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September 11, 2014
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UNITED STATES DEPARTMENT OF TRANSPORTATION
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET 35733
MIDWEST RAILROAD COMPANY - EXEMPTION - LEASE AND OPERATION -
CHICAGO RAIL LINK, L.L.C., AND LIMITED EXEMPTION FROM
SURFACE TRANSPORTATION BOARD REGULATIONS

NOTICE OF EXEMPTION

Surface Transportation Board
Office of the Secretary
Washington, D.C. 20423-0001

This notice of exemption is submitted by Midwest Railroad Company under 49 U.S.C. § 10902 and 49 CFR Subpart E, § 1150.41.

Midwest Railroad Company is an Illinois corporation. Its business address is 12217 South Cicero, Alsip, Illinois 60803.

The attorney to whom correspondence should be sent is:

Kurt E. Vragel, Jr.
Attorney for Midwest Railroad Company
Kurt E. Vragel, Jr., P.C.
1701 East Lake Ave., Suite 170
Glenview, Illinois 60025
(847) 657-8551.

The exemption provided for in 49 CFR § 1150.41 applies to the acquisitions or operations by Class III rail carriers under 49 U.S.C. § 10902.

By this notice, Midwest Railroad Company proposes to exempt the lease of track described below and some of its operations from the application of Surface Transportation Board's licensing regulations under 49 U.S.C. § 10901.

Midwest Railroad Company is a Class III rail carrier. It has entered a lease for track at Blue Island, Illinois. It will begin railroad service using that track and other facilities and equipment as soon as practicable after publication of notice of this exemption in the Federal Register.

Midwest Railroad leases 2,000 feet of track, located at Blue Island, Illinois, from

Chicago Rail Link, L.L.C., the owner of the facilities at Blue Island. The track is located near Milepost 15 of Chicago Rail Link's line and is a part of that railroad's Burr Oak Yard. A copy of the track chart showing the location of that track is attached as Exhibit 1.

Chicago Rail Link, L.L.C.'s address is:

Chicago Rail Link, L.L.C.
Attn: Director - Real Estate
252 Clayton Street
Denver, Colorado 80206.

Following consummation, Midwest Railroad Company will begin using the Chicago Rail Link track as part of its railroad operations. Midwest Railroad Company asks the Surface Transportation Board to confirm the exemption of that lease from STB regulation.

Midwest Railroad Company will own and operate passenger rail cars; will provide premium-level passenger rail services using those cars; will maintain and operate passenger rail cars owned or operated by other companies; and will provide excursion and dinner train services. Midwest Railroad Company will use the track leased from Chicago Rail Link in connection with those operations. Relevant parts of the Midwest Railroad Company 2014 Business Plan Summary, Updated May 14, 2014, are attached in Exhibit 2.

The Railroad Retirement Board has determined that Midwest Railroad Company is an employer under the Railroad Retirement Act and the Railroad Retirement Tax Act because Midwest Railroad Company is a rail carrier operating in interstate commerce.

The Railroad Retirement Board determined that Midwest Railroad Company became an employer within the meaning of the Railroad Retirement Act and the Railroad Unemployment Insurance Act effective July 1, 2013. Copies of the Railroad Retirement Board's letters are attached as Exhibit 3.

Since that date, Midwest Railroad Company has been preparing to begin operations, including leasing property; obtaining and updating operating and storage facilities; looking for equipment to purchase or lease; hiring and training staff; locating suppliers for its

operations; and obtaining insurance.

The Federal Railroad Administration also indicated that it would have jurisdiction over operations such as those proposed by Midwest Railroad Company, and that it would expect the operations to be in compliance with Federal Railroad Administration regulations. Although the FRA said that it would not require the operator to obtain a reporting code as a separate carrier, it did say that it would expect the operator to comply with all other applicable FRA regulations. FRA confirmed that Midwest Railroad Company would be subject to the FRA regulations at 49 CFR Parts 223 and Part 238. The FRA's correspondence with Midwest Railroad Company and Midwest Entertainment, the original formulation of Midwest Railroad Company's operations, is included in Exhibit 4.

Proceeding by notice of exemption rather than a petition for exemption is consistent with the outcome of the Surface Transportation Board's actions in STB Finance Docket No. 34502, *American Orient Express Railway Company LLC – Petition for Declaratory Order*, decided December 27, 2005. A copy of that decision is attached as Exhibit 5.

In that proceeding, American Orient asked for a declaration that it was not a rail carrier subject to the STB's jurisdiction. A hearing examiner at the Railroad Retirement Board had already found that American Orient was a covered employer under the Railroad Retirement Act and the Railroad Retirement Tax Act because it was a common carrier providing rail transportation and that it was subject to STB jurisdiction.

Like Midwest Railroad Company plans to do, American Orient used restored vintage railroad cars to offer an excursion-type service to the general public. American Orient sold tickets for trips directly to its customers. It contracted with Amtrak to provide locomotive power and train and engine crews.

The STB stated that "transportation" is broadly defined under 49 U.S.C. § 10102(9) to include " a car...related to movement of passengers by rail," and "services related to

that movement." As such American Orient's operations met the definition of "transportation." The STB found that the transportation did not need to involve movement from an origin to a destination, but only that movement by rail be involved.

STB next determined that American Orient was a "rail carrier" within the meaning of 49 U.S.C. § 10102(5). A "rail carrier" is defined as "a person providing common carrier railroad transportation for compensation." The term "railroad" embraces not only road owned and operated directly, but also railroad operations under an agreement. American Orient's arrangement with Amtrak was such an agreement.

The STB found that American Orient was a common carrier because it was an entity that held itself out to the general public as engaged in the business of transporting persons or property from place to place for compensation. While American Orient targeted only a limited subset of the public, it nevertheless held itself out to the groups to which it marketed its services and, therefore, was a common carrier of passengers.

Midwest Railroad Company similarly holds itself out to a segment of the general public to provide common carrier railroad transportation. Both the Railroad Retirement Board and the FRA have said its operations would be those of a common carrier railroad.

Unlike American Orient, Midwest Railroad Company is not contesting the jurisdiction of the STB over its operations. Rather, Midwest Railroad Company is seeking only a limited exemption from STB licensing regulations under 49 U.S.C. § 10901 for its operations. That is the exemption that STB ultimately extended to American Orient.

Midwest Railroad Company believes that it should be extended the same exemption and that the most efficient way to do so would be through the notice of exemption procedure.

A draft Federal Register notice is attached.

By my signature below, I certify that the operating revenues of Midwest Railroad Company will be less than \$20 million per year.

Respectfully submitted,

James Bradley

James Bradley
President
Midwest Railroad Company
12217 South Cicero
Alsip, Illinois 60803

Dated: 9/9/14

Of counsel:

Kurt E. Vragel, Jr.

Kurt E. Vragel, Jr.
Kurt E. Vragel, Jr., P.C.
1701 East Lake Ave., Suite 170
Glenview, Illinois 60025
(847) 657-8551

Dated: 9-9-2014

VERIFICATION

State of Illinois)
County of Cook) ss.

