

LAW OFFICES  
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WASHINGTON, D.C. 20006  
PH: (202) 296-3333  
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**ORIGINAL**

**BY MESSENGER**

231011

September 30, 2011

Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
Washington, D.C. 20423-0001

SEP 30 2011  
FEE RECEIVED

**FEE RECEIVED**  
SEP 30 2011  
SURFACE  
TRANSPORTATION BOARD

**RE: Finance Docket No. 35555, Midwest Rail d/b/a Toledo, Lake Erie  
And Western Railway-Lease and Operation Exemption-Line of  
Railroad Owned by the Toledo, Lake Erie And Western Railway And  
Museum, Inc.**

Dear Ms. Brown:

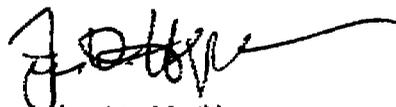
On behalf of Midwest Rail d/b/a Toledo, Lake Erie And Western Railway, I am enclosing an original and 10 copies of a Verified Notice of Exemption for lease and operation of a rail line pursuant to 49 U.S.C. 10901 and 49CFR 1150.31 along with a filing fee check payable to the Board for \$1800, and a copy of this filing on a computer diskette.

Please date stamp and return one copy of this filing.

Sincerely yours,

**FILED**

SEP 30 2011

  
John D. Heffner

**SURFACE  
TRANSPORTATION BOARD**

Enclosure

**ORIGINAL**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**FD 35555**



**MIDWEST RAIL D/B/A  
TOLEDO, LAKE ERIE AND WESTERN RAILWAY  
—LEASE AND OPERATION EXEMPTION—  
LINE OF RAILROAD OWNED BY THE  
TOLEDO, LAKE ERIE AND WESTERN RAILWAY AND MUSEUM, INC.**

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

23/011

SEP 30 2011  
Part of  
Public Record

Submitted By:

John D. Heffner  
John D. Heffner, PLLC  
1750 K Street, N.W.  
Suite 200  
Washington, D.C. 20006  
(202) 296-3334

Counsel for Petitioner

**FEE RECEIVED**  
SEP 30 2011  
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TRANSPORTATION BOARD

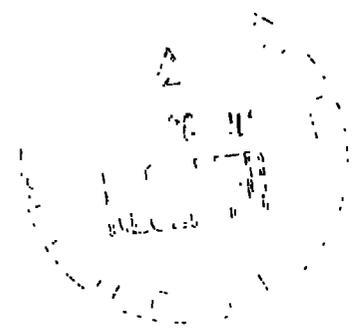
Dated: September 30, 2011

**FILED**

SEP 30 2011

**SURFACE  
TRANSPORTATION BOARD**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**



**FD 35555**

**MIDWEST RAIL, LLC D/B/A  
TOLEDO, LAKE ERIE AND WESTERN RAILWAY  
—LEASE AND OPERATION EXEMPTION—  
LINE OF RAILROAD OWNED BY THE  
TOLEDO, LAKE ERIE AND WESTERN RAILWAY AND MUSEUM, INC.**

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

Midwest Rail d/b/a Toledo, Lake Erie and Western Railway ("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 permit it to lease and operate about 10 miles of abandoned railroad track ("the Line") currently owned and operated for excursion rail service by Toledo, Lake Erie and Western Railway and Museum, Inc. ("the Museum"). Presently, use of the line is limited to excursion rail service. No common carrier railroad operations are conducted over it.

The Line extends between a connection with Norfolk Southern Railway ("NS") at milepost 15, in Waterville, OH, and the line's terminus at milepost 25, in

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

**INFORMATION REQUIRED BY 49 CFR 1150.33**

Name and Address of Applicant **49 CFR 1150.33(a)**

Midwest Rail d/b/a  
Toledo, Lake Erie and Western Railway  
Box 168  
49 North Sixth Street  
Waterville, OH 43566

Applicant's Representative **49 CFR 1150.33(b)**

John D. Heffner  
John D. Heffner, PLLC  
1750 K Street, N.W.  
Suite 200  
Washington, D.C. 20006  
(202) 296-3334

Statement of Agreement **49 CFR 1150.33(c)**

Toledo has a signed letter of intent with the Museum acknowledging the parties' desire to enter into a definitive lease and operating agreement under which Toledo will provide both common carrier freight service and excursion passenger service on the Line. The Museum is currently preparing a lease and operating agreement for the parties to sign. This agreement should be executed in the very near future before this notice becomes effective.

Operator of the Property

**49 CFR 1150.33(d)**

As noted above, Toledo will provide all common carrier rail operations over the Line.

