

LAW OFFICE
THOMAS F. MCFARLAND, P.C.
208 SOUTH LA SALLE STREET - SUITE 1890
CHICAGO, ILLINOIS 60604-1112
TELEPHONE (312) 236-0204
FAX (312) 201-9695
mcfarland@aol.com

234181



THOMAS F. MCFARLAND

May 7, 2013

By UPS overnight mail

Ms. Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024

FILED
MAY 8 - 2013
**SURFACE
TRANSPORTATION BOARD**

Re: Finance Docket No. 35737, *Central Midland Railway Company -- Extension of Lease Exemption -- Rail Line of Union Pacific Railroad Company in St. Louis County, MO*

Dear Ms. Brown:

Hereby transmitted for filing with the Board in the above proceeding are the original and 10 copies of a Verified Notice of Exemption under 49 C.F.R. § 1180.2(d)(4) in behalf of Central Midland Railway Company, along with a check in the amount of \$1,400 for the filing fee.

PLEASE NOTE THAT BY VIRTUE OF 49 C.F.R. § 1150.43(h)(ii), THE LEASE AGREEMENT, WHICH IS APPENDIX 3 OF THE VERIFIED NOTICE OF EXEMPTION, IS TO BE KEPT CONFIDENTIAL BY THE BOARD WITHOUT THE NEED TO FILE A MOTION FOR PROTECTIVE ORDER UNDER 49 C.F.R. § 1104.14(a).

ACCORDINGLY, I AM HEREBY TRANSMITTING AN ADDITIONAL COPY OF THE VERIFIED NOTICE OF EXEMPTION FOR RELEASE ON THE BOARD'S WEBSITE IN WHICH THE LEASE AGREEMENT IS NOT CONTAINED.

Very truly yours,

Tom McFarland

Thomas F. McFarland
Attorney for Central Midland
Railway Company

FEE RECEIVED
MAY 8 - 2013
**SURFACE
TRANSPORTATION BOARD**

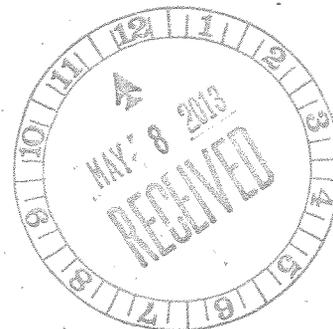
ENTERED
Office of Proceedings

MAY 8 - 2013

Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

CENTRAL MIDLAND RAILWAY)
COMPANY-- EXTENSION OF LEASE) FINANCE DOCKET
EXEMPTION -- RAIL LINE OF UNION) NO. 35737
PACIFIC RAILROAD COMPANY IN ST.)
LOUIS COUNTY, MO)



VERIFIED NOTICE OF EXEMPTION
UNDER 49 C.F.R. § 1180.2(d)(4)

FEE RECEIVED

MAY 8 - 2013

**SURFACE
TRANSPORTATION BOARD**

CENTRAL MIDLAND RAILWAY COMPANY
1400 North Warson Road
St. Louis, MO 63132

Applicant

FILED

MAY 8 - 2013

**SURFACE
TRANSPORTATION BOARD**

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1112
(312) 236-0204 (ph)
(312) 201-9695 (fax)
mcfarland@aol.com

Attorney for Applicant

DATE FILED: May 8, 2013

**ENTERED
Office of Proceedings**

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**Part of
Public Record**

BEFORE THE
SURFACE TRANSPORTATION BOARD

CENTRAL MIDLAND RAILWAY)	
COMPANY-- EXTENSION OF LEASE)	FINANCE DOCKET
EXEMPTION -- RAIL LINE OF UNION)	NO. 35737
PACIFIC RAILROAD COMPANY IN ST.)	
LOUIS COUNTY, MO)	

**VERIFIED NOTICE OF EXEMPTION
UNDER 49 C.F.R. § 1180.2(d)(4)**

Pursuant to 49 U.S.C. § 10502(a) and 49 C.F.R. § 1180.2(d)(4), CENTRAL MIDLAND RAILWAY COMPANY (CMR), hereby provides notice of its exemption from 49 U.S.C. § 10902 for extension of the term of its lease from UNION PACIFIC RAILROAD COMPANY (UP) of a portion of UP's Lackland Sub-Division that extends between Milepost 10.35 at Rock Island Jct. and Milepost 19.0 west of Vigus, a distance of 8.65 miles in St. Louis County, MO. (the Rail Line) .