James Bradley

Subscribed and sworn to before me, a notary public, by James Bradley, President of Midwest Railroad Company, on September 9, 2014.

Linda Ann Lewkowski
Notary Public
My commission expires: 11-10-14

[SEAL]



[FEDERAL REGISTER NOTICE]

SURFACE TRANSPORTATION BOARD
NOTICE OF EXEMPTION

FINANCE DOCKET 35733

MIDWEST RAILROAD COMPANY – EXEMPTION – LEASE AND OPERATION –
CHICAGO RAIL LINK, L.L.C., AND LIMITED EXEMPTION FROM
SURFACE TRANSPORTATION BOARD REGULATIONS

Midwest Railroad Company has filed a notice of exemption to lease and operate a 2,000 foot line of Chicago Rail Link, L.L.C., at or near Milepost 15 of that railroad in Blue Island, Illinois.

The notice of exemption is submitted under 49 U.S.C. § 10902 and 49 CFR Subpart E, § 1150.41.

Midwest Railroad Company proposes to exempt its operations from the application of Surface Transportation Board's licensing regulations under 49 U.S.C. § 10901.

Midwest Railroad Company is a Class III rail carrier. It has entered a lease for track at Blue Island, Illinois, from Chicago Rail Link, L.L.C.. Midwest Railroad Company will begin railroad service using that track and other facilities and equipment as soon as practicable after publication of notice of this exemption in the Federal Register.

Following consummation, Midwest will begin using the Chicago Rail Link track as part of its railroad operations. Midwest Railroad will own and operate passenger rail cars; will provide premium-level passenger rail services using those cars; will maintain and operate passenger rail cars owned or operated by other companies; and will provide excursion and dinner train services.

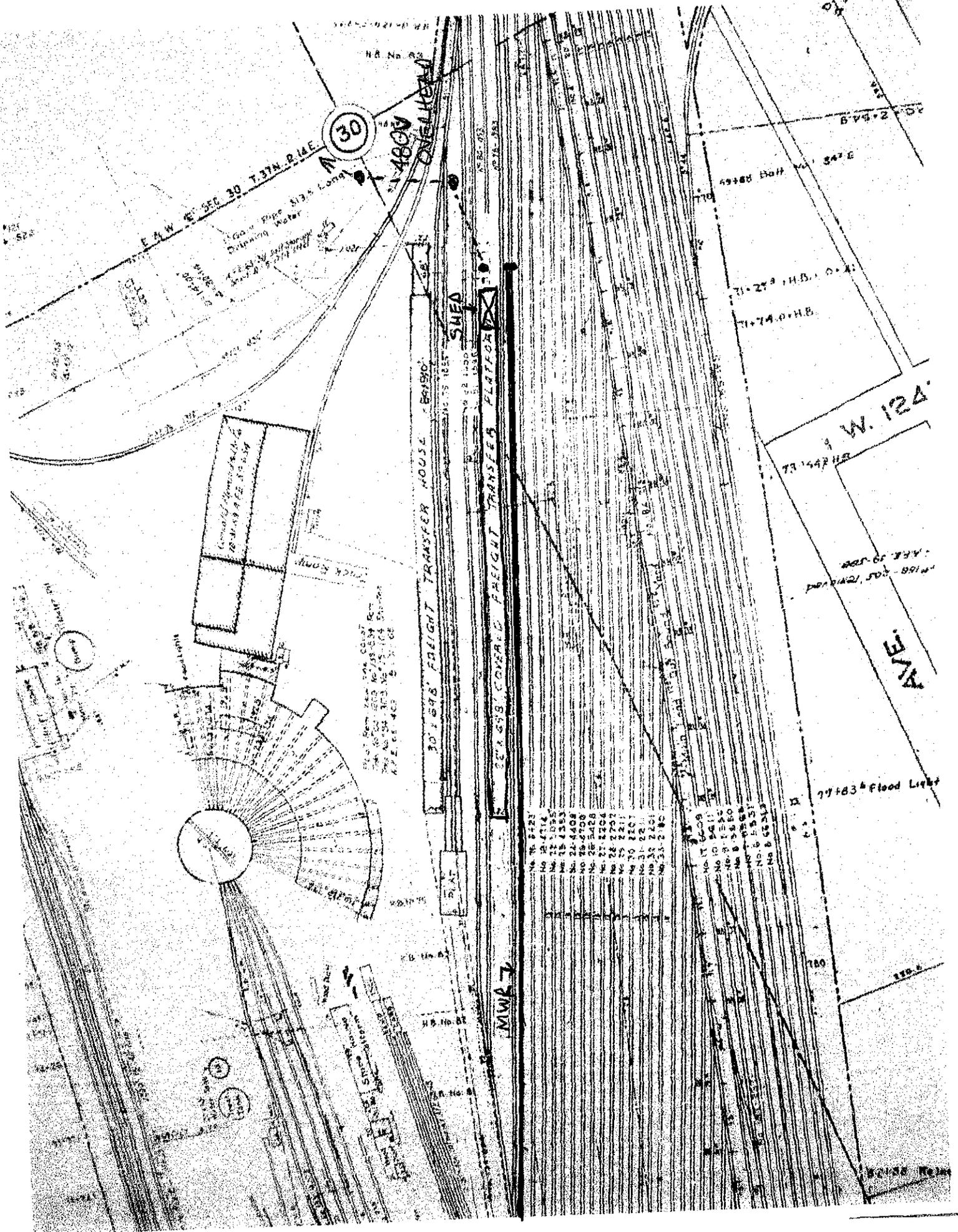
Proceeding by notice of exemption is consistent with the outcome of the Surface Transportation Board's actions in STB Finance Docket No. 34502, *American Orient Express Railway Company LLC – Petition for Declaratory Order*, decided December 27, 2005. Midwest Railroad Company intends to operate as a common carrier railroad providing transportation for compensation. It seeks exemption only from Surface Transportation Board licensing regulations under 49 U.S.C. § 10901 for its operations.

Comments must be filed with the Board and served on:

Kurt E. Vragel, Jr.
Attorney for Midwest Railroad Company
Kurt E. Vragel, Jr., P.C.
1701 East Lake Ave., Suite 170
Glenview, Illinois 60025
(847) 657-8551

This notice is filed under 49 CFR § 1150.41. 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.

EXHIBIT 1



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E. & W. 30' SEC 30 T. 37N. R. 1E
 100' Pipe 513.5' Long
 Containing Water

4800
 ONELKORD

30' x 58' FREIGHT TRANSFER HOUSE - BRISCO

SHEED

30' x 58' COVERED FREIGHT TRANSEER PLATFORM

MWA 7

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- No. 17 8114
- No. 18 8153
- No. 19 8153
- No. 20 8153
- No. 21 8153
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- No. 100 8153

W. 124'

AVE.

77+83 Flood Light

77+44 H.B.

71+27 H.B.

