

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

239418

ENTERED
Office of Proceedings
October 23, 2015
Part of
Public Record

FD 35970

**TOLEDO, LAKE ERIE & WESTERN RAILWAY AND MUSEUM, INC.
—OPERATION EXEMPTION—**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 U.S.C. §10901 and 49 CFR §1150.31**

Submitted By:

John D. Heffner
Strasburger & Price, LLP
1025 Connecticut Ave., N.W.
Suite 717
Washington, D.C. 20036
(202) 742-8607

Counsel for Petitioner

Dated: October 23, 2015

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The Toledo, Lake Erie & Western Railway And Museum, Inc. (“Toledo”) files this Notice of Exemption, pursuant to 49 C.F.R. Part 1150, Subpart D – Exempt Transactions, with the Surface Transportation Board (“the Board”) to operate a line of railroad it currently owns as a common carrier railroad. The trackage that is the subject of this notice extends 10 miles between a point of connection with Norfolk Southern Railway’s (NSR) trackage at milepost 15 in Waterville, Ohio, and the end of the line at milepost 25 in Grand Rapids, Ohio (the Line). Service over the subject line has been provided in the past by Midwest Rail d/b/a Toledo, Lake Erie and Western Railway (“TLE&W”);¹ however, that entity has ceased providing service. Toledo’s service will be substituted for that of TLE&W.

¹ That service was authorized by the Board in a decision served on October 14, 2011, in FD 35555, *Midwest Rail d/b/a Toledo, Lake Erie and Western Railway—Lease and Operation Exemption—Toledo, Lake Erie and Western Railway and Museum, Inc.*

Once this notice becomes effective, Toledo will provide common carrier railroad service over the subject line connecting with and interchanging traffic with NSR at Waterville, OH.

INFORMATION REQUIRED BY 49 CFR §1150.33

Name and Address of Applicant 49 CFR §1150.33(a)
Toledo, Lake Erie & Western Railway And Museum, Inc.
Box 168
Waterville, OH 43566

Applicant's Representative 49 CFR §1150.33(b)
John D. Heffner
Strasburger & Price, LLP
1025 Connecticut Ave., N.W.
Suite 717
Washington, D.C. 20006
(202) 742-8607

Statement of Agreement 49 CFR §1150.33(c)
N.A. Toledo owns the property.

Operator of the Property 49 CFR §1150.33(d)
Toledo will provide all common carrier rail operations over the Line.

Brief Summary of Transaction 49 CFR §1150.33(e)

Toledo is a nonprofit entity that was established in June 1969 for the purpose of operating a railroad museum. The subject line was originally constructed many years ago by a predecessor of NSR and was sold to the Toledo after its abandonment. Toledo has operated excursion passenger service over the Line but starting in 2011 it leased the line to the TLE&W for common carrier freight service. Because TLE&W has ceased providing service over the Line, Toledo

seeks obtain common carrier authority from the Board to provide service in the event of a demand for such service. This transaction is in the nature of a change in operators, a transaction specifically covered by the Board's class exemption procedures. 49 CFR at §1150.31(a)(3). Furthermore, the Board has assumed jurisdiction over and granted operating authority over railroad museum-owned track when there was a need for common carrier railroad service. *See, e.g., Dubois County Railroad Corporation—Lease and Operation Exemption—Indiana Railroad Museum, Inc.*, FD 33671 (STB served Nov. 24, 1998) and *Fremont Northwestern Railroad Company—Lease and Operation Exemption—Rail Line of the Eastern Nebraska Chapter National Railway Historical Society*, FD 34383 (STB served Aug. 8, 2003).

Other information required

(1) The name and address of the party transferring the subject property:

N.A. Toledo already owns the Line.

(2) The proposed time schedule for consummation of the transaction:

Toledo intends to consummate this transaction at least 30 days from the date of this notice, probably around November 23, 2015.

The mileposts of the subject property, including any branch lines:

Between milepost 15 in Waterville, Ohio, and the end of the line at milepost 25 in Grand Rapids, Ohio.

The total route miles to be operated:

4

About 10 miles of railroad.

Map 49 CFR §1150.33(f)

A map depicting the railroad trackage to be operated is attached as Exhibit A.

Certificate of Carrier Classification 49 CFR §1150.33(g)

Toledo certifies that with this transaction its projected annual revenues will be less than \$5,000,000 annually. A certificate complying with the provisions of 49 CFR 1150.33(g) is attached as Exhibit B to this notice.

Transactions Imposing Interchange Commitments 49 CFR §1150.33(h)

N.A.

Labor Protection

The imposition of labor protective conditions is discretionary and are not usually imposed under 49 U.S.C. §10901. There conditions are not appropriate here as no employees will be adversely affected.

Caption Summary 49 CFR §1150.34

A caption summary in the prescribed form is attached as Exhibit C to this Notice.

Environmental and Historic Preservation Data 49 CFR §1105

Pursuant to 49 CFR §1105.6(c) (2), the proposed transaction is exempt from environmental review under 49 CFR §1105(c) (2) (i), because the actions proposed

herein will not cause any operating changes that exceed the thresholds established in 49 CFR §1105.7(e) (4) or (5).

In addition, this transaction is exempt from historic review under 49 CFR §1105.8(b) (1). Under this section, a sale, lease or transfer of a rail line is exempt if rail operations will continue. Further Board approval is required for the parties to abandon service, and there are no plans to dispose of or alter the properties subject to Board jurisdiction.

