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SERVICE DATE – OCTOBER 14, 2011

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. 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.

Midwest Rail d/b/a Toledo, Lake Erie and Western Railway (Toledo), a noncarrier, has filed a verified notice of exemption under 49 C.F.R. § 1150.31 to lease from Toledo, Lake Erie and Western Railway and Museum, Inc. (the Museum), and to operate, a 10-mile rail line extending 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).

In the notice, Toledo states that the Line was originally constructed by the Toledo, St. Louis and Western Railroad and was subsequently acquired by the New York, Chicago & St. Louis Railway as part of its Cloverleaf Division. NSR's predecessor, the Norfolk & Western Railway, subsequently acquired the Line, abandoned it, and sold the track to the Museum. Currently, only excursion passenger rail service is being provided on the Line by the Museum.

As a result of this transaction, and pursuant to an agreement with the Museum, Toledo will provide common carrier rail service over the Line, connecting with and interchanging traffic with NSR, and also will provide excursion passenger service.

Toledo states that the Museum is currently preparing a lease and operating agreement for the parties to sign and that the agreement should be executed in the very near future, before the notice becomes effective.¹

According to Toledo, there are no agreements applicable to the Line imposing any interchange commitments. Toledo notes that the Line does not physically connect with any rail lines other than that owned by NSR.

The earliest the transaction can be consummated is October 30, 2011, the effective date of the exemption (30 days after the exemption was filed).

Toledo certifies that its projected annual revenues as a result of this transaction will not exceed \$5 million annually and will not result in it becoming a Class I or Class II rail carrier.

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. Stay petitions must be filed no later than October 21, 2011 (at least 7 days before the exemption becomes effective).

¹ Once Toledo enters into the agreement, it should submit the agreement into the record in this proceeding in order to provide sufficient information and documentation for the Board to determine whether the owner-lessor can exert undue control over the lessee-carrier's operations. See Anthony Macrie—Continuance in Control Exemption—N.J. Seashore Lines, Inc., FD 35296, slip op. at 3 (STB served Aug. 31, 2010); N. Shore R.R.—Acquis. & Operation Exemption—PPL Susquehanna, LLC, FD 35377, slip op. at 3 (STB served Apr. 26, 2011).

An original and 10 copies of all pleadings, referring to Docket No. FD 35555, 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, John D. Heffner, PLLC, 1750 K Street, N.W., Suite 200, Washington, DC 20006.

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Decided: October 11, 2011.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.