71+74 H.B.

67+2

69+88 Bolt

BRISCO HOUSE

EXHIBIT 2

I. Executive Summary

Business Overview

Midwest Railroad Company operates public excursion trains, meal & wine trains, offers chartered and leased railcar service, and provides other private railcar owners storage and minor service.

Success Factors

Midwest Railroad Company is uniquely qualified to succeed due to the following reasons:

- **Safety:** The leadership of the company has been brought up through 2 of the best safety programs in the railroad industry. Therefore, the safety culture that will be promoted at MWR will reduce risk liability by influencing the behavior of the employees
- **Products and/or Services:** We have created MIDWEST PREMIER™ Business Class that offers a high level of service above all other rail service in the local region
- **Human Resources:** Our management team has unique experience in the industry including over 18 years of railroad operations and management as well as a combined 20 plus years of food & beverage service
- **Location:** We are located in Chicago, which is the central hub for Amtrak which operates 56 trains a day on 16 routes
- **Operational Services:** We have developed services that enable us to provide high quality products/services at a lower cost. These services include owning and operating a restaurant that is recreated on-board the dining car
- **Railroad Company:** We are filing with the STB to operate as a Class III common carrier with a verified Notice of Exemption. Finance Document #35733 is reserved for MWR
- **Customers:** We have successfully ran 2 excursion trains in 2013, and have customers lined up for 2014

III. Industry Analysis

Market Overview

The markets in which Midwest Railroad Company is operating can be characterized as by the following:

Excursion trains and chartering/leasing of railcars

- Amtrak average annual revenue from hauling private cars: \$12 million
- American Association of Private Railroad Car Owners (AAPRCO) reports highest membership in 5 years, double over last decade
- Key Statistics: Amtrak reports over 5 million Illinois riders in FY13
- Key Statistics: Amtrak's Lincoln Service (CHI-STL) FY12 ridership was 597,519
- Market trend: Current Amtrak Illinois ridership up 2.1% over FY12
- Average revenue for chartered railcar(s) is _____ per weekend
- "Las Vegas X-Train" is leasing railcars for approximately \$15,000 per month
- Annual chartered trains around the Midwest sponsored by Amtrak and other Class I Railroads include the Kentucky Derby, Nickel Plate steam engines, Milwaukee Road 261 steam engine, AAPRCO Convention

Meal & Wine Service Trains / Restaurant Business

- Operations: Over 80 dinner trains listed in the United States and Canada
- Services: Wide variety of meal selections and levels of service nationwide
- Equipment: All types of railcars and locomotives; no industry specific format
- Industry sales: The United States restaurant industry sales estimated at \$683.4 billion in 2014

- Restaurant Performance Index (RPI): March 2014 reported at 102.0, the strongest level in 9 months; 17th consecutive month the Expectations Index remained above 100 indicating restaurant operators remain optimistic about business conditions ahead
- Illinois restaurant statistics: There are 25,785 locations (2012) expected to produce \$22.4 billion in sales (2014) while employing 515,600 people (9% of employment in the state)
- Economic development: Every \$1.00 spent in Illinois's restaurants generates an additional \$1.23 in sales for the state economy. Every \$1 million spent in Illinois's restaurants generates an additional 24.8 jobs in the state
- Chicago service: Amtrak's Hiawatha service to Milwaukee provides approximately a 3 hour and 30 minute roundtrip; one of the seven departs at 1:05 p.m. daily

Railcar Storage

- Sales: Estimated at \$2.2 million annually (Amtrak Certified cars)
- Locations: Approximately 20
- Over 200 Amtrak certified cars plus hundreds of other private railcars
- Amtrak to raise storage rates by 30% in 2014

Railcar Service

- Sales: Estimated at over \$8 million annually in the region
- Other Midwestern shop locations include Chicago (Amtrak), Milwaukee (Avalon Rail), St. Louis (Gateway Rail Services), Indianapolis (Amtrak, Crossroads Railcar Services)
- Amtrak to phase out Heritage Equipment cars and parts within 3 years
- Railcar cleaning service is not provided by any other company in Chicago

IV. Customer Analysis

Below is a description of who our target customers are, and their core needs.

Target Customers

Below is a profile of our target passengers for **excursion trains**:

- Age: 26-70
- Household Income: \$100,000 and above
- Location: Greater Chicago area
- One-way, daylight trip of less than 6 hours
- Activities & Interests: Sports, music, golf, wine, festivals, casinos, travel

Below is a profile of our target passengers for **meal and wine trains**:

- Age: 26-70
- Household Income: \$100,000 and above
- Location: Greater Chicago area
- Lunch service: Business casual with premier service including lighter meal service and wine tasting
- Employment: Individuals or companies located in downtown Chicago able to have lunch and/or meetings on weekday afternoon departures
- Residents: Individuals that reside downtown or have access to Chicagoland's vast public transportation system to travel to downtown for weekend departures
- Tourists: Individuals or groups that target downtown Chicago venues
- Dinner service: Affluent individuals that enjoy fine dining and premier service including wine while enjoying a train ride on vintage railcars

Customer Needs

Below is a profile of the needs that our target **excursion train** passengers have:

- **Service Quality:** MIDWEST PREMIER™ Business Class offers an at-seat service not available on any Amtrak train in the Midwest
- **Food Quality:** Freshly prepared, made-to-order food using top quality products not available on any other mode of transportation
- **Location:** Amtrak's train service from Chicago allows multiple frequencies within the designated service area
- **Comfort:** Heritage Equipment is more spacious and the vintage railcars are customized to provide a luxury interior
- **Price:** Package includes roundtrip rail fare, food, beverage, and hotel (event ticket where applicable)
- **Speed:** Target destinations St. Louis, MO and Detroit, MI (Ann Arbor) are both on Amtrak's 110 m.p.h. network; trip times will be greatly reduced within 2 years
- **Customer Service:** All train staff must comply with a Service Standards Manual thereby providing a high level of customer service
- **Convenience:** Amtrak train service offers downtown-to-downtown service and all target destinations are less than a 6 hour one-way ride

Below is a profile of the needs that our target **lunch and wine train** customers have:

- **Service:** MIDWEST PREMIER™ Business Class offers wine service promoting regional wines not otherwise readily available in Chicago
- **Food Service:** Unique menu of freshly prepared, made-to-order sandwiches served in a vintage dining car
- **Location:** Chicago Union Station allows for easy access to service

- Price: An inclusive ticket that requires no additional charges for wine service

Below is a profile of the needs that our target **charter service** customers have:

- Amtrak certification: All railcars can travel the entire Amtrak system and operate at speeds up to 110 m.p.h.
- Dining car: There is a limited availability of full service dining cars for lease making our "Anthony Wayne" railcar a rare asset
- Lounge service: Both railcars have the ability to provide beverage service. The dining car is set-up to provide lounge and entertainment, and the coach is equipped with the wine service bar
- Coach car: The 44 seat coach provides spacious leg room compared to most high density coaches available for lease
- Meetings: We are able to provide full catered corporate business trips anywhere Amtrak runs in the Midwest
- Generator equipped: The dining car has a generator capable of providing head-end power to itself and the coach. This allows for service to be provided off the Amtrak network with freight locomotives

Below is a profile of the needs that our target private car owners have for **railcar storage & service**

- Location: MWR storage yard is 15 miles away from Amtrak's Chicago Yard, 12 miles from Midway Airport, and within a few miles of Interstates 57 and 294
- Speed: Less than one hour transit time for delivery to/from Amtrak
- Price: Less than the average per month, with 480V electric service available
- Convenience: Amtrak serves Chicago with 56 daily trains on 16 routes
- Capacity: Our track holds about 20 railcars
- Access: On track location provides full access for service and repairs

- Flexibility: Our coach cleaning service can be dispatched to Amtrak's Chicago Yard or Union Station

VI. Marketing Plan

Our marketing plan, included below, details our products and/or services, pricing and promotions plans.

