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July 18, 2016

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Office of Proceedings
July 19, 2016
Part of
Public Record

VIA FEDERAL EXPRESS

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20024

Re: **Docket No. FD 36010**
Wheeling & Lake Erie Railway Company -- Operation
Exemption -- Valley Line in Harrison and Jefferson Counties, OH

Dear Ms. Brown:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of the **Verified Notice of Exemption of Wheeling & Lake Erie Railway Company Pursuant to 49 C.F.R. § 1150.31**, dated July 18, 2016. A check in the amount of \$1,900.00, representing the appropriate fee for this filing, has been sent under separate cover. A compact disk containing the text of the Notice and the *Federal Register* caption summary in MS Word 2010 format is attached.

One extra copy of the Notice and this letter also are enclosed. I would request that you date-stamp those items to show receipt of this filing and return them to me in the provided envelope.

If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance on this matter.

Respectfully submitted,

Thomas J. Litwiler
Attorney for Wheeling & Lake Erie
Railway Company

TJL:tl

Enclosures

FEE RECEIVED
July 19, 2016
SURFACE
TRANSPORTATION BOARD

FILED
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BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36010

WHEELING & LAKE ERIE RAILWAY COMPANY
-- OPERATION EXEMPTION --
VALLEY LINE IN HARRISON AND JEFFERSON COUNTIES, OH

**VERIFIED NOTICE OF EXEMPTION
OF
WHEELING & LAKE ERIE RAILWAY COMPANY
PURSUANT TO 49 C.F.R. § 1150.31**

Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

Alexander C. Jarvis
Vice President - Law & Government Relations
Wheeling & Lake Erie Railway Company
100 East First Street
Brewster, Ohio 44613-1202
(330) 767-7250

**ATTORNEYS FOR WHEELING & LAKE ERIE
RAILWAY COMPANY**

Dated: July 18, 2016

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36010

WHEELING & LAKE ERIE RAILWAY COMPANY
-- OPERATION EXEMPTION --
VALLEY LINE IN HARRISON AND JEFFERSON COUNTIES, OH

**VERIFIED NOTICE OF EXEMPTION
OF
WHEELING & LAKE ERIE RAILWAY COMPANY
PURSUANT TO 49 C.F.R. § 1150.31**

Pursuant to 49 C.F.R. § 1150.31, et seq., Wheeling & Lake Erie Railway Company ("W&LE"), a Class II rail carrier, hereby files this Verified Notice of Exemption to operate approximately 18 miles of trackage in Harrison and Jefferson Counties, Ohio (the "Valley Line") that was previously abandoned by W&LE. The resumption of operations on an abandoned line by an existing rail carrier is subject to the provisions of 49 U.S.C. § 10901 and the class exemption therefrom codified at 49 C.F.R., Subpart D. Class Exemption -- Acq. & Oper. Of R. Lines Under 49 U.S.C. 10901, 1 I.C.C.2d 810 (1985) ("Existing carriers require approval under section 10901 to . . . operate previously abandoned lines of an existing carrier."). Because the proposed operation will not result in the creation of a new Class I or Class II rail carrier, the transaction is subject to the procedures of 49 C.F.R. §§ 1150.32-1150.34 rather than the procedures of 49 C.F.R. § 1150.35. W&LE will remain a Class II rail carrier after consummation of the transaction proposed herein, and the projected revenues of the Valley Line do not exceed those that would qualify a stand-alone operator of that line as a Class III rail carrier.

In accordance with the requirements of 49 C.F.R. § 1150.33, W&LE submits the following information:

Name and Address of Applicant: 49 C.F.R. § 1150.33(a)

The full name and address of the rail carrier applicant herein is as follows:

Wheeling & Lake Erie Railway Company
100 East First Street
Brewster, OH 44613-1202
(330) 767-3401

Applicant's Representative: 49 C.F.R. § 1150.33(b)

W&LE's representative to whom correspondence regarding this transaction should be sent is as follows:

Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, IL 60606-2832
(312) 252-1508

Statement Concerning Agreement: 49 C.F.R. § 1150.33(c)

W&LE remains the owner of the previously-abandoned Valley Line, and no agreement is necessary for W&LE to resume common carrier operations on the line.

Operation of the Property: 49 C.F.R. § 1150.33(d)

W&LE will be the operator for rail common carrier service on the Valley Line upon its reactivation.