BACKGROUND

CMR initially leased the Rail Line from UP by means of a Lease Agreement dated as of January 14, 2003. The Board issued a Notice of Exemption from 49 U.S.C. § 10902 for that Lease in Finance Docket No. 34308, *Central Midland Ry. Co. -- Lease and Operation Exemption -- Union Pacific R. Co.*, served January 27, 2003.

That Lease Agreement contains an Interchange Commitment, hereinafter identified. At the time that the Notice of Exemption was filed for that Lease Agreement, Board regulations did not require that CMR identify and submit a copy of that Interchange Commitment.

UP and CMR have recently agreed on a 20-year extension of the term of the Lease Agreement. There is a class exemption under C.F.R. § 1180.2(d)(4) for renewal of leases where, as here, the Board has previously authorized the Lease Agreement, and only an extension in time is involved.

By virtue of 49 C.F.R. § 1180.4(g)(4)(i)(A) and (B), when a Lease Agreement and/or an Agreement for Extension of Lease Agreement contains an Interchange Commitment, the Lessee must divulge the existence of such Interchange Commitment; identify the affected interchange points; and file with the Board a confidential, complete version of the document that contains the Interchange Commitment. CMR complies with those requirements as part of this Verified Notice of Exemption.

INFORMATION REQUIRED BY C.F.R. § 1180.4(g)(1)(i) and (4)

1. 49 C.F.R. § 1180.6(a)(1)(i) - Summary of Transaction

The proposed transaction is a 20-year extension of the term of a Lease Agreement between UP and CMR for CMR's lease of a portion of UP's Lackland Sub-Division that extends between Milepost 10.35 at Rock Island Jct. and Milepost 19.0 west of Vigus, a distance of 8.65 miles in St. Louis County, MO (the Rail Line). The proposed transaction is contained in a Third Amendment to Lease Agreement, a copy of which is attached to this Notice as Appendix 1.

Applicant is Central Midland Railway Company (CMR), 1400 North Warson Road, St. Louis, MO 63132, (618)-910-8273. CMR's counsel is Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604-1112, (312) 236-0204 (ph), (312) 201-9695 (fax), mcfarland@aol.com.

2. **49 C.F.R. § 1180.6(a)(1)(ii) - Time Schedule for Consummation**

The transaction is proposed to be consummated no earlier than the 30th day after this Notice is filed with the Board.

3. **49 C.F.R. § 1180.6(a)(1)(iii) - Purpose of Transaction**

The purpose of the proposed extension of lease term is to make CMR better able to finance improvements to the infrastructure of the Rail Line, thereby improving rail service for shippers on the Line.

4. **49 C.F.R. § 1180.6(a)(5) - Location of Applicant's Property**

All of CMR's rail property is located in the State of Missouri.

5. **49 C.F.R. § 1180.6(a)(6) - Map of Rail Line**

The required map is attached to this Notice as Appendix 2.

6. **49 C.F.R. § 1180.6(a)(7)(ii) - Agreement**

The proposed transaction is agreed to in a Third Amendment to Lease Agreement, a copy of which is attached to this Notice as Appendix 1.

In addition, a confidential copy of the initial Lease Agreement between UP and CMR dated as of January 14, 2003 is attached to this Notice as Appendix 3. A public version of Verified Notice of Exemption in which Appendix 3 is omitted is also filed with the Board.