Products, Services & Pricing

Excursion Service:

- Service description: Roundtrip rail transportation packages
- Service benefits: Package includes onboard food & beverages, beer & wine and hotel. May also include tickets to specific events based on trip and availability
- Package price: per person, double occupancy
- Service expected purchase frequency: March - November
- Service strengths: Large population base in Chicago with multiple destinations and frequencies available
- Service weaknesses: Can only run on scheduled Amtrak routes and trains

Lunch Wine Train

- Service description: Business casual lunch with wine tasting
- Service benefits: Train can run 365 days a year, and multiple frequencies daily
- Service location: Chicago, IL
- Package price: per person, all inclusive food and wine
- Menu: Freshly sliced, made-to-order hot & cold sandwiches, including soup and cold side salads

- Unique qualities: Sandwich menu selections will be rotated to create variety. Special sandwiches are created and named based on the city they are indigenous to
- Service expected frequency: Friday and Saturday
- Service strengths: Additional trips are possible based on equipment turn utilization. Train may operate on other routes with or without Amtrak locomotives.
- Service weaknesses: Operating on the Hiawatha Service means equipment is captive with the Amtrak consist for 2 days
- Expansion: This service could be added at the destination cities of the excursion train during the Saturday layover, e.g. St. Louis

Dinner Wine Train

- Service description: Fine dining; four course meals with wine service
- Service benefits: No current operation in the Chicagoland area
- Service location: Depart from Chicago Union Station and operate to Milwaukee roundtrip
- Package price: per person, all inclusive food and wine(s)
- Menu: Multiple selections of four course meals fresh prepared onboard the train
- Unique qualities: Menu selections will be rotated to create variety. Special entrees are created and named based on the city they are indigenous to
- Service expected frequency: Saturday nights with special runs for holidays or other events
- Service strengths: Train operates from Chicago Union Station allowing customers to utilize multiple modes of transportation versus traveling by car and parking

- Service weaknesses: Can only operate on Amtrak's Hiawatha Service to Milwaukee unless locomotives are purchased or agreement with a freight railroad(s) is reached

Charter Service:

- Service description: Private trips sold by carload or leased railcar(s)
- Service benefits: Inclusive charter package includes onboard food & beverages and may also include tickets to specific events based on trip. Leased railcars are unstaffed and sold as a rental
- Chartered price: Determined by mileage, days, and staff requirements; average is
- Lease price: Unstaffed diner : per day
- Service expected frequency: Year round
- Service strengths: Charter service package is sold at a guaranteed profit to the customer; lease service provides low-risk revenue while cars may be otherwise stored
- Service weaknesses: Charter sales and lease service is based on specific customer demand

Railcar Storage:

- Storage features: 480V electric, easy access, secure
- Storage benefits: Inexpensive
- Service price: per month, per car. Service fee for movement of cars(s) which includes employee to accompany railcars; per move
- Storage capacity: 20 railcars
- Service strengths: Low monthly fee, short transit time to Amtrak

VII. Operations Plan

Our Operations Plan details:

- 1) The key day-to-day processes that our business performs to serve our customers
- 2) The key business milestones that our company expects to accomplish as we grow

Key Operational Processes

The key day-to-day processes that our business performs to serve our customers are as follows:

FOOD SERVICE:

In regards to rail excursions, our biggest advantage and asset is that "Sub Cities" is in our family of businesses. We control food cost and minimize inventory on the train while the restaurant operates daily in Alsip. All of the menu items are a proven success during the regular course of business. The sub sandwiches are not premade, but freshly sliced when the passenger orders. We directly control the quality of the food service and can offer fresh food service at a wholesale price to ourselves.

ACCOUNTING:

Our C.P.A. is a native of Chicago, and has a vested interest in the company. His service to the company guarantees our legal and accounting matters are handled properly. He currently is in his own practice for over 9 years, and has worked for the Internal Revenue Service.

MARKETING:

We are partnering up with "560 AM-The Answer" to provide our long term advertising campaign(s). The station is a news talk format that attracts the most sought after demographics; high earning, well educated, affluent individuals. A strong qualitative

audience means listeners with greater disposable income and greater potential spending power. This meets our target customer base for excursion and wine trips.

Stone Hill Winery will be our partner and provide all wine service. MWR will also schedule specific excursion trips to St. Louis and provide motor coach connections to visit the winery in Hermann, MO

Various marketing campaigns will be launched to promote excursions trains to Midwestern cities. These trips will have an event for the passengers to attend at the outlying destination. Current activities planned include golf outings, casinos, sporting events, winery and micro-brewery tours, music and art festivals, and riverboat activities.

HUMAN RESOURCES:

We are linked up with "Hire Small Business Solutions", owned by a personal friend. All external employment needs will be handled by his company. In combination with his vested interest and our ability to pay "railroad wages", we are assured to have access to above average quality employees.

Equipment Schedules

The following table shows the Amtrak schedule and how the equipment set is utilized from Friday morning to Saturday night. The consist arrives from the yard on "Day One", and returns to the yard on "Day Two".

Trips in *italics* are not operated by MWR; **bold** indicates MWR wine train service; **RED** indicates future dinner train run

Dp. CHI	Ar. MKE	Dp. MKE	Ar. CHI
<i>0610</i>	<i>0739</i>	<i>0805</i>	<i>0934</i>
<i>1020</i>	<i>1149</i>	<i>1300</i>	<i>1429</i>
1515	1644	1745	1914
<i>2005</i>	<i>2134</i>	<i>0615</i>	<i>0757</i>
<i>0825</i>	<i>0954</i>	<i>1100</i>	<i>1229</i>
1305	1434	1500	1629
1708	1815	1935	2104

EXHIBIT 3

B.C.D. 13-40

November 15, 2013

**EMPLOYER STATUS DETERMINATION
Midwest Railroad Company (MRC)**

This is a determination of the Railroad Retirement Board concerning the status of the Midwest Railroad Company (MRC) as an employer under the Railroad Retirement Act (45 U.S.C. § 231 et seq.)(RRA) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.)(RUIA). The status of MRC under the Acts has not previously been considered.