Summary of the Transaction: 49 C.F.R. § 1150.33(e)

W&LE is a Class II common carrier by rail which owns, leases or operates approximately 840 miles of rail line in the states of Ohio, Pennsylvania, West Virginia and

Maryland. W&LE's principal route extends from Connellsville, Pennsylvania through Pittsburgh, Pennsylvania and Brewster, Ohio to Bellevue, Ohio. W&LE operates, inter alia, over CSX Transportation, Inc. between Connellsville and Hagerstown, Maryland pursuant to trackage rights, and over Norfolk Southern Railway Company ("NS") between Bellevue and Toledo, Ohio pursuant to trackage rights.

W&LE began operations in May, 1990 after acquiring its core rail lines from a predecessor of NS. Wheeling Acquisition Corporation -- Acquisition and Operation Exemption -- Lines of Norfolk and Western Railway Company, Docket No. FD 31591 (ICC served May 7, 1990 and December 28, 1990). W&LE is a subsidiary of The Wheeling Corporation, and is affiliated with the Akron Barberton Cluster Railway Company. See Wheeling Corporation -- Continuance in Control Exemption -- Akron Barberton Cluster Railway Company, Docket No. FD 32538 (ICC served October 27, 1994 and January 12, 1996).

In 1999, W&LE received exemption authority from the STB to abandon its "Valley Line" extending from milepost 188.5 near Unionvale, Ohio to milepost 205.54 near Warrenton, Ohio, a distance of approximately 18 miles. Wheeling & Lake Erie Railway Company -- Abandonment Exemption -- In Harrison and Jefferson Counties, OH, Docket No. AB-227 (Sub-No. 9X) (STB served October 19, 1999). The Valley Line was the eastern portion of a longer, secondary W&LE line extending from a connection with W&LE's Connellsville-Bellevue main line at Pittsburgh Junction, Ohio to Warrenton. At Warrenton, the Valley Line connects with another secondary W&LE line (known as the "River Line") that extends south from Steubenville, Ohio to Benwood, West Virginia.

After completion of the Section 106 process under the National Historic Preservation Act, W&LE consummated abandonment of the Valley Line on December 23, 2003.

See Docket No. AB-227 (Sub-No. 9X), W&LE Letter to Vernon A. Williams filed December 23, 2003. W&LE did not, however, pursue salvage of the Valley Line, and the trackage has remained in place.¹ Recently W&LE has operated occasional trains over the eastern end of the Valley Line, from Warrenton to Dillonvale, pursuant to individual arrangements with customers. There is also a stone transload facility located at the very western limits of the abandoned Valley Line.

To accommodate potential traffic development and restore a strategic link between the W&LE main line at Pittsburgh Junction and the River Line at Warrenton, W&LE proposes to resume its common carrier status on the Valley Line, extending from milepost 188.5 near Unionvale to milepost 205.54 near Warrenton, a distance of approximately 18 miles. The requested authority will allow W&LE to conduct authorized operations as service demands may dictate. W&LE intends to consummate the proposed transaction on or after August 18, 2016, at which time the Valley Line will be returned to the national rail system.

Map: 49 C.F.R. § 1150.33(f)

A map showing the Valley Line and the surrounding area is attached as Exhibit A to this Notice.

Certificate of Compliance: 49 C.F.R. § 1150.33(g)

Where an existing Class II rail carrier seeks to resume operations on a previously abandoned rail line, the transaction is appropriately considered under the expedited notice of

¹ In 2012, W&LE removed a segment of rail near Adena, Ohio (in the vicinity of milepost 192) for use elsewhere on the W&LE system. W&LE anticipates reinstalling that rail when Valley Line operations in the Adena area resume. Similarly, a 2015 agreement with the Ohio Department of Transportation permitting the removal of the deteriorated at-grade crossing with State Route 150 in Dillonvale (milepost 199.2 on the Valley Line) specifically provides for W&LE's re-installation of the crossing.

exemption procedures of 49 C.F.R. §§ 1150.32-1150.34 so long as the anticipated revenues of the subject rail line itself do not exceed those of a Class III rail carrier. The Board's predecessor explained this in a proceeding involving Buffalo & Pittsburgh Railroad, Inc. ("B&P"), a Class II carrier:

Although B&P is a Class II railroad, no new Class I or II railroad would be created by this transaction. Therefore, it is properly classified under [49 C.F.R. § 1150.33(g)] and subject to the procedures at 49 CFR 1150.32-1150.34 and not the procedures of section 1150.35.

Buffalo & Pittsburgh Railroad, Inc. -- Operation Exemption -- Lucerne Branch in Pennsylvania, Docket No. FD 31372 (ICC served December 22, 1988) at 2, n.3. While the carrier in that case provided no certification regarding projected revenues on the reactivated line, the agency found that "it is obvious" that such revenues did not exceed those of a Class III carrier because "the line to be operated was previously abandoned and generates no revenues." *Id.* Here, W&LE is providing as Exhibit B to this Notice a certification pursuant to 49 C.F.R. § 1150.33(g) that the projected revenues of the Valley Line do not exceed those that would qualify a stand-alone operator of that line as a Class III rail carrier.