7. **49 C.F.R. § 1180.4(g)(4) - Interchange Commitment**

Section 4.03 of the Lease Agreement (Appendix 3) contains an Interchange Commitment in the form of an adjustment in the amount of rent payable in each year, depending on the percentage of total traffic transported over the Rail Line that is interchanged with UP in that year. A relatively high percentage of traffic interchanged with UP would result in a low amount of rent (or no rent), and vice versa. The force and effect of the Interchange Commitment are materially

lessened by Section 4.02 of the Lease Agreement, which excludes from the calculation of rent payable, all traffic to or from any industry on the Rail Line that is listed in the Lease Agreement as open to reciprocal switching. There are 23 of such industries listed in the Lease Agreement. In addition, UP agrees in that Section to negotiate in good faith further exceptions to the Interchange Commitment on a case by case basis.

Attached to this Notice of Exemption as Appendix 4 is a verified statement of Mr. Lon Van Gemert, Chief Executive Officer of CMR. Mr. Van Gemert's statement establishes that any disincentive to interchange traffic with carriers other than UP resulting from the Interchange Commitment is not absolute nor perpetual, and would be more than counterbalanced by public benefits associated with the Interchange Commitment.

Attached to this Notice of Exemption as Appendix 5 is a Legal Argument that establishes that the Interchange Commitment is lawful and should be approved in the circumstances identified in Mr. Van Gemert's verified statement, and where, as here, it does not appear that such Interchange Commitment would be inconsistent with any National Rail Policy of 49 U.S.C. § 10101.

In accordance with 49 C.F.R. § 1180.4(g)(4)(i)(B), a confidential, complete version of the Lease Agreement that contains the Interchange Commitment is filed solely with the Board (Appendix 3). It is noted that in accordance with that regulation, the Lease Agreement is to be kept confidential by the Board without a need for CMR to file a Motion for Protective Order under 49 C.F.R. § 1104.14(a). CMR is filing a public version of this Notice of Exemption that does not contain a copy of the Lease Agreement.

VERIFICATION

Mr. Van Gemert's verified statement contains a verification of all factual matter asserted in this Notice of Exemption.

ENVIRONMENTAL AND HISTORIC CONSIDERATIONS

The proposed transaction does not require environmental or historic reporting or assessment. *See* 49 C.F.R. § 1105.6(c)(2)(i) and 49 C.F.R. § 1105.8(b)(1).

LABOR PROTECTION

Pursuant to 49 U.S.C. § 10902(d), labor protection requirements do not apply to the proposed transaction.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, within 16 days of the filing of this notice, the Director of the Board's Office of Proceedings should publish a Notice in the Federal Register of the filing of this Verified Notice of Exemption. *See* 49 C.F.R. § 1180.4(g)(1)(ii).

Respectfully submitted,

CENTRAL MIDLAND RAILWAY COMPANY
1400 North Warson Road
St. Louis, MO 63132

Applicant

Thomas F. McFarland

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1112
(312) 236-0204 (ph)
(312) 201-9695 (fax)
mcfarland@aol.com

Attorney for Applicant

DATE FILED: May 8, 2013

THIRD AMENDMENT TO LEASE AGREEMENT

This Third Amendment (this "Third Amendment") is made and entered into as of this _____ day of _____, 2013, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, hereinafter called "Lessor", and **CENTRAL MIDLAND RAILWAY COMPANY** ("Lessee").

RECITALS

WHEREAS, Lessor and Lessee are parties to a Lease Agreement dated as of January 14, 2003 as amended by a First Supplemental Agreement dated as of July 26, 2005 and as amended by a Second Supplemental Agreement dated as of July 19, 2007 (collectively, the "Lease") under which Lessee leases from Lessor, 8.65 miles of main line railroad in the State of Missouri known as Lackland Sub-Division from Lessor, extending from Milepost 10.35 at Rock Island Jct. to Milepost 19.0 West of Vigus, Missouri (hereinafter collectively referred to as the "Leased Premises"), which does not include the Olivette Branch Line, as indicated on **Exhibit A**, which is attached hereto and hereby made a part hereof; and

WHEREAS, Lessor and Lessee desire to extend the term of the Lease for an extended term of twenty (20) years beginning on April 1, 2013, due to immense capital investment that Lessee will be making to the rail line and bridge structures; and

WHEREAS, The Lease contains an interchange commitment ("Interchange Commitment") in the form of an adjustment in the amount of rent payable, depending on the percentage of total traffic originating or terminating on the Leased Premises that is interchanged with Lessor in each year; and

WHEREAS, The Interchange Commitment has resulted in and will continue to create vital public benefits by enabling Lessee to make substantial improvements to the Leased Premises; and

WHEREAS, The Interchange Commitment does not impose an outright barrier to interchange between Lessee and a carrier other than Lessor and contains an exception as to not restrict access to shippers open to reciprocal switching; and

WHEREAS, Lessee freely chose the Interchange Commitment that is contained in the Lease because it enabled Lessee to improve rail service over the Leased Premises and because Lessor has agreed to share risk under that commitment; and

WHEREAS, Lessee has successfully operated, without complaint from itself or shippers, under the Interchange Commitment for over ten years; and

WHEREAS, This Third Amendment does not alter the Interchange Commitment in any way.

AGREEMENT

NOW, THEREFORE, in consideration of the terms and conditions of this Third Amendment, and for other good and valuable consideration, the receipt and sufficiency of which being hereby acknowledged, the parties, intending to be legally bound, agree as follows:

1. Unless terminated or otherwise cancelled in accordance with the terms and conditions of the Lease as amended by this Third Amendment, the Term of the Lease is hereby extended to April 1, 2033.

2. All rights and obligations of Lessor and Lessee under the Lease that have accrued prior to the effective date of this Third Amendment or arise out of the acts or omissions of Lessor or Lessee prior to the effective date of this Third Amendment, with regard to the Leased Premises as defined in the Lease, shall survive the effective date of this Third Amendment.

3. Except as otherwise provided in this Third Amendment, all terms and conditions of the Lease, as amended to date, shall remain in full force and effect and shall remain binding upon the parties hereto.

4. Unless otherwise defined in this Third Amendment, all capitalized terms used herein shall have the same meaning as defined in the Lease.

IN WITNESS WHEREOF, the parties hereto have caused this Third Amendment to be executed as of the day and year first herein written.

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

CENTRAIL MIDLAND RAILWAY
COMPANY, a subsidiary of,
PROGRESSIVE RAIL INCORPORATED,
a Minnesota corporation

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Finance Docket No. 35737

APPENDIX 3

**Lease Agreement between UP and CMR
(71 pages)**

[CONFIDENTIAL]

VERIFIED STATEMENT OF LON VAN GEMERT

My name is Lon Van Gemert. I am Chief Executive Officer of Central Midland Railway Company (CMR), whose main office is located at 1400 North Warson Road, St. Louis, MO 63132. I am also Chief Executive Officer of Progressive Rail Incorporated (PGR), whose main office is located at 21778 Highview Avenue, Lakeville, MN 55044.

In 2007, PGR acquired all of the stock of CMR. *See* STB Finance Docket No. 35051, *Progressive Rail, Inc. -- Acquisition of Control Exemption -- Central Midland Railway Company*, Notice served July 5, 2007.

Since January, 2003, CMR has leased from Union Pacific Railroad Company (UP) a portion of UP's Lackland Subdivision between Milepost 10.35 at Rock Island, Jct. and Milepost 19.0 west of Vigus, a distance of 8.65 miles in St. Louis County, MO (the Rail Line). *See* STB Finance Docket No. 34308, *Central Midland Railway Company -- Lease and Operation Exemption -- Union Pacific Railroad Company*, Notice served January 27, 2003.

When the Lease Agreement for the Rail Line was noticed to the public in 2003, there was no Board regulation that required CMR to identify an Interchange Commitment contained in the Agreement. Consequently, at that time the Board did not have occasion to consider the Interchange Commitment contained in the Agreement.