Brief Summary of Transaction

**49 CFR 1150.33(e)**

Midwest Rail, LLC d/b/a Toledo is a recently established noncarrier formed for the purpose of operating common carrier freight and excursion passenger service over an abandoned line of railroad owned by the Museum. The Line was originally constructed many years ago by the Toledo, St. Louis and Western Railroad and was subsequently acquired by the New York, Chicago & St. Louis Railway (commonly known as the "Nickel Plate Road") as part of its "Cloverleaf Division." Subsequently, the Nickel Plate Road was acquired by the NS' predecessor the Norfolk & Western Railway. Norfolk & Western abandoned and sold the subject track to the Museum around 1975.

Section 1150.31(a) of the Board's rules pertaining to short line railroad acquisition and operations transactions. 49 CFR 1150.31, provides "except as indicated below, that this exemption applies to *all* [emphasis supplied] acquisitions and operations under section 10901." Board precedent allows the restoration of common carrier freight rail service over abandoned but still in-tact rail lines acquired by museums or other parties outside Board jurisdiction for excursion rail service. *See, e.g., Dubois County Railroad Corporation--Lease and Operation*

Exemption--Indiana Railway 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 August 8, 2003. As with other exemptions involving  
the conversion to and common carrier operation of what had previously been  
private or industry-owned trackage,<sup>1</sup> the key to the Board's assumption of  
jurisdiction is whether the putative carrier will be "holding out" to serve the public  
at large.

Toledo fits that test. It has begun to solicit traffic from potential customers.  
It will be better able to accelerate those efforts once it has an executed lease and  
operating agreement with the Museum, its lease and operating exemption takes  
effect, and it has a signed interchange agreement with NS. Toledo anticipates that  
initial traffic will include stone and agricultural products as well as manufactured  
goods.

Other information required

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

No physical property will be transferred as a result of this filing; only a  
leasehold interest and operating rights will be granted to the operator.

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<sup>1</sup> Effingham R.R. Co.—Pet. For Declaratory Order, 2 S.T.B. 606 (1997); Clark Shortline  
Railroad Company—Acquisition And Operation Exemption—Indiana Port Commission, Et Al, FD  
32112, STB served May 14, 1998; and SMS Rail Service, Inc.—Petition for Declaratory Order,  
FD 34483, STB served Jan. 24, 2005.

The name and address of the Museum is:

Toledo, Lake Erie and Western Railway and Museum, Inc.  
P.O. Box 168, 49 North Sixth Street,  
Waterville, OH 43566-0168

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

Toledo intends to consummate this transaction at least 30 days from the effective date of this notice, probably around late October 2011.

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

The Line extends between a connection with Norfolk Southern Railway ("NS") at milepost 15, in Waterville, OH, and the line's terminus at milepost 25, in Grand Rapids, OH.

The total route miles to be operated:

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)**

Not applicable. There are no agreements applicable to the Line imposing any interchange commitments. The subject line of railroad does not physically connect with any rail lines other than that owned by NS. Consequently, Toledo will not be able to interchange with any other carriers.

Disclosure of Intent to Transport Waste

Toledo does not anticipate handling any solid waste or construction and demolition debris over the Line.

Labor Protection

Labor protective conditions are not applicable to transactions under 49 U.S.C. 10901.

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.

Submitted By:



John D. Heffner

John D. Heffner, PLLC

1750 K Street, N.W.

Suite 200

Washington, D.C. 20006

(202) 296-3334

Counsel for Petitioner

Dated: September 30, 2011

Exhibit A  
Railroad Assets

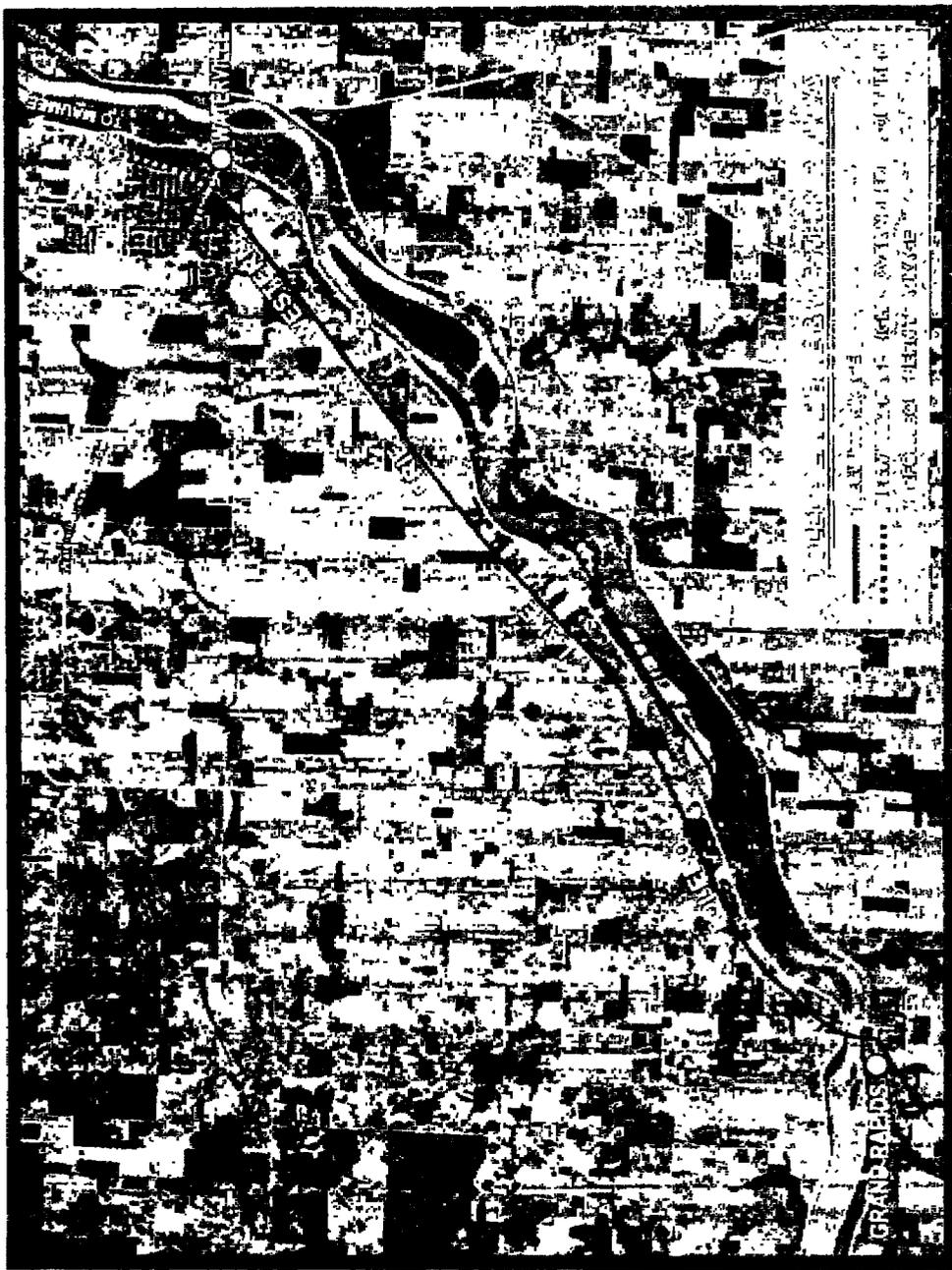


Exhibit B

*Certification*

I, Matthew Shawver, certify that I am Operator of Toledo, Lake Erie and Western Railway 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: 9/27, 2011

Signature

A handwritten signature in black ink that reads "Matthew D. Shawver". The signature is written in a cursive style with a horizontal line underneath the name.

**EXHIBIT C**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**FD 35555**

**MIDWEST RAIL, LLC  
TOLEDO, LAKE ERIE AND WESTERN RAILWAY  
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PURSUANT TO 49 U.S.C. 10901 and 49 CFR 1150.31**

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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 \_\_\_\_\_, 2011 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to FD No. 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, Esq., John D. Heffner, PLLC, 1750 K Street, N.W. – Suite 200, Washington, D.C. 20006, Telephone: (202) 296-3334, counsel.

Board decisions and notices are available on our website at [WWW.STB.DOT.GOV](http://WWW.STB.DOT.GOV).

Decided:

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

**VERIFICATION**

STATE OF Ohio )  
 )  
CITY OF Findlay )

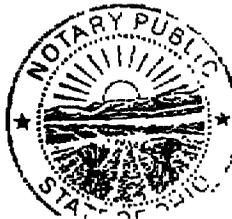
Matthew Shawver, being duly sworn according to law,  
hereby deposes and states that (s)he is holds the position of owner/president  
with applicant/petitioner (respondent), is authorized to make this  
Verification, has read the foregoing document, and knows the facts asserted  
therein are true an accurate as stated, to the best of (her) his knowledge,  
information, and belief.

Matthew Shawver

Subscribed to and sworn to before me, a Notary Public, in and for the City of  
Findlay in the State of Ohio, this 27 day of September

Lissa A. Sheacker  
Notary Public

My commission expires:



LISSA A SHEACKER  
Notary Public, State of Ohio  
My Commission Expires  
April 16, 2017