

ENTERED  
Office of Proceedings  
December 7, 2015  
Part of  
Public Record

December 7, 2015

JOHN D. HEFFNER  
(202) 742-8607  
Direct Fax (202) 742-8697  
John.Heffner@strasburger.com

**BY E-FILING**

Ms. Cynthia T. Brown  
Chief of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D.C. 20423-0001

 <b>GRANTED</b> Office of Proceedings	DECISION ID NO.: <u>44965</u>
	DECIDED DATE: <u>12/22/15</u>
	SERVICE DATE: <u>12/23/15</u>
	APPROVED: <u>Rachel O Campbell</u> Director
<input checked="" type="checkbox"/> <u>Request to continue to hold in abeyance granted.</u>	

**RE: FD 35970, Toledo, Lake Erie & Western Railway and Museum, Inc.-Operation Exemption**

Dear Ms. Brown:

I am writing on behalf of the Toledo, Lake Erie & Western Railway and Museum, Inc. ("TLEW"), applicant, in connection with the above-captioned proceeding.

On November 19, the Board served an order holding this proceeding in abeyance and seeking additional information from TLEW. More specifically, the Board directed the applicant to clarify how it would provide common carrier service if the demand for such service arises and to submit any information pertaining to its ability to interchange traffic at Waterville with Norfolk Southern Railway ("NSR"). In response to the Board's invitation, NSR submitted its comment wherein it stated on the basis of information currently available, NSR does not believe TLEW's exemption should take effect. However, at the end of the letter NSR stated that "it believes it is inappropriate to grant TLEW's notice of exemption *at this time*" [emphasis supplied].

By this letter, TLEW advises that it has been trying to reach the appropriate NSR officials to establish commercial arrangements for the interchange of traffic. Due to the Thanksgiving Holiday and the conflicting schedules of TLEW's

7445392 1/SP/39589/0101/120715

Strasburger & Price, LLP

1025 Connecticut Ave., N.W. Suite 717 | Washington, DC 20036 | 202.742.8600 tel | 202.742.8699 fax | www.strasburger.com  
Austin | Collin County | Dallas | Houston | San Antonio | New York, N.Y. | Washington, D.C. | Mexico City - Strasburger & Price, SC

**Strasburger**  
ATTORNEYS AT LAW

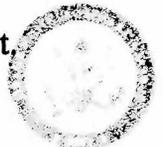
Ms. Cynthia T. Brown

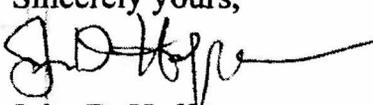
December 7, 2015

Page 2

personnel and those of NSR, it has yet to reach those officials. Accordingly, TLEW requests that its notice be held in abeyance as the Board's order directs. TLEW hopes to have a resolution within the next few weeks.

NSR concurs in this request.



Sincerely yours,  
  
John D. Heffner

cc: William A. Mullins, Esq.  
Mr. Richard Westphal

CERTIFICATE OF SERVICE

I, John D. Heffner, hereby certifies that I transmitted a copy of the foregoing Request to Hold Abeyance to the following party by First Class United States Mail and Electronic mail this 7<sup>th</sup> day of December, 2015.



William A. Mullins  
Partner  
Baker and Miller PLLC  
2401 Pennsylvania Ave, N.W.  
Suite 300  
Washington, D.C. 20037

# BAKER & MILLER PLLC

ATTORNEYS and COUNSELLORS  
2401 PENNSYLVANIA AVENUE, NW  
SUITE 300  
WASHINGTON, DC 20037  
TELEPHONE (202) 663-7820  
FACSIMILE (202) 663-7849

WILLIAM A. MULLINE

(202) 663-7823 (Direct Dial)

December 3, 2015

## VIA E-FILING

Cynthia T. Brown, Chief  
Section of Administration, Office of Proceedings  
Surface Transportation Board  
395 E Street, SW  
Washington DC 20423-0001

Re: Toledo, Lake Erie & Western Railway and Museum, Inc. – Operation Exemption, FD 35970

Dear Ms. Brown:

In a decision served on November 19, 2015 (“Nov. 19<sup>th</sup> Decision”), the Board invited Norfolk Southern Railway Company (“NSR”) to comment on a verified notice of exemption filed by Toledo, Lake Erie & Western Railway And Museum, Inc. (“TLEW”), which if allowed to become effective would permit TLEW to operate over a 10 mile rail line between milepost 15 in Waterville, Ohio, and the end of the line at milepost 25 in Grand Rapids, Ohio (the “Line”). NSR appreciates the opportunity to provide this comment. Based on the information currently available, NSR does not believe TLEW’s exemption should take effect.

As properly recognized by the Board in the Nov. 19<sup>th</sup> Decision, TLEW has yet to explain how it will interchange traffic or connect to the interstate rail network to provide common carrier service over the Line, given that the Line’s prior connection to the interstate rail network was terminated when NSR was granted and exercised authority to discontinue rail service over its Maumee line segment (“Maumee Segment”) earlier this year.<sup>1</sup> After reviewing all available

<sup>1</sup> Norfolk Southern Railway – Discontinuance of Service Exemption – in Lucas County, Ohio, AB 290 (Sub-No. 377X) (STB served June 1, 2015). The Maumee Segment extended from milepost TS 13.2 (near Maumee, Ohio) to milepost TS 15 (at Waterville). In the jointly-filed notice, Midwest Rail, LLC d/b/a Toledo, Lake Erie and Western Railway also sought authority to discontinue its lease operations over the same line. Midwest Rail, LLC d/b/a Toledo, Lake Erie and Western Railway – Discontinuance of Service Exemption – in Lucas County, Ohio, AB 1231X (STB served June 1, 2015).

**BAKER & MILLER PLLC**

Cynthia T. Brown  
December 3, 2015  
Page 2

information, NSR shares the Board's concern that the discontinued Maumee Segment was the Line's only connection to the interstate rail network. Without some form of agreement between TLEW and NSR that would allow TLEW to operate over the Maumee Segment<sup>2</sup> so as to connect its Line with the NSR at milepost 15, it does not appear that TLEW will be able to conduct interstate rail common carrier operations. Thus, NSR believes it is inappropriate to grant TLEW's notice of exemption at this time.

Sincerely,



William A. Mullins  
Attorney for Norfolk Southern Railway Company

cc: Parties of Record

---

<sup>2</sup> NSR has no current plans to reactivate the Maumee Segment. Furthermore, no agreements have been reached between NSR and TL&EW that would TL&EW to operate over the Maumee Segment for interchange of traffic originating or terminating on the Line.