Recently, UP and CMR have agreed to extend the term of the Lease Agreement for an additional 20 years. Board regulations now require CMR to identify any Interchange Commitment contained in the Lease Agreement and to file with the Board a confidential copy of

the Lease Agreement. *See* 49 C.F.R. § 1180.4(g)(4). This verified statement is part of CMR's compliance with those regulations.

49 C.F.R. § 1180.4(g)(4)(i)(A) - Identification of Interchange Commitment and Affected Interchange Points

The 2003 Lease Agreement between UP and CMR contains an Interchange Commitment in the form of an adjustment in the amount of rent payable, depending on the percentage of total traffic transported over the Rail Line that is interchanged with UP. A relatively high percentage of traffic interchanged with UP would result in a relatively low amount of rent (or no rent), and vice versa.

The affected interchange points are located in St. Louis Switching District. CMR connects with Terminal Railroad Association of St. Louis (TRRA) at Geraldine, MO. TRRA is a neutral switching carrier that operates within the St. Louis Switching District. By means of intermediate switching performed by TRRA, CMR is able to interchange traffic with six Class I rail carriers in the St. Louis Switching District, including UP, viz:

- (1) BNSF Railway Company
- (2) Canadian National Railway Company
- (3) CSX Transportation, Inc.
- (4) Kansas City Southern Railway Company
- (5) Norfolk Southern Railway Company
- (6) Union Pacific Railroad Company

Justification for Interchange Commitment

The force and effect of the Interchange Commitment are materially lessened by Section 4.02 of the Lease Agreement, which excludes from the calculation of total traffic and percentage of traffic interchanged with UP, traffic to or from industries on the Rail Line that are listed in the

Agreement as being open to reciprocal switching. The Lease Agreement lists 23 industries that are open to reciprocal switching. In addition, UP undertakes in that Section to negotiate in good faith for further exceptions to the Interchange Commitment on a case-by-case basis.

I understand that during the course of negotiations for the Lease Agreement, UP provided several options for different forms of Interchange Commitments, and that CMR freely chose the Interchange Commitment that is contained in the Lease Agreement because it enabled CMR to dramatically improve rail service on the Rail Line and because UP agreed to share risk under that commitment.

It is important to note that the Interchange Commitment under consideration does not impose an outright barrier to interchange between CMR and a rail carrier other than UP. The Interchange Commitment does not prohibit such interchange, but instead requires a varying amount of rent depending on the extent of such interchange.

It is also significant that CMR will not have an incentive to prioritize interchange with UP for an indefinite period of time as a result of the Interchange Commitment. Each year, the provision for adjustment of the rental amount will be treated independently of any other year. The percentage of traffic interchanged with UP in any year will not be carried over into the following year.

The Lease Agreement is not perpetual. The proposed extension is for 20 years. That extended term is commercially reasonable. A term of that duration will provide the kind of certainty that CMR requires to be able to make long-term investments to improve rail service over the Rail Line.

The Interchange Commitment will result in vital public benefits because it will enable CMR to make substantial improvements to track and bridges on the Rail Line. There are opportunities for CMR to grow outbound traffic dramatically if the Rail Line were to be significantly improved. To that end, CMR intends to perform major renewals, including installation of 4,000 new crossties per year, rebuilding one of the 12 bridges in the line each year, and spreading ballast on the line annually.

Improvements of that magnitude will require a very large investment. CMR can borrow the required funds only if its lender is assured that there will be a steady long-term stream of cash flow sufficient to service the debt and to recover the costs associated with materially increased rail traffic. If CMR were required to pay full market rental for the Rail Line, CMR would be unlikely to afford to make the required investments. The Interchange Commitment is structured to provide the essential flexibility needed by CMR to successfully finance the prospective track and bridge improvements.

The extensive improvements to track and bridges to be made by CMR will result in dramatically improved rail service for the benefit of Rail Line shippers. CMR, UP, and other rail carriers will also benefit from the resulting increased rail traffic volume. In addition, the major improvements to infrastructure will have a pronounced beneficial effect on safe operation of the Rail Line. Safety is the number one priority of all railroads and these improvements prove not only to CMR's employees but also to the shipping public that safety is CMR's number one priority.