MRC is a privately held company owned by James Bradley. Mr. Bradley, the President, supplied information regarding the formation and start of operations for MRC. In correspondence dated June 17, 2013, Mr. Temple stated that MRC would begin operations on July 1, 2013 with between one and five compensated employees.

Mr. Bradley stated that he is currently filing a Notice of Exemption with the Surface Transportation Board. He also stated that there is no Surface Transportation Board Finance Docket because MRC has no freight operations. MRC has leased passenger railcars and is planning to provide rail passenger service over the interstate rail network owned by Amtrak.

Section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)), insofar as relevant here, defines a covered employer as:

- (i) any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under Part A of subtitle IV of title 49, United States Code;

Section 1 of the RUIA (45 U.S.C. § 351) contains essentially the same definition, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

The evidence of record establishes that MRC is a rail carrier operating in interstate commerce. Accordingly, it is determined that Midwest Railroad Company became

an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act and its corresponding provision of the Railroad Unemployment Insurance Act effective July 1, 2013, the date on which MRC began operations.

A handwritten signature in cursive script, appearing to read "Martha P. Rico".

FOR THE BOARD

Martha P. Rico

Secretary to the Board

EXHIBIT 4

Kurt Vragel

From: James Bradley <midwestrail@hotmail.com>
Sent: Monday, September 08, 2014 8:04 AM
To: Kurt Vragel
Subject: FW: MWR

FRA update

From: James Bradley [<mailto:midwestrail@hotmail.com>]
Sent: Tuesday, September 2, 2014 3:30 PM
To: 'Kurt Vragel'
Subject: FW: MWR

FRA response...FYI

From: michael.ramsey@dot.gov [<mailto:michael.ramsey@dot.gov>]
Sent: Tuesday, September 2, 2014 3:25 PM
To: midwestrail@hotmail.com
Cc: john.robertson@dot.gov
Subject: RE: MWR

Hello Mr. Bradley! Sorry I have taken so long to respond, on annual leave for a week then a full week of training.

Based on your description below, I do not see any change at this point regarding your operations as a "charter operation" with private ATK compliant equipment on ATK trains. Other than the current requirements for private car operators on the general system (ATK) regarding Part 223 and Part 238, you should be OK.

I appreciate you keeping us up to date on your project.

Michael D. Ramsey
Federal Railroad Administration
Passenger Rail Safety Specialist
25587 Conifer Road, Suite 105, No. 122 - Conifer, CO 80433
Office (303) 670-7103, Cell (720) 201-5718
michael.ramsey@dot.gov

RAIL — *Moving America Forward* 

From: James Bradley [<mailto:midwestrail@hotmail.com>]
Sent: Monday, August 18, 2014 7:52 AM
To: Ramsey, Michael (FRA)
Subject: MWR

Mike: Hope all is well. I want to keep you up to date on our progress. I need to know if there is anything required from the FRA at this point. Not much has changed from the business plan of previous.

We currently lease a 2000' stub track in Blue Island, IL from Chicago Rail Link. It is intended to store our cars, or sell space to other private car owners. There is no railcar equipment or employees at this point. We have completed the filing with the STB and will operate as a Class III with the Notice of Exemption (FD 35733). We are approved to cover employees under the RRB.

Our intention is to purchase/lease Amtrak certified passenger car(s) and run excursion/meal & wine trains out of Chicago. We will only run on revenue Amtrak trains; we will not offer a set schedule of dates and times at this point. At a minimum we will run on the Amtrak private car tariffs; but will look into other methods with them. We will have any cars 238/239 compliant. We will NOT purchase or lease locomotives, have any hours or service employees, perform any mechanical services, or operate any freight service.

I would like to know if there are any responsibilities on my hand in regards to safety compliance, regulations, etc.
Thanks.

James Bradley
President
Midwest Railroad Company
12217 S. Cicero
Alsip, IL 60803
(708) 557-3666
www.midwestrailroadco.com



Kurt Vragel

From: James Bradley <midwestrail@hotmail.com>
Sent: Monday, September 08, 2014 8:04 AM
To: Kurt Vragel
Subject: FW: Jurisdictional Determination, Midwestern Entertainment Train

Original from 2013

From: James Bradley [mailto:midwestrail@hotmail.com]
Sent: Tuesday, August 26, 2014 2:33 PM
To: 'Kurt Vragel'
Subject: FW: Jurisdictional Determination, Midwestern Entertainment Train

FYI. This is the FRA response when we FIRST created the idea. I have stayed in contact with Mr. Ramsey since. Next to follow will be the RRB determination.

From: Larry Beard [mailto:lrb1044@me.com]
Sent: Wednesday, March 20, 2013 12:27 PM
To: midwestrail@hotmail.com
Subject: Fwd: Jurisdictional Determination, Midwestern Entertainment Train

FWI

Sent from my iPad

Begin forwarded message:

From: michael.ramsey@dot.gov
Date: March 20, 2013, 9:38:35 AM EDT
To: lrb1044@me.com
Cc: veronica.chittim@dot.gov, rebecca.behraves@dot.gov, daniel.knote@dot.gov,
michael.long@dot.gov
Subject: Jurisdictional Determination, Midwestern Entertainment Train

Good Morning Mr. Beard!

The Federal railroad safety laws apply to “railroad carriers.” A “railroad carrier” is defined as a person providing railroad transportation. See 49 U.S.C. § 20102(3). The term “railroad” is defined broadly and includes any form of nonhighway ground transportation that runs on rails or electromagnetic guideways. See 49 U.S.C. § 20102(2)(A). The lone exception is for rapid transit operations in an urban area that are not connected to the general system and that exception would not apply in the instant situation. See 49 U.S.C. § 20102(2)(B). As the delegate of the Secretary of Transportation, FRA exercises jurisdiction over any railroad operating on the “general railroad system of transportation” (general system), which is defined as “the network of standard gage track over which goods may be transported throughout the nation.” 49 C.F.R. § 1.89; Appendix A to 49 C.F.R. Part 209. FRA has safety jurisdiction over “every area of railroad safety.” 49 U.S.C. § 20103.

According to information that you provided, FRA has the following understanding of the proposed operations. From Ann Arbor, MI, to Chicago, IL, on select Friday nights, the operation will be completely chartered for Midwest Entertainment. Amtrak would be paid to provide the equipment and

crew, for Midwest Entertainment only, no other Amtrak passengers would be served, and no one can buy a ticket from Amtrak online or train-side – it must be a roundtrip ticket purchased in advance online through Midwest Entertainment. All inspections on the equipment are performed by Amtrak-certified inspectors (QMPs), who are employed by or are contracted by Amtrak or Mid-America Leasing. On the return trip on Sundays, from Chicago to Ann Arbor, Amtrak runs its regular route, the Wolverine, with regular Amtrak equipment and passengers, with the same leased cars tacked onto the end of the Amtrak train. Midwest Entertainment is not performing any inspections or repairs itself, it does not own any equipment or track, and it does not employ any crew members (other than the designated employee on the Midwest Entertainment-leased cars that will coordinate with the Amtrak-provided personnel, per Amtrak requirements). This service is not necessarily going to be offered every weekend. FRA understands that Amtrak requires all passenger equipment that it hauls to be fully FRA compliant. FRA expects that all equipment used in Midwest Entertainment's service will be fully compliant with both Amtrak's requirements and FRA's regulations, such as 49 CFR Part 238. If any of this information is incorrect, please let us know.

