenterPoint at the time but was purchased by GLT soon after. (GLTRR Notice 4.) GLTRR states that additional track was added and that it now operates over

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<sup>3</sup> GLTRR states that, in 2018, it used the 12,500 feet of track owned by CenterPoint in interchange operations with Indiana Harbor Belt Railroad but that now it uses the track owned by CRRC and the Owners’ Association in such interchange operations. (*Id.* at 4 n.4.)

<sup>4</sup> GLTRR states that, with respect to NSR, the Line is industry track governed by 49 U.S.C. § 10906, which does not require Board authority to acquire or operate.

22,568 feet of track, including track owned by CRRC and the Owners' Association. (*Id.* at 3 n.2, 5.) GLTRR's notice seeks after-the-fact authority to continue its operations over GLT-owned track pursuant to its lease with GLT and to continue its operations over tracks owned by CRRC and the Owners' Association pursuant to agreements entered into with those entities. (*Id.* at 4 n.4, 5.) But it is not clear when GLTRR began operating over the tracks of CRRC and the Owners' Association or why GLTRR never sought Board authority to enter into agreements with CRRC and the Owners' Association to acquire and operate over their tracks.<sup>5</sup>

The notice of exemption also raises questions about the status of any agreements with NSR due to various seemingly inconsistent statements. GLTRR states that "today GLTRR is leasing 14,215 linear feet (2.69 miles) of trackage from NSR and will continue to operate over [it]." (*Id.* at 9.) This language suggests that GLT has already sold the track to NSR and GLTRR has entered into a lease with NSR without the necessary Board authority. GLTRR also states that a "lease amendment" with NSR is to become effective 30 days after the filing of GLTRR's notice. (*Id.*) The term "lease amendment" suggests that there may already be an existing lease with NSR. Elsewhere GLTRR uses language indicating that no transaction with NSR has yet been consummated but even these statements appear contradictory. Specifically, GLTRR states that "GLT reached an agreement with NSR (pursuant to a purchase and sale agreement) to sell NSR the entirety of its [track]," but later states that there is only "an agreement in principle with NSR to sell NSR the entirety of its [track]." (*Id.* at 5, 8.)

For the reasons explained above, the Board will reject GLTRR's notice of exemption. See, e.g., S. San Luis Valley R.R.—Acquis. & Operation Exemption—Iowa Pac. Holdings, LLC, FD 35586 et al., slip op. at 2 (STB served Feb. 10, 2012) (rejecting notice of exemption raising substantial questions about prior acquisitions). GLTRR will be directed to file a petition for exemption to obtain after-the-fact authority for the prior acquisition and operation of GLT's tracks. GLTRR should also seek authority via a petition for exemption for the acquisition and operation of CRRC's and the Owners' Association's tracks or explain why such authority is not required. If NSR has already acquired GLT's segment of the Line and GLTRR has entered into a lease with NSR, GLTRR should also seek after-the-fact authority for the acquisition by lease and operation of that segment through a petition for exemption. If, however, GLTRR has not yet entered into a lease with NSR, GLTRR can seek authority to lease the track from NSR pursuant to a notice of exemption once GLTRR obtains all necessary after-the-fact authority for prior transactions.

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<sup>5</sup> GLTRR does not claim that it ever sought authority to enter into agreements with CRRC or the Owners' Association to operate over their tracks and the Board can find no record of granting such authority. The requirement to obtain acquisition and operation authority is not limited to situations where a carrier is purchasing or leasing a rail line to operate but can also apply when a carrier seeks to obtain other types of property or contract rights to conduct rail operations. See, e.g., Grafton & Upton R.R.—Acquis. & Operation Exemption—CSX Transp., Inc., FD 36444 (STB served Oct. 14, 2020) (granting an exemption "to acquire by easement and operate" a rail line); New England Transrail, Inc.—Acquis. & Operation Exemption—Lines of Bos. & Me. R.R., FD 34365 (STB served July 10, 2023) (denying petition for stay of a notice of exemption to acquire and operate a rail line "pursuant to contract rights").

Given that this decision implicates agreements that GLTRR has entered into with CRRC and the Owners' Association, GLTRR will also be directed to serve a copy of this decision on CRRC and the Owners' Association.

It is ordered:

1. The verified notice of exemption is rejected.
2. GLTRR is directed to seek after-the-fact authority for prior transactions as described above.
3. GLTRR is directed to serve a copy of this decision on CRRC and the Owners' Association and certify by May 1, 2024, that it has done so.
4. This decision is effective on its service date.

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