Interchange Commitments: 49 C.F.R. § 1150.33(h)

The proposed operation of the Valley Line by W&LE does not involve any provision or agreement that would limit future interchange with a third-party connecting carrier.

Advance Notice: 49 C.F.R. § 1150.32(e)

While W&LE's current annual rail revenues exceed \$5 million, the STB has held that the advance notice requirement of 49 C.F.R. § 1150.32(e) is inapplicable to the proposed resumption of operations over a previously abandoned line:

The purpose of the Board's rule at 49 CFR 1150.32(e) is to give advance notice of a transaction to any employees on the affected line. Because the line had been previously abandoned and there thus are no employees on the line, the rule does not apply here.

R.J. Corman Railroad Company/Memphis Line -- Operation Exemption -- Line in Montgomery and Stewart Counties, TN, Docket No. FD 33841 (STB served January 18, 2000) ("RJCM") at 1, n.2. The rail carrier applicant in RJCM had submitted a petition for waiver of the advance notice requirement, but action on that petition was not necessary in light of the Board's conclusion that the requirement was inapplicable to the proposed transaction.

Environmental and Historic Preservation Data: 49 C.F.R. § 1105

Under 49 C.F.R. § 1105.6(c)(2), W&LE's proposed operation of the Valley Line is exempt from environmental reporting requirements. The proposed transaction will not result in significant changes in carrier operations, i.e., changes that exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5).

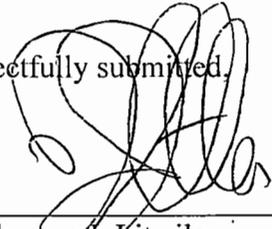
Under 49 C.F.R. § 1105.8(b)(1), W&LE's operation of the Valley Line also is exempt from historic preservation reporting requirements. The proposed transaction is for the purpose of providing common carrier rail operations. Further Surface Transportation Board approval will be required to abandon or discontinue any service and there are no plans to dispose of or alter properties subject to Board jurisdiction that are fifty years old or older.