FRA could find that Midwest Entertainment will be a railroad, as the statutory definition of "railroad" is very broad. Midwest Entertainment is offering transportation to the general public by contracting with Amtrak to pull the cars Midwest Entertainment has leased from Mid-America Leasing, and by selling tickets for such service to the public. Additionally, based on the *purpose* of the service, to transport passengers from Ann Arbor, MI, to Chicago, IL, with on-board food & entertainment, the proposed operation would *not* be considered a tourist or excursion operation. The purpose of the service is not to enjoy the scenery or the train ride itself, but to get from point A to point B over the general railroad system of transportation.

However, because Midwest Entertainment is not performing any rail operations itself, aside from paying Amtrak for the use of the Amtrak crew and Amtrak locomotive, and paying Mid America Leasing for the use of the passenger cars, FRA does not plan to exercise its authority over Midwest Entertainment. Thus, FRA does *not* require Midwest Entertainment to obtain a reporting code as a separate railroad carrier. Should Midwest Entertainment's operations change, FRA's opinion could change.

If you have any questions about FRA's safety jurisdiction, please call Veronica Chittim at (202) 493-0273 to discuss the issue.

FRA would also recommend that Midwestern Entertainment develop a passenger emergency preparedness document that would address the applicable elements (communication, emergency evacuation, emergency equipment, windows, markings, etc) for the Mid-America passenger equipment used. Please contact me if you have any questions regarding this request.

Regards

Michael D. Ramsey
Federal Railroad Administration
Passenger Rail Safety Specialist
25587 Conifer Road, Suite 105, No. 122 - Conifer, CO 80433
Office (303) 670-7103
Cell (720) 201-5718
michael.ramsey@dot.gov



Please consider the environment before printing this e-mail.

EXHIBIT 5

34918
EB

SERVICE DATE – DECEMBER 29, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34502

AMERICAN ORIENT EXPRESS RAILWAY COMPANY LLC–
PETITION FOR DECLARATORY ORDER

Decided: December 27, 2005

By petition filed on April 30, 2004, American Orient Express Railway Company LLC (AOERC) asked the Surface Transportation Board (Board or STB) to declare that AOERC is not a rail carrier subject to the Board's jurisdiction. A decision instituting a declaratory order proceeding and requesting comments on AOERC's petition was served and published in the Federal Register (69 FR 35130) on June 23, 2004 (June 23 decision).¹ On October 4, 2005, AOERC notified the Board that the Railroad Retirement Board (RRB) plans to issue its final coverage determination regarding AOERC. UTU/GO-386 replied to AOERC's filing. Having reviewed the record, we find that AOERC is a rail carrier subject to our jurisdiction. However, we will exempt AOERC from our licensing requirements, as discussed below.

BACKGROUND

RRB Proceedings. On February 9, 2001, the RRB issued a decision concluding that AOERC is a covered employer for purposes of the Railroad Retirement Act, 45 U.S.C. 231 et seq., and Railroad Unemployment Insurance Act, 45 U.S.C. 351 et seq. (collectively, Railroad Retirement Acts) on the ground that AOERC is a "reincarnation" of a previously covered sleeper car carrier. AOERC sought reconsideration of that decision. The RRB appointed a Hearing Examiner, who, on May 21, 2002, held a hearing on the petition for reconsideration.

¹ On July 9, 2004, American Association of Private Railroad Car Owners, Inc., filed comments in support of AOERC's petition. On July 13, 2004, comments opposing AOERC's petition were filed by John D. Fitzgerald, on behalf of United Transportation Union-General Committee of Adjustment, GO-386 (UTU/GO-386); Rail Labor Division of the Transportation Trades Department, AFL-CIO; and United Transportation Union. On August 10, 2004, AOERC filed a reply to the comments. On August 12, 2004, UTU/GO-386 filed a motion to strike AOERC's reply or for leave to respond by filing a reply to a reply. On August 20, 2004, AOERC filed a pleading in opposition to the motion to strike. In the interest of a more complete record and because no party will be prejudiced, we will deny the motion to strike and accept AOERC's August 10 filing and UTU/GO-386's August 12 response.

On May 16, 2003, the Hearing Examiner recommended that the RRB find that AOERC is a covered employer not because it is a “reincarnation” of a covered sleeper car carrier but because it is a common carrier providing rail transportation subject to STB jurisdiction. The Hearing Examiner looked across different modes of transportation to make his common carrier determination and concluded that “[t]he act of holding out [transportation] as a common carrier creates the obligation owed to the public to follow through with the promised service.” Hearing Examiner Recommendation at 40 (May 16, 2003). Based on his view of the facts before him, the Hearing Examiner concluded that AOERC holds itself out to transport a segment of the public for compensation and is, therefore, a common carrier.

The RRB has not acted on the petition for reconsideration or on the Hearing Examiner’s recommendation. Instead, it has stayed its decision to allow the STB to rule on the scope of our jurisdiction.²

AOERC’s Operations. AOERC describes itself as a land excursion company that uses restored vintage railroad coaches, diners and sleepers as the home base for the various 4-, 7-, and 10-day vacation packages that it offers. AOERC operates seasonally and does not offer trips over set routes. All of the vacation packages are offered as one-way excursions, and at the end of an AOERC-arranged trip each customer is responsible for finding his or her own transportation back to the tour origination city or home. Additionally, AOERC may cancel a planned excursion if there are not enough customers or it may add a charter trip on a different route.

AOERC sells the tickets to its customers but contracts with the National Railroad Passenger Corporation (Amtrak) to provide locomotive power and train and engine crews (Amtrak Contract). Amtrak typically operates through trackage rights that it obtains from other railroads. Amtrak pulls AOERC’s vintage rail cars pursuant to a schedule for each excursion that meets the availability of both Amtrak and the host railroad (the track owner or operator). AOERC proposes itineraries to Amtrak, usually 2 years in advance, so that Amtrak can determine, based on its own schedule and the availability of the track routes requested, whether they are possible. AOERC cannot offer itineraries that have not been approved by Amtrak. Even if an itinerary has been approved, the Amtrak Contract gives Amtrak the right to cancel or change routes, stops or entire trips.

Under the Amtrak Contract, AOERC is responsible for providing its car consists in good order and on time to meet the schedules of Amtrak and host railroads. Additionally, the consists must be submitted to Amtrak for inspection at the beginning of each touring season and before each trip. Amtrak may refuse to pull cars that do not pass its inspections.