Equally beneficial will be the significant boost to the local economy resulting from those track and bridge improvements and the increased traffic volume. Increased activity of that kind will be sure to generate numerous direct and indirect new jobs, providing vital benefits to hundreds of families in the St. Louis area.

Beyond the immediate ability to heavily reinvest in the rail line and bridge infrastructure, there is another slower but as urgently needed benefit that will be generated from the extended time line, i.e., Industrial Development.

This is an area of railroading that at one time was a huge priority for railroads of all sizes. However, it takes vision and patience. With a twenty year horizon line CMR can make strategic cash investments in launching rail served industrial parks that have the right sized lots configured for rail access, proper utilities and most importantly, the correct zoning that will encourage brick and mortar investments in brand new manufacturing plants of every possible description. Growing the industrial base up and down CMR's right-of-way via the creation of the right environment for heavy industry to be located in Missouri is a huge component of our mission.

We all live in a global marketplace and "transportation" is more times than not a "Top Five" expense so with the twenty year time line, CMR will have the solutions at the ready for what is always a multi-year search for serious site selection teams representing industrial clients. Shovel ready sites, business friendly zoning and great rail service will bode well for the new shippers, but also the communities we proudly serve. Equally important are the careers with benefits to be created as a result of true industrial development successes. Finally, the Class I

railroads to whom CMR will deliver new organically grown traffic each and every day will also benefit, which in turn propels even more reinvestment back into America's economy.

That's the multiple win advantage of having the time to truly build America's industrial base.

In view of those extensive and widespread benefits, the proposed CMR-UP Lease Agreement, including its Interchange Commitment, is strongly in the overall public interest.

An additional positive aspect of the proposed Interchange Commitment is that UP thereby undertakes to share risk with CMR. The contingent rent arrangement of the Interchange Commitment essentially makes UP a joint venturer with CMR because UP thereby trades the certainty of a cash flow from market rental payments for an uncertain opportunity for increased revenue from additional traffic to be developed by CMR as a result of the improvements that CMR will make to the Rail Line. Likewise, if economic conditions reduce volume at some point, UP shares the risk and CMR avoids the burden of a fixed cost.

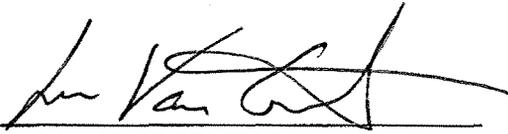
The Board is urged to permit the extension of lease term to become effective without delay. CMR is poised to begin infrastructure improvements on the Rail Line that would be enabled by an adequate lease term.

I hereby verify all factual assertions made in this Notice of Exemption.

VERIFICATION

STATE OF MINNESOTA)
) SS:
TOWN OF LAKEVILLE)

LON VAN GEMERT, being duly sworn on oath, deposes and states that he has read the foregoing statement, that he knows the contents thereof, and that the facts therein stated are true and correct.



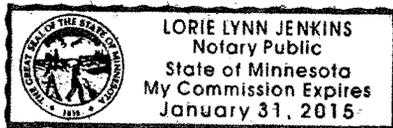
LON VAN GEMERT

SUBSCRIBED AND SWORN to
before me this 7th day
of May, 2013.



Notary Public

My Commission Expires: 1-31-15



ARGUMENT RE INTERCHANGE COMMITMENT

To assess whether a particular Interchange Commitment is consistent with the public interest, the Board weighs the benefits of the Interchange Commitment against its potential for harm. *Review of Rail Access and Competition Issues - Renewed Petition of the Western Coal Traffic League*, 2007 STB LEXIS 632 at *34 (Ex Parte No. 575), decision served October 30, 2007). The Board in that decision said (*id.* at *18):

... We will consider whether the interchange agreement is part of a lease or sale of a line, and we will look at the duration of the restriction. We will examine the manner in which the Interchange Commitment discourages interchange with other carriers and the degree to which interchange is effectively foreclosed. Parties should expect a higher level of scrutiny on agreements that contain a total ban on interchange with other carriers or go on in perpetuity.