Caption Summary: 49 C.F.R. § 1150.34

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

Respectfully submitted,

By: _____

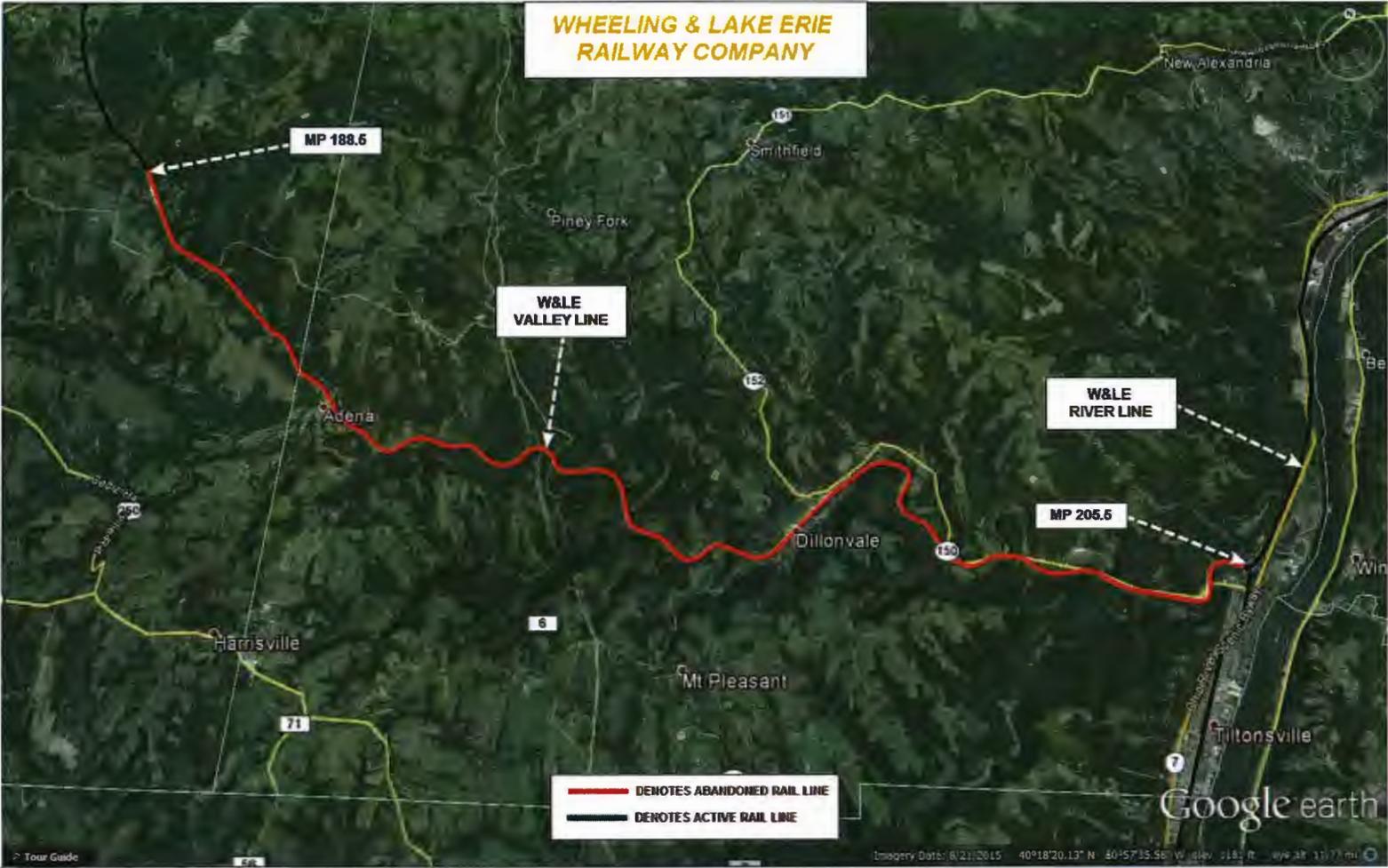

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**ATTORNEYS FOR WHEELING & LAKE ERIE
RAILWAY COMPANY**

Dated: July 18, 2016



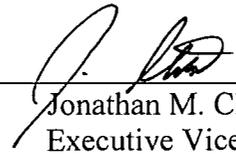


CERTIFICATION

State of Ohio)
) ss:
County of Stark)

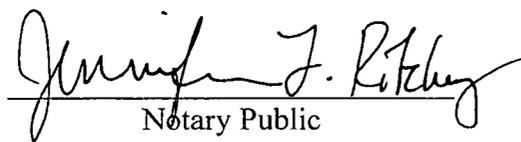


Jonathan M. Chastek, being duly sworn, hereby certifies that the projected annual revenue of the Wheeling & Lake Erie Railway Company Valley Line between Unionvale and Warrenton, Ohio would not, if considered separately, exceed those of a Class III rail carrier under the provisions of 49 C.F.R. § 1201 (1-1).



Jonathan M. Chastek
Executive Vice President

SUBSCRIBED AND SWORN TO
before me this 13th day
of July, 2016.



Notary Public

My Commission expires:



JENNIFER L. RITCHEY
Notary Public, State of Ohio
Recorded in Wayne Cty.
My commission expires 11/2/18

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

DOCKET NO. FD 36010

WHEELING & LAKE ERIE RAILWAY COMPANY
-- OPERATION EXEMPTION --
VALLEY LINE IN HARRISON AND JEFFERSON COUNTIES, OH

Wheeling & Lake Erie Railway Company ("W&LE"), a Class II rail carrier, has filed a Verified Notice of Exemption to operate approximately 18 miles of previously-abandoned rail line extending from milepost 188.5 near Unionvale to milepost 205.54 near Warrenton in Harrison and Jefferson Counties, Ohio (the "Valley Line"). The Valley Line was abandoned by W&LE in 2003 pursuant to exemption authority granted by the Board in Docket No. AB-227 (Sub-No. 9X).

W&LE expects to consummate its resumption of common carrier status on the Valley Line on or after August 18, 2016.

Comments must be filed with the Board and served on:

Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

This Notice is filed under 49 C.F.R. § 1150.31. 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.

Dated: July __, 2016

By the Board

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings

VERIFICATION

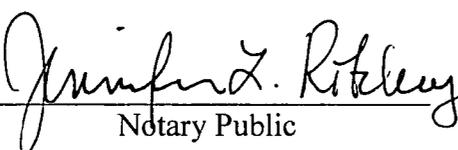
State of Ohio)
) ss:
County of Stark)

Jonathan M. Chastek, being duly sworn, deposes and says that he is Executive Vice President of Wheeling & Lake Erie Railway Company, that he has read the foregoing Notice of Exemption and knows the facts asserted therein, and that the same are true as stated.



Jonathan M. Chastek

SUBSCRIBED AND SWORN TO
before me this 13th day
of July, 2016.



Notary Public

My Commission expires:



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