² UTU/GO-386 argues that we should not have begun a declaratory order proceeding given the related pending proceeding before a sister federal agency. But a ruling here will not interfere with the RRB proceeding, which, as noted, is in abeyance pending our ruling. And contrary to UTU/GO-386’s argument, there was no requirement for the entire RRB record to have been filed with us; both AOERC and one of the RRB members submitted evidence for our consideration, and we make our findings here on a well-developed record.

Most of AOERC's employees are part-time seasonal employees such as bartenders, maids, waiters and cooks. AOERC argues that it does not employ traditional rail workers because it provides only non-railroad amenities and services. AOERC states that specially tailored meals, luxury accommodations, and various excursions (including walking tours of historic and natural sites, lectures and live music) are the central features of its vacation packages. Children younger than age 8, and others whose physical needs are incompatible with the restrictions of AOERC's rail cars, are not eligible for the vacation packages. AOERC reserves the right to remove a passenger from its excursion for any reason, and has done so on at least two occasions. AOERC argues that its rail-related service is more in the nature of a moveable hotel or restaurant than a railroad; or that it is more like a sleeping car, express, or private car service, none of which are within the Board's jurisdiction.

DISCUSSION AND CONCLUSIONS

As noted, the RRB has held up its proceeding to give this Board the opportunity to determine whether AOERC is a rail carrier subject to our jurisdiction under 49 U.S.C. 10501. Under section 10501(a), the Board has jurisdiction over "transportation by a rail carrier" on the interstate rail network.

Parsing this definition, we first examine whether AOERC provides "transportation" (it is clear from its evidentiary submissions that its trips are conducted on the interstate rail network, by means of Amtrak's rights to operate over the trackage). AOERC contends that it is not engaged in the business of transporting persons or property from place to place for compensation, because any transportation actually performed is handled by Amtrak and is under Amtrak's control as provided for in the Amtrak Contract. AOERC argues that, in contrast, it is in the business of providing a unique vacation experience whose primary purpose is not to transport customers but rather to provide accommodations on vintage rail cars and to provide attendant amenities such as fine dining, lectures, concerts, and off-rail tours of local points of interest. To that end, AOERC states, it does not employ traditional rail workers because it provides only non-railroad amenities and services; thus, AOERC's employees are part-time seasonal employees such as bartenders, maids, waiters and cooks. AOERC argues that its customers do not purchase AOERC packages in order to get from the origin to destination, but rather to enjoy the amenities provided by AOERC.

Notwithstanding the fact that AOERC's direct employees are not in typical railroad positions, such as engineers, brakemen, and so forth, AOERC does in our view provide transportation. The term "transportation" is broadly defined under 49 U.S.C. 10102(9) to include "a car . . . related to movement of passengers by rail," and "services related to that movement."³ While Amtrak provides the motive power and train and engine crews to move

³ Section 10102(9) states that "transportation" includes—

(A) a locomotive, car, vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, by rail, regardless of ownership or an agreement concerning use; and

(B) services related to that movement, including receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, and interchange of passengers and property.

AOERC's consists, AOERC provides the rail cars and provides services to passengers that are related to the passengers' movement. Thus, AOERC's operations meet the definition of "transportation." To be sure, transportation is not the only service, and perhaps not even the dominant service, that AOERC offers. But it clearly is a part— and not a trivial part— of AOERC's vacation packages. These vacation packages would plainly be less desirable if AOERC offered all of its amenities while its cars remained fixed at one location. Moreover, the statute does not require that transportation encompass movement from an origin to destination as its sole or main purpose, only that movement be involved. 49 U.S.C. 10102(9), 10501(a)(2).

We next examine whether AOERC is a "rail carrier." In 49 U.S.C. 10102(5), the term "rail carrier" is defined as "a person providing common carrier railroad transportation for compensation." We first consider whether AOERC provides "railroad" transportation. The term "railroad" is defined at 49 U.S.C. 10102(6).⁴ While AOERC concedes that its service might meet the statutory definition of "transportation" (Pet. at 20 n.10), AOERC asserts that it is not involved in "railroad" transportation, as the term "railroad" is defined in 49 U.S.C. 10102(6), because it does not own or operate any of the equipment, road, or facilities listed in this statutory provision. But the term "railroad" embraces not only road owned and operated directly, but also road operated under an agreement. 49 U.S.C. 10102(6)(B). AOERC's arrangement with Amtrak is such an agreement. Indeed, AOERC's arrangement with Amtrak appears to provide that Amtrak pays the railroads over whose track it runs a different rate when the track is used for AOERC service than the rate it pays when the track is used for Amtrak service. Because the operations are conducted on AOERC's behalf, AOERC can be considered as providing railroad transportation.

Accordingly, the issue is whether AOERC is a "common carrier." There is no statutory definition of the term "common carrier." However, as a general matter, the term "common carrier" is a well-understood concept arising out of common law, and it refers to a person or entity that holds itself out to the general public as engaged in the business of transporting persons or property from place to place for compensation. See Stimson Lumber v. Kuykendall, 275 U.S. 207, 211 (1927); Pennsylvania R. Co. —Merger— New York Central R. Co., 347 I.C.C. 536, 549 (1974) (Penn. R. Co.); Status of Bush Universal, Inc., 342 I.C.C. 550, 564 (1973).⁵ In determining whether there has been a holding out, "one must look to the character of the service of the party in relation to the public." Penn. R. Co. at 549.

⁴ Section 10102(6) provides that "railroad" includes—

- (A) a bridge, car float, lighter, ferry, and intermodal equipment used by or in connection with a railroad;
- (B) the road used by a rail carrier and owned by it or operated under an agreement; and
- (C) a switch, spur, track, terminal, terminal facility, and a freight depot, yard, and ground, used or necessary for transportation.

⁵ See also Black's Law Dictionary 205 (7th ed. 1999): "*common carrier*. A carrier that is required by law to transport passengers or freight, without refusal, if the approved fare or charge is paid."

AOERC asserts that its business practices demonstrate that it does not serve or hold itself out to serve the general public. AOERC states that children younger than age 8, and others whose physical needs are incompatible with the restrictions of AOERC's rail cars, are not eligible for its vacation packages. AOERC further argues that it targets its tour packages to a small subset of vacationers that meet its strict eligibility criteria. But these practices do not shield AOERC from characterization as a common carrier. A common carrier need not hold itself out to serve all business at all times; rather, it may establish a business niche, as AOERC has done here.⁶ While AOERC only targets a subset of the public, it nevertheless holds itself out to the groups to which it markets its services.

AOERC claims that its service most resembles that of a hotel or restaurant. Because its food and lodging services move from place to place, however, AOERC's operations appear to us to be more like those of a cruise ship operator – which is considered a common carrier⁷ – than those of a mere restaurant or hotel.⁸ Like AOERC's railroad cars, cruise ships travel from one place to another⁹ (or, sometimes, they simply go to sea and return, in the well-known “cruise to nowhere”). Also, just as passengers on AOERC's excursions enjoy fine dining, luxury accommodations, and attendance at lectures and performances on board, so cruise ship passengers engage in activities and use of the ship's facilities such as dining, gambling, dancing, exercising, attending shows, and shopping. And cruise ship passengers may tour the ports of call to which they are transported by the ship, just as AOERC passengers may take walking tours and enjoy attractions at intermediate stops along the excursion route.

⁶ See Steere Tank Lines, Inc. v. ICC, 675 F.2d 103, 105 (5th Cir. 1982).

⁷ See American Ass'n of Cruise Passengers v. Cunard Line, 911 F.2d 786, 792 (D.C. Cir. 1990) (unless operating solely between foreign ports, cruise ships are common carriers under Shipping Act of 1984); Petchem, Inc. v. Canaveral Port Auth., 1985 WL 148954 (F.M.C.) (1985) at *12 (same). See also Doe v. Celebrity Cruises, 145 F.Supp.2d 1337, 1344 n.5 (S.D. Fla. 2001) (determining appropriate liability standard for common carrier); Shultz v. Florida Keys Dive Center, Inc., 224 F.3d 1269, 1273 (11th Cir. 2000) (citing cases finding cruise ships to be common carriers); Morton v. De Oliveira, 984 F.2d 289, 292 (9th Cir. 1993) (determining appropriate liability standard for common carrier); Kornberg v. Carnival Cruise Lines, Inc., 741 F.2d 1332, 1334 (11th Cir. 1984) (ship, as common carrier, owes special duty to passengers to provide comfortable accommodations).

⁸ AOERC's operations are also similar in some ways to those of tour bus operators, which were historically considered to be common carriers subject to the jurisdiction of the Board's predecessor agency, the Interstate Commerce Commission (ICC). See, e.g., Petition for Declaratory Order–Executive Coach Serv., Docket No. MC-C-10095, 131 M.C.C. 706, 1979 MCC Lexis 18 (1979). Tour bus operators offer amenities to their passengers which, while more minimal in scope than are offered by AOERC, nonetheless distinguish tour buses as a discrete subset of motor common carrier service. The services offered by these companies—as a more luxurious form of bus transportation—are analogous in some ways to those offered by AOERC as a more luxurious form of passenger rail than Amtrak.

⁹ The lack of regular schedules or regular routes does not mean that AOERC is not a common carrier. Whether a carrier offers scheduled service is one factor to be examined, but it is not determinative of common carriage. R.C. Serv., Inc. v. Kende Leasing Corp., 1985 U.S. Dist. Lexis 17351 at *5 (N.D. Ill. 1985). The Federal Maritime Commission has found that an entity may be a common carrier without regular calls at ports, regular sailings, or even sailing schedules. Activities, Tariff Filing Practices and Carrier Status of Containerships, Inc., 9 F.M.C. 56, 63 (1965).

AOERC argues that it is not a common carrier because any services that may involve common carriage are provided by Amtrak. But the ICC found that Auto-Train (at the time it was established, before it became part of Amtrak) was a common carrier. See Auto-Train, Rail Passenger & Auto Transport Serv., 342 I.C.C. 533 (1971). Like AOERC, Auto-Train depended at least in part on services and facilities being provided to it by the freight railroads. And, like AOERC, Auto-Train was solely responsible for making reservations and selling tickets, and its customers looked to it as the service provider.

AOERC also argues that its operations are similar to those of sleeping car, express, car service, and private car companies, which are not subject to the Board's jurisdiction. We disagree. To obtain sleeping car services, passengers purchased tickets directly from the railroad for the underlying movement between origin and destination and then separately contracted with a sleeping car company for the accommodations that company provided;¹⁰ here, by contrast, AOERC appears to be the only entity with which the customer makes arrangements. AOERC is also not like an express company, which historically provided an expedited service rendered on passenger trains for transportation of freight requiring quick transportation.¹¹ Nor is AOERC like a car service company, which leases its equipment to a railroad for that railroad's use.¹² Here, Amtrak moves AOERC's consists but AOERC is the party using the cars.

Finally, AOERC likens itself to a private carrier because it transports only a small number of passengers, it individually contracts with each passenger for his or her transportation, and, on occasion, a company such as Subaru has chartered an AOERC excursion. However, unlike a private carrier, AOERC's primary operations do not consist of carrying its own goods or personnel;¹³ rather it offers transportation to the public, even if it is only to a segment of the public as discussed above.

In sum, we find that AOERC meets the definition of a "common carrier" that provides "transportation by a rail carrier" on the interstate rail network. AOERC is thus a "rail carrier" subject to our jurisdiction under 49 U.S.C. 10501(a). Some of the parties that filed comments in this case appeared to be concerned that a Board finding that AOERC is a common carrier could have broad consequences for the private car industry. We recognize this concern, and we note that this holding is limited to the particular facts of this case, and indicates no intention by the Board to alter the status of private car owners that attach cars to an Amtrak train or locomotive.

¹⁰ See, e.g., Pullman Co. v. Linke, 203 F.1017, 1019 (S.D. Ohio 1913); Calhoun v. Pullman Co., 159 F. 387, 389 (6th Cir. 1908).

¹¹ Coordination of Motor Transp., 182 I.C.C. 263, 348 (1932).

¹² See, e.g., Edwards v. Pacific Fruit Express Co., 390 U.S. 538, 539 (1968); United States v. ICC, 265 U.S. 292, 293-94 (1924).

¹³ See, e.g., S.D. Warren Co.-Acquisition & Operation Exemption-Maine Cent. R.R., STB Finance Docket No.34133, at 2 (STB served Sept. 30, 2002).

This decision is limited to the particular circumstances attending AOERC's operations, as described in this proceeding.

Our finding that AOERC is a rail common carrier subject to our jurisdiction does not mean that we must fully regulate its operations. On our own motion, we will exempt AOERC from the Board's licensing regulation under 49 U.S.C. 10901, for its operations.¹⁴ Requiring AOERC to come to the Board for authority would place an unnecessary burden on it.

It is ordered:

1. The motion to strike AOERC's reply is denied.
2. AOERC's petition for declaratory order is granted.
3. AOERC is exempted, pursuant to 49 U.S.C. 10502, from application of Board regulation under 49 U.S.C. 10901.
4. This proceeding is discontinued.
5. This decision is effective on its service date.

By the Board, Chairman Nober, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams
Secretary

¹⁴ See, e.g., Minnesota Zephyr Limited—Operation Exemption—Between East of Hudson, WI, and Minneapolis and Duluth Junction, MN, Finance Docket No. 31924 (ICC served Apr. 17, 1992); Horsehead Corporation—Petition for Acquisition and Operation Exemption—Chestnut Ridge Railway Company, STB Finance Docket No. 34481 (STB served Mar. 12, 2004); Exem. of Freight Forwarders from Tariff Filing Requir., 2 S.T.B. 48 (1997).