

# FLETCHER & SIPPEL LLC

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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

July 6, 2015



Phone: (312) 252-1500  
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238756  
ENTERED  
Office of Proceedings  
July 7, 2015  
Part of  
Public Record

Re: Docket No. FD 35944  
Akron Barberton Cluster Railway Company – Amendment of Lease  
Exemption – Metro Regional Transit Authority

Dear Chief Brown:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of the Verified Notice of Exemption of Akron Barberton Cluster Railway Company pursuant to 49 C.F.R. § 1150.41, dated July 6, 2015. A check in the amount of \$1,800, representing the appropriate fee for this filing, and a compact disk containing a pdf of the Notice and the *Federal Register* caption summary in MS Word format are attached.

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Michael J. Barron, Jr.'.

Michael J. Barron, Jr.  
Attorney for Akron Barberton Cluster Railway  
Company

Enclosures

FEE RECEIVED  
July 7, 2015  
SURFACE  
TRANSPORTATION BOARD

FILED  
July 7, 2015  
SURFACE  
TRANSPORTATION BOARD

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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DOCKET NO. FD 35944

AKRON BARBERTON CLUSTER RAILWAY COMPANY  
-- AMENDMENT OF LEASE EXEMPTION --  
METRO REGIONAL TRANSIT AUTHORITY

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**VERIFIED NOTICE OF EXEMPTION  
OF  
AKRON BARBERTON CLUSTER RAILWAY COMPANY  
PURSUANT TO 49 C.F.R. § 1150.41**

Michael J. Barron, Jr.  
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Suite 920  
Chicago, Illinois 60606-2832  
(312) 252-1500

**ATTORNEY FOR  
AKRON BARBERTON CLUSTER RAILWAY  
COMPANY**

Dated: July 6, 2015

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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DOCKET NO. FD 35944

AKRON BARBERTON CLUSTER RAILWAY COMPANY  
-- AMENDMENT OF LEASE EXEMPTION  
METRO REGIONAL TRANSIT AUTHORITY

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**VERIFIED NOTICE OF EXEMPTION  
OF  
AKRON BARBERTON CLUSTER RAILWAY COMPANY  
PURSUANT TO 49 C.F.R. § 1150.41**

Pursuant to 49 C.F.R. § 1150.41, et seq., Akron Barberton Cluster Railway Company ("ABC"), a Class III switching and terminal railroad, hereby files this Verified Notice of Exemption to amend its lease from Metro Regional Transit Authority ("Metro") of an existing rail freight operating easement (the "Freight Easement") on a 6.72 mile rail line extending from Akron to Krumroy, Ohio (the "Akron-Krumroy Line").<sup>1</sup>

Based on projected revenues for the Akron-Krumroy Line, ABC expects to remain within the revenue thresholds for Class III rail carriers.

In accordance with the requirements of 49 C.F.R. § 1150.43, ABC submits the following information:

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1. Authority to enter into the original lease was granted in Docket No. FD 34362, Akron Barberton Cluster Railway Company – Lease Exemption – Metro Regional Transit Authority (STB served July 11, 2003). Since this transaction involves an amendment and not simply a renewal, the class exemption at 49 C.F.R. 1180.2(d)(4), covering lease renewals where only an extension of time is involved, is not available here.

Name and Address of Applicant: 49 C.F.R. § 1150.43(a)

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

Akron Barberton Cluster Railway Company  
100 E. First Street  
Brewster, OH 44613

Applicant's Representative: 49 C.F.R. § 1150.43(b)

The ABC representative to whom correspondence regarding this transaction should be sent is as follows:

Michael J. Barron, Jr.  
Fletcher & Sippel  
29 North Wacker Drive, Suite 920  
Chicago, Illinois 60606-2832  
(312) 252-1500

Statement Concerning Agreement: 49 C.F.R. § 1150.43(c)

ABC and Metro have entered into an amendment of the Freight Operations Lease Agreement so that ABC can continue its lease of the Freight Easement from Metro and the coordination of freight and passenger operations on the Akron-Krumroy Line.

Operation of the Property: 49 C.F.R. § 1150.43(d)

ABC will continue to conduct all rail freight operations on the Akron-Krumroy Line, and will continue to provide service as a neutral terminal switching carrier between industries on the Line and connecting line-haul carriers in Akron/Barberton, Ohio.

Summary of the Transaction: 49 C.F.R. § 1150.43(e)

ABC is a Class III switching and terminal rail common which owns, operates or otherwise holds interests in approximately 71 route miles of rail line in the Akron, Ohio area (including Akron, Barberton, Rittman, Wadsworth, Kent and Ravenna, Ohio). ABC began operations in 1994 after acquiring certain Akron-area terminal trackage from Consolidated

Rail Corporation and the Akron & Barberton Belt Railroad Company. Docket No. FD 32537, Akron Barberton Cluster Railway Company – Acquisition and Operation Exemption – Certain Lines of Consolidated Rail Corporation (ICC served August 10, 1994 and January 12, 1996). ABC is a subsidiary of The Wheeling Corporation, and is affiliated with the Wheeling & Lake Erie Railway Company ("W&LE"). See Docket No. FD 32538, Wheeling Corporation – Continuance in Control Exemption – Akron Barberton Cluster Railway Company (ICC served October 27, 1994 and January 12, 1996).