An Interchange Commitment is to be approved where a disincentive to interchange with other carriers is not absolute nor perpetual, and where such disincentive is counterbalanced by public benefits. *See Jackson & Lansing R. Co. - Lease and Oper. Exempt. - Norfolk Southern Ry. Co.*, 2011 STB LEXIS 454 at *23-24 (Finance Docket No. 35411, decision served September 27, 2011).¹²; *see, also, Progressive Rail, Incorporated -- Lease and Operation Exemption -- Rail Line of Union Pacific Railroad Company*, 2012 STB LEXIS 160 at *3 (Finance Docket No. 35617, decision served May 4, 2012).

The verified statement of CMR CEO Lon Van Gemert (Appendix 4) establishes that the Interchange Commitment in the CMR-UP Lease Agreement is in accordance with those standards, and, therefore, should be approved.

¹² The lead docket in that decision is Finance Docket No. 35410, *Adrian & Blissfield R. Co. - Contin. in Control Exempt. - Jackson & Lansing R. Co.*

Thus, the Interchange Commitment has limited application. The commitment does not apply to the substantial traffic of 23 named industries on the Rail Line who are open to reciprocal switching. As to other traffic, the Interchange Commitment is neither absolute, nor perpetual. Interchange with rail carriers other than UP is not prohibited. Instead, any such interchange would result in higher rental payment, depending on the extent of such interchange. The Agreement in which the Interchange Commitment is contained is not open-ended, nor perpetual. Instead, each year of its term is treated independently as to the effect of the Interchange Commitment. There are no “carry-overs” whereby one annual period could influence others. The 20-year term is essential to enable reasonable financing of improvements to Rail Line infrastructure, resulting in improved service for Rail Line Shippers.

The public benefits that will flow from the Interchange Commitment more than counterbalance any disincentive to interchange traffic with carriers other than UP. Thus, CMR’s ability to minimize or to avoid market rental payments by virtue of the structure of the Interchange Commitment will enable CMR to invest heavily in the Rail Line to renew track and bridges thereby materially improving rail service to shippers and increasing the safety of train operations. The resulting substantial improvement in quality of rail service on the Rail Line will greatly benefit (1) shippers by enabling much more streamlined rail operations in getting their commodities to market; (2) CMR, UP, and other rail carriers by enabling them to share in the significantly increased rail traffic volume resulting from more efficient service; and (3) perhaps most importantly, hundreds of local citizens and families in the St. Louis area by virtue of the availability of numerous additional direct and indirect jobs made possible by increased rail traffic

volume and associated economic activity at and near the Rail Line. Thus, the Interchange Commitment is strongly and broadly in the public interest.

There is no indication that the Interchange Commitment would be inconsistent with any of the national rail policies, such as the prohibition of predatory pricing and practices. 49 U.S.C. § 10101(12). CMR has successfully operated the Rail Line without complaint from shippers or rail carriers for over 10 years. UP would share risk with CMR by virtue of the Interchange Commitment. Thus, the contingent rental agreement essentially makes UP a joint venturer with CMR because UP trades the certainty of cash flow from recurring market rental payments for the uncertain opportunity for increased revenue from traffic to be developed by CMR on the Rail Line. In addition, CMR avoids the burden of a fixed cost and UP shares the risk if traffic volume declines due to economic conditions.

WHEREFORE, for all the reasons stated, the Board should permit the extension of lease term to take effect as scheduled.

Respectfully submitted,

CENTRAL MIDLAND RAILWAY COMPANY
1400 North Warson Road
St. Louis, MO 63132

Applicant

Thomas F. McFarland

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(312) 236-0204 (ph)
(312) 201-9695 (fax)
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Attorney for Applicant

DATE FILED: MAY 8, 2013