Respectfully submitted,



John D. Heffner
Strasburger & Price, LLP
1025 Connecticut Ave., N.W.
Suite 717
Washington, D.C. 20036
(202) 742-8607

Counsel for Petitioner

Dated: October 23, 2015

EXHIBIT A

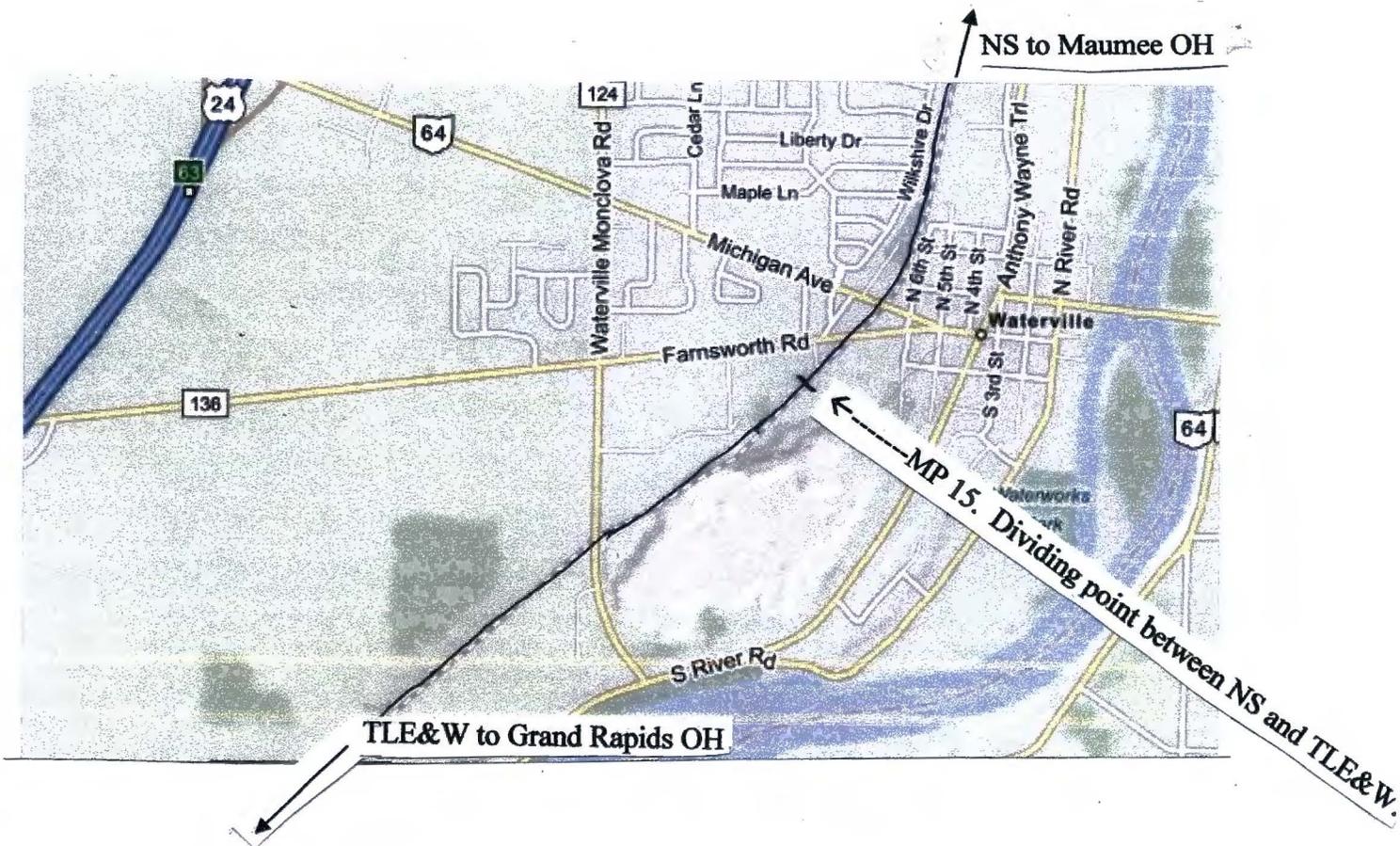


Exhibit B***Certification***

I, Richard E. Westphal, Jr., certify that I am Vice President (state position) of Toledo, Lake Erie & Western Railway and Museum, Inc. (name of carrier) and that applicant's projected revenues will not exceed \$5 million annually and will not result in the applicant becoming a Class I or Class II carrier under the provisions of 49 CFR 1201(1-1).

Dated: October 23, 2015

Signature

A handwritten signature in black ink, appearing to read 'Richard E. Westphal, Jr.', written over a horizontal line.

EXHIBIT C

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Toledo certifies that its projected annual revenues as a result of this transaction would not exceed those that would qualify it as a Class III rail carrier and further certifies that its projected annual revenues will not exceed \$5 million.

If the verified 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 effectiveness of the exemption. Petitions for stay must be filed no later than November 16, 2015 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to FD 35970, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423 0001. In addition, one copy of each pleading must be served on John D. Heffner, Esq., Strasburger & Price, 1025 Connecticut Ave., N.W. – Suite 717, Washington, D.C. 20036, Telephone: (202) 742-8607, counsel for Toledo.

Board decisions and notices are available on our website at

WWW.STB.DOT.GOV.

Decided:

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

VERIFICATION

STATE OF OHIO)
)
 CITY OF WATERVILLE)

Richard E. Westphal, Jr., being duly sworn according to law, hereby deposes and states that (s)he holds the position of Vice President with applicant/petitioner, is authorized to make this Verification, had read the foregoing document, and knows the facts asserted therein are true and accurate as stated, to the best of (her)his knowledge, information, and belief.

[Handwritten Signature]

Subscribed to and sworn to before me, a Notary Public, in and for the County of Lucas in the State of Ohio, this 23rd day of October.

[Handwritten Signature]

 Notary Public

My Commission expires:



MICHELLE M. SMITH
 Notary Public, State of Ohio
 My Commission Expires: July 17, 2017