Pursuant to an amendment to the Freight Operations Lease Agreement, ABC will continue to lease the existing rail freight operating easement on the Akron-Krumroy Line, extending from approximately milepost 40.42 in Akron, Ohio to approximately milepost 33.70 in Krumroy, Ohio, a distance of approximately 6.72 miles.

ABC will continue to provide rail freight service between industries on the Akron-Krumroy Line and connecting line-haul carriers (W&LE and CSXT) in Akron/Barberton, Ohio. While Metro, as the owner and lessor of the Freight Easement, will retain a residual common carrier obligation on the Akron-Krumroy Line, Metro will not operate any rail freight service on the line.

The complete name and address of the carrier leasing the Freight Easement on the Akron-Krumroy Line to ABC is as follows:

Metro Regional Transit Authority  
416 Kenmore Boulevard  
Akron, OH 44301

ABC intends to consummate the amendment to the lease of the Akron-Krumroy Line Freight Easement on or shortly after August 6, 2015.

**Map: 49 C.F.R. § 1150.43(f)**

A map showing the Line is attached as Exhibit A to this notice.

**Certificate of Compliance: 49 C.F.R. § 1150.43(g)**

A Certificate of Compliance with the provisions of 49 C.F.R. § 1150.43(g) is attached as Exhibit B to this notice.

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

The lease agreement between ABC and Metro does not include any provision limiting ABC's future interchange of traffic on the line with a third-party connecting carrier.

**Advance Notice: 49 C.F.R. § 1150.42(e)**

The projected annual operating revenue of ABC upon consummation of this transaction does not exceed \$5 million, and, accordingly, the advance notice requirements of 49 C.F.R. § 1150.42(e) are not applicable to this transaction. See Exhibit B.

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

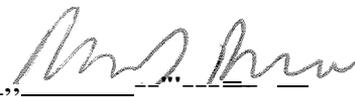
Under C.F.R. § 1105.6(c)(2), the proposed transaction is exempt from environmental reporting requirements. The proposed transaction will not result in significant changes in carrier operations, i.e., changes that exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5).

Under 49 C.F.R. § 1105.8(b)(1), the proposed transaction also is exempt from historic preservation reporting requirements. The proposed amendment to lease is for the purpose of continuing rail operations. Additional Board approval would be required to discontinue rail service or to abandon the line. Moreover, 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:   
Michael J. Banon, Jr.  
Fletcher & Sippel  
29 North Wacker Drive  
Suite 920  
Chicago, Illinois 60606-2832  
(312)252-1500

**ATTORNEY FOR  
AKRON BARBERTON CLUSTER RAILWAY  
COMPANY**

Dated: July 6, 2015



**EXHIBIT**

A

tablier

Lakemore  
Satellite

MP 33.70

MP 40.42

**CERTIFICATION AND VERIFICATION**

I, Jonathan Chastek, Executive Vice President of Akron Barberton Cluster Railway Company ("ABC"), hereby certify that ABC's projected annual revenues will not as a consequence of the proposed transaction result in ABC becoming a Class II or Class I rail carrier so as to require processing of the foregoing notice of exemption under 49 C.F.R. § 1150.45, and that ABC's projected annual revenues will not exceed \$5,000,000.00.

Also, pursuant to 28. U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States that the foregoing acquisition notice of exemption is true and correct to the best of my knowledge and belief.

  
\_\_\_\_\_  
Name: Jonathan Chastek  
Title: Executive Vice President  
Akron Barberton Cluster Railway Company

Executed on: June 29, 2015

SURFACE TRANSPORTATION BOARD

**NOTICE OF EXEMPTION**

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DOCKET NO. FD 35944

AKRON BARBERTON CLUSTER RAILWAY COMPANY  
-- AMENDMENT OF LEASE EXEMPTION --  
METRO REGIONAL TRANSIT AUTHORITY

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Akron Barberton Cluster Railway Company ("ABC"), a Class III switching and terminal carrier, has filed a Notice of Exemption under 49 C.F.R. § 1150.41 et seq. to amend a lease from Metro Regional Transit Authority ("Metro"), and allow ABC to continue operating on, the existing rail freight operating easement on a line of railroad extending from milepost 40.42 in Akron, Ohio to milepost 33.70 in Krumroy, Ohio, a distance of approximately 6.72 miles.

ABC expects to consummate the amendment to the lease of the subject freight easement on or shortly after August 6, 2015.

Comments must be filed with the Board and served on:

Michael J. Barron, Jr.  
Fletcher & Sippel  
29 North Wacker Drive, Suite 920  
Chicago, Illinois 60606-2832  
(312) 252-1500

This Notice is filed under 49 C.F.R § 1150.41. If this Notice contains false or misleading information, the exemption is void *in* 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: \_\_ ,2015

By the Board