

ultimately passed to the Northern Hills Regional Railroad Authority (NHRRA).

As operator of the line, DBHWR will provide both passenger and freight services pursuant to an operating agreement with NHRRA. Under the agreement, DBHWR expects to interchange with Dakota, Minnesota & Eastern Railroad at milepost 0.0, at Whitewood. DBHWR states that the period for operation is currently indefinite and that the agreement with NHRRA will be amended or supplanted prior to actual commencement of operations.

The rail segment qualifies for a modified certificate of public convenience and necessity. See *Common Carrier Status of States, State Agencies and Instrumentalities and Political Subdivisions*, Finance Docket No. 28990F (ICC served July 16, 1981).

DBHWR states that the line will require reconstruction for operational purposes and the imposition of certain preconditions to ensure that construction and operation costs are recoverable. DBHWR indicates that commencement of rehabilitation or operations will be contingent upon shippers meeting the following preconditions: (a) Entry into binding written commitments to provide funding for restoration purposes equal to a sum no less than \$13,000,000;<sup>1</sup> and (b) entry into binding written commitments sufficient to assure car loadings (or payments in lieu thereof) in an amount no less than 1,000 carloads per year (an amount judged adequate to cover all costs associated with maintenance, operation and capitalization of the line).

DBHWR indicates that no subsidy is involved. DBHWR also indicates that it

<sup>1</sup> This sum may be increased in the event a third party engineering study identifies needs requiring a greater amount of rehabilitation necessary to improve the facilities in order to achieve 25 mph operation in accordance with applicable standards.

has obtained liability insurance coverage, and will obtain additional insurance when it commences rehabilitation or actual operation.

This notice will be served on the Association of American Railroads (Car Service Division) as agent for all railroads subscribing to the car-service and car-hire agreement: Association of American Railroads, 50 F Street, NW., Washington, DC 20001; and on the American Short Line and Regional Railroad Association: American Short Line and Regional Railroad Association, 50 F Street, NW., Suite 7020, Washington, DC 20001.

Board decisions and notices are available on our Web site at [WWW.STB.DOT.GOV](http://WWW.STB.DOT.GOV).

Decided: September 21, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**  
*Secretary.*

[FR Doc. E6-15955 Filed 9-28-06; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Finance Docket No. 34928]

#### **SMS Rail Lines of New York, LLC— Acquisition and Operation Exemption—Northeastern Industrial Park, Inc.**

SMS Rail Lines of New York, LLC (SMSNY), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire by lease from Northeastern Industrial Park, Inc., and to operate approximately 15 miles of rail line in the Northeastern Industrial Park, Guilderland Center 12085, Albany County, NY.<sup>1</sup>

<sup>1</sup> The rail lines extend from connections with the Canadian Pacific Railway at milepost 11.4 on the railroad's Vorheesville Running Track. There is a

This transaction is related to STB Finance Docket No. 34929, *Jeffrey L. Sutch—Continuance in Control Exemption—SMS Rail Lines of New York, LLC*, wherein Jeffrey L. Sutch has concurrently filed a verified notice of exemption to continue in control of SMSNY, upon its becoming a Class III rail carrier.<sup>2</sup>

SMSNY certifies that the projected annual revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier, and further certifies that its projected annual revenues will not exceed \$5 million. The transaction was scheduled to be consummated on or after September 8, 2006.

If the 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 transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34928, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on Fritz R. Kahn, Fritz R. Kahn, PC, 1920 N St., NW., Eighth Floor, Washington, DC 20036-1601.

Board decisions and notices are available on our Web site at [WWW.STB.DOT.GOV](http://WWW.STB.DOT.GOV).

Decided: September 22, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**  
*Secretary.*

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separate connection with a rail line of CSX Transportation, Inc.

<sup>2</sup> Mr. Sutch also controls SMS Rail Service, Inc., a Class III rail carrier.