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**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**



AB-1245X

**MICHIGAN SOUTHERN RAILROAD COMPANY, D/B/A NAPOLEON, DEFIANCE &
WESTERN RAILWAY
– DISCONTINUANCE OF SERVICE EXEMPTION –
IN HENRY COUNTY, OHIO**

PETITION FOR EXEMPTION

**Daniel A. LaKemper
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August 11, 2016

**Attorneys for Michigan Southern
Railroad Company, d/b/a Napoleon,
Defiance & Western Railway**

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INTRODUCTION

Pursuant to 49 U.S.C. § 10502 and rules applicable thereto at 49 C.F.R. Parts 1121 and 1152.60, Michigan Southern Railroad Company, d/b/a Napoleon, Defiance & Western Railway (“NDW”), a Class III common carrier by railroad, files this petition (the “Petition”) seeking an exemption from the provisions of 49 U.S.C. § 10903 to discontinue its common carrier service obligation over approximately 5.43 miles of rail line (hereinafter, the “Line”) located in Henry County, Ohio extending from milepost MP TN-28.0 (near Liberty Center) to milepost 33.43 (near Napoleon, Ohio).

The Line traverses United States Postal Zip Code territories 43545 and 43532. Based on information in NDW’s possession, the Line does not contain federally granted rights-of-way. Any documentation in NDW’s possession will be made available promptly to those requesting it. The Line includes one station: Liberty Center, Ohio, which will be discontinued in connection with this transaction.

The Line is a burden on NDW and interstate commerce because the annual revenue that is or could be generated by the sole shipper on the Line, Glenn Hunter & Associates (“GHA”), a transload shipper whose operations will be relocated and who does not oppose the discontinuance, does not cover the costs of maintaining and operating the Line. Moreover, the Line is no longer in fully operable condition and needs substantial rehabilitation, the costs of which cannot be recouped because the Line cannot be operated profitably. In sum, the requested exemption should be granted because –

- the costs of operating the Line exceed the potential traffic revenues;
- the Line needs substantial rehabilitation (at considerable cost) to continue to provide service over it;
- granting the discontinuance will allow NDW to reinvest its limited resources in more critical segments of rail line that serve rail dependent communities connecting to the Line;
- NDW is relocating the Line’s only shipper, a transload operator, and the shipper has submitted a letter supporting the Board granting NDW’s discontinuance (attached as Exhibit A);
- The discontinuance is supported by the Ohio Rail Development Commission (“ORDC”) who supports the discontinuance due to safety concerns regarding an existing rail crossing that would be eliminated if the discontinuance is granted (support letter is part of Exhibit A); and
- in keeping with the standards of section 10502 – (a) application of the Board’s formal discontinuance process is unnecessary to carry out the Rail Transportation Policy (“RTP”) of 49 U.S.C. § 10502; (b) the proposed action is of limited scope; and (c) regulation is not necessary to protect the sole customer on the Line from market power abuse.

Accordingly, NDW’s Petition should be granted in keeping with agency policy and precedent.

MAPS AND EXHIBITS

A letter from the Line's only shipper supporting the discontinuance is attached as Exhibit A. Also included as part of Exhibit A is a letter in support of the discontinuance being filed by the ORDC. A map of the Line is attached as Exhibit B. A draft Federal Register notice is attached as Exhibit C, and the certifications of compliance with 49 C.F.R. §§ 1105.12 and 1152.60(d) are included as Exhibit D. Exhibit E consists of a verification of the facts stated herein and signed by J. Michael Carr, President and CEO, Pioneer Rail Corp.

FACTUAL BACKGROUND

The Line proposed for discontinuance was originally part of the larger Wabash Railroad Company. A 51-mile segment of the Wabash Railroad Company was eventually acquired by Norfolk and Western Railway Company and later became part of the Norfolk Southern Railway Company ("Former Wabash Line"). Over the past 23 years, ownership of the Former Wabash Line has transferred four times, each time the line was in worse condition.¹ In December of 2012, NDW purchased the Former Wabash Line. Immediately upon NDW taking ownership, the Ohio Department of Transportation ("ODOT") and NDW entered into a public private partnership to make some critical repairs to specific segments of the Former Wabash Line to

¹ Indiana Hi-Rail Corporation - Lease and Operation Exemption - Norfolk and Western Railway Company Between Liberty Center, Ohio and Woodburn, Indiana, FD No. 31514 (STB served October 13, 1989); Maumee & Western, L.L.C.--Acquisition and Operation Exemption--Norfolk and Western Railway Company, FD 33478 (STB served Oct. 31, 1997); RMW Ventures, L.L.C.-Control Exemption--C&NC, L.L.C., Maumee & Western, L.L.C., and Wabash Central, L.L.C., FD 33565 (STB served Mar. 10, 1998); and Michigan Southern Railroad Company—Acquisition and Operation Exemption—RMW Ventures, LLC and Maumee & