

232284

May 7, 2012

**FILED**

MAY 8 - 2012

**SURFACE  
TRANSPORTATION BOARD**

JOHN D. HEFFNER

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Email: john.heffner@strasburger.com

**VIA COURIER**

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

**FEE RECEIVED**

MAY 8 - 2012

**SURFACE  
TRANSPORTATION BOARD**

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MAY 8 2012

MANAGEMENT  
STB

**RE: FD 35623, Cleveland Commercial Railroad Company, LLC—  
Continuance-In-Control Exemption-Cleveland Harbor Belt Railroad**

ENTERED  
Office of Proceedings

MAY 8 - 2012

Part of  
Public Record

**FD 35624, Cleveland Harbor Belt Railroad-Operation Exemption-  
Cleveland-Cuyahoga County Port Authority**

Dear Ms. Brown:

I am filing an original and ten copies of the following two documents in the above-captioned dockets:

- (1) in FD 35623, I am filing on behalf of the Cleveland Commercial Railroad Company, LLC, a verified notice of exemption under 49 CFR §1180.2(d)(2) for Cleveland Commercial Railroad Company to Continue in Control of the Cleveland Harbor Belt Railroad; and
- (2) in FD 35624, a verified notice of exemption under 49 U.S.C. §10901 and 49 CFR §1150.31 for the Cleveland Harbor Belt Railroad to operate trackage owned by the Cleveland-Cuyahoga County Port Authority.

I am enclosing with a check payable to the Board for \$3100 to cover the applicable filing fees as well as a copy of each filing on a computer disk formatted

Ms. Cynthia A. Brown  
May 7, 2012  
Page 2

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in MS Word. Please date stamp and return to me one copy of each filing in the attached envelop.

Sincerely yours,

A handwritten signature in black ink, appearing to read "John D. Heffner", with a long horizontal flourish extending to the right.

John D. Heffner

Enclosures

cc: Mr. William Brown

232284

ORIGINAL

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**FD 35623**

RECEIVED  
MAY 8 2012  
MANAGEMENT  
STB

**CLEVELAND COMMERCIAL RAILROAD COMPANY, LLC  
-- CONTINUANCE IN CONTROL EXEMPTION --  
CLEVELAND HARBOR BELT RAILROAD  
VERIFIED NOTICE OF EXEMPTION  
UNDER 49 CFR § 1180.2(d) (2)**

**FILED**  
MAY 8 - 2012  
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Submitted By:

John D. Heffner  
Strasburger & Price, LLP  
1700 K Street, N.W.  
Suite 640  
Washington, D.C. 20006  
(202) 742-8607

ENTERED  
Office of Proceedings  
MAY 8 - 2012  
Part of  
Public Record

Counsel for Petitioner

Dated: May 7, 2012

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**FD 35623**

**CLEVELAND COMMERCIAL RAILROAD COMPANY, LLC  
-- CONTINUANCE IN CONTROL EXEMPTION --  
CLEVELAND HARBOR BELT RAILROAD  
VERIFIED NOTICE OF EXEMPTION  
UNDER 49 CFR § 1180.2(d) (2)**

Come now Cleveland Commercial Railroad Company, LLC (“CCR”), and Cleveland Harbor Belt Railroad (“CHB”) and state as follows:

1. Pursuant to the provisions of Section 1180 of the Board's Railroad Consolidation Rules (49 C.F.R. § 1180), CCR hereby gives notice of a transaction which qualifies for exemption under Section 1180.2(d) (2) of those rules.

2. As relevant here, CCR is a limited liability company and an existing class III short line railroad carrier.<sup>1</sup>

3. CCR has recently established CHB as a limited liability company and

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<sup>1</sup> On Aug. 6, 2004, in FD 34521, CCR was authorized to lease and operate a 10.4 mile-long line of railroad owned by the Wheeling & Lake Erie Railway Company between MP 5.1 in Cleveland, OH, and MP 15.5 in Glenwillow, OH. Subsequently, on May 29, 2009, in FD 35251 CCR was authorized to lease and operate a second line of railroad. That line, owned by Norfolk Southern Railway Company, extends between MP RH 2.2+/- at Cleveland and MP RH 27.5 +/- at Aurora, OH. Copies of the Board decisions authorizing these transactions are attached as Exhibits A and B.

a noncarrier, to operate approximately 1 mile of terminal railroad trackage currently owned by the Cleveland-Cuyahoga County Port Authority (“the Port”) in Cleveland, OH.<sup>2</sup> CHB will also operate about 6 miles of incidental trackage rights over a line of CSX Transportation (“CSXT”) between downtown Cleveland and CSXT’s yard at Collingwood , OH, for the purpose of interchange only.

4. CCR has executed an agreement with the Port for it or its assignee to operate the subject terminal trackage for a three year term starting June 1, 2012.

5. CCR has established CHB to operate that trackage as its assignee pursuant to the accompanying verified Notice of Exemption submitted under 49 U.S.C. §10901 and 49 CFR §1150.31.

6. The lines currently owned and operated by CCR will not connect with the line to be operated by CHB as they are located approximately 12 miles apart from CHB’s line and there are no plans to connect these lines.

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<sup>2</sup> The two segments of track that CHB will operate exist today and are operated by CSXT and Norfolk Southern Railway (“NSR”), respectively, as private “exempt trackage” outside the Board’s jurisdiction. The Port is currently engaged in a major rail development improvement project as part of an overall expansion of its facilities. As a result, the Port will install additional trackage that will link the current segment that is served by just CSXT on the east segment with the current segment that is served by just NSR on the west. CHB will replace CSXT and NSR as the operator of the Port’s trackage.

7. Under section 1180.2(d) (2) of the Board's consolidation rules, certain transactions are automatically exempt from the prior approval requirements for common control. Specifically, section 1180.2(d) (2) exempts the acquisition of nonconnecting carriers where (i) the railroads will not connect with each other or any railroad in their corporate family, (ii) the acquisition is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (iii) the transaction does not involve a class I carrier.

8. In order to claim the section 1180.2(d)(2) exemption, section 1180.4(g) requires the filing of a verified notice of exemption furnishing the information requested in sections 1180.6(a)(1)(i) – (iii), 1180.6(a)(5) – (6), and 1180.6(a)(7)(ii) of those rules. That information is provided as follows:

Summary of Proposed Transaction: **49 CFR § 1180.6(a) (1) (i)**

CCR will own the entire ownership interest in CHB. As noted above, CHB is a newly established limited liability company and noncarrier organized by CCR for the purpose of operating the rail line owned by the Port.

Applicant's name, address, and telephone number:

Cleveland Commercial Railroad  
29930 Pettibone Road,  
Glenwillow, OH 44139  
Telephone: 440-746-0801

Legal counsel to whom questions should be addressed:

John D. Heffner  
Strasburger & Price, LLP  
1700 K Street, N.W.  
Suite 640  
Washington, D.C. 20006  
(202) 742-8607

Schedule for consummation: **49 CFR §1180.6(a) (1) (ii)**

The parties intend to consummate the proposed transaction at least 30 days from the date of this notice, on or about June 7, 2012.

Purpose to be accomplished by the transaction: **49 CFR §1180.6(a) (1) (iii)**

The purpose of this transaction is for CHB to replace the service previously provided at the Port by CSXT and NSR as well as to service a vastly expanded railroad facility at the Port. CHB believes that it can provide freight service that is both more economical and more responsive to local needs than a class I railroad could furnish. It plans to work closely with the Port, local community, and the connecting carriers to develop the freight potential of this trackage.

State(s) in which the property of each carrier is situated: **49 CFR**

**§1180.6(a) (5)**

Ohio

Map: **49 CFR § 1180.6(a) (6)**

Attached hereto as Exhibit C.

Copy of Agreement:      **49 CFR § 1180.6(a) (7) (ii)**

N.A. There is no agreement covering CCR's control of CHB.

Related transaction

Concurrently with this filing, CHB is submitting a verified Notice of Exemption for its operation of the subject line. That notice has been assigned docket number FD 35624.

Other information / Certification:

CCR and CHB hereby certify that (1) the line to be operated by the rail carrier [CHB] to be controlled pursuant to this notice of exemption does not connect with those of CCR, (2) the subject acquisition proceeding is not a part of a series of anticipated transactions that would connect these railroads with each other, and (3) the transaction does not involve a class I carrier.

Environmental and historical considerations:

This continuance in control proceeding is exempt from environmental review under 49 CFR §1105.6(c) (2) (i) because the proposed action will not cause any operating changes that exceed the thresholds established in 49 CFR §1105.7(e) (4) or (5). In addition, this proceeding is exempt from historic review under 49

CFR §1105.8(b)(1) because there are no plans to dispose of or alter properties subject to Board jurisdiction that are at least 50 years old. Accordingly, no historic report is required.

Labor Protection to be Imposed

No labor protection applies on transactions involving only class III railroads.

See, 49 U.S.C. §11326(c).

Respectfully submitted,



John D. Heffner  
Strasburger & Price, LLP  
1700 K Street, N.W.  
Suite 640  
Washington, D.C. 20006  
(202) 742-8607

Counsel for Petitioner

Dated: May 7, 2012

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EXHIBIT A

34899

SERVICE DATE - AUGUST 6, 2004

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34521]

Cleveland Commercial Railroad Company, LLC – Change in Operators Exemption –  
Wheeling & Lake Erie Railway Company

Cleveland Commercial Railroad Company, LLC (CCR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to operate a line of railroad owned by Wheeling & Lake Erie Railway Company (W&LE). Pursuant to a Lease and Operating Agreement entered into on June 21, 2004, between CCR and W&LE, CCR will lease and operate W&LE's rail line extending from a connection with W&LE at milepost 15.5 at Falls Junction, in Glenwillow, OH, to milepost 5.1, in Cleveland, OH, a distance of approximately 10.4 miles, in Cuyahoga County, OH. The line has been operated previously by Connotton Valley Railway, Inc. (CVR).<sup>1</sup>

The parties indicated that the transaction was scheduled to be consummated not less than 7 days after the exemption was filed, which would have been July 15, 2004.

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<sup>1</sup> See Connotton Valley Railway, Inc.–Lease and Operation Exemption–Wheeling & Lake Erie Railway Company, STB Finance Docket No. 34264 (STB served Nov. 7, 2002). On June 18, 2004, CVR's lease of the line terminated, and CVR ceased all operations on the line. W&LE has been providing rail service to customers on the line since June 18, 2004, pursuant to its underlying common carrier obligation as owner of the line. Upon consummation of the change in operators authorized by the exemption, CVR's authority to lease and operate the line will terminate. W&LE states that CVR consents to the proposed change in operators of the line.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed by any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34521, must be filed with the Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Jami L. Bishop, Law Offices of Bishop & Nosich, LLC, 143 West Main Street, Cortland, OH 44410.

Board decisions and notices are available on our website at “WWW.STB.DOT.GOV.”

Decided: July 30, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary

EXHIBIT B

39989

SERVICE DATE – MAY 29, 2009

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35251]

Cleveland Commercial Railroad Company, LLC–Lease and Operation Exemption–  
Norfolk Southern Railway Company

Cleveland Commercial Railroad Company, LLC (CCR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease and to operate, pursuant to a lease agreement (Agreement) entered into on May 13, 2009, with Norfolk Southern Railway Company (NSR), approximately 25.3 miles of NSR's rail line between milepost RH 2.2+/- at Cleveland, OH, and milepost RH 27.5+/- at Aurora, OH.

CCR states that it will interchange traffic with NSR at a track in the vicinity of Von Willer Yard in Cleveland. CCR also states that it interchanges traffic with the Wheeling & Lake Erie Railway Company (W&LE) at Falls Junction in Glenwillow, OH, and that CCR's lease and operation of the subject line, which physically connects with the line that CCR currently leases from W&LE, will not affect the existing CCR and W&LE relationship.<sup>1</sup>

CCR states that it does not believe that the Agreement contains an interchange commitment that would impede CCR's ability to interchange with third party carriers.

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<sup>1</sup> See Cleveland Commercial Railroad Company, LLC–Change in Operators Exemption–Wheeling & Lake Erie Railway Company, STB Finance Docket No. 34521 (STB served Aug. 6, 2004).

See 49 CFR 1150.43(h). According to CCR, the Agreement does contain a standard rental credit provision, which CCR sought in negotiations to afford it greater financial flexibility to, among other things, improve the line's infrastructure. To ensure adherence to 49 CFR 1150.43(h) for transactions involving interchange commitments, CCR concurrently has filed with its notice a complete version of the Agreement, marked "highly confidential" and submitted under seal pursuant to 49 CFR 1104.14(a).

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

CCR states that it expects to consummate the transaction on or after June 15, 2009. The earliest this transaction may be consummated is the June 14, 2009 effective date of the exemption (30 days after the exemption was filed).

Pursuant to the Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting and shredding). The term "solid waste" is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

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 June 5, 2009 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35251, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Robert A. Wimbish, Baker & Miller, PLLC, 2401 Pennsylvania Ave., N.W., Suite 300, Washington, DC 20037.

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

Decided: May 21, 2009.

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

Anne K. Quinlan

Acting Secretary

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EXHIBIT C



**VERIFICATION**

STATE OF OHIO )  
 ) SS  
CITY OF Brecksville )

William D. Brown, being duly sworn according to law, hereby deposes and states that (s)he is holds the position of Chief Financial Officer \_\_\_\_\_ with applicant/petitioner (respondent), is authorized to make this Verification, has 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.

  
WILLIAM D. BROWN OHDLIC RP993278 ISS 4-1-11 EXP 4-13-11

Subscribed to and sworn to before me, a Notary Public, in and for the City of BRECKSVILLE in the State of OHIO, this 1<sup>st</sup> day of MAY, 2012

Kwab Munnahlin  
Notary Public

My commission expires: 08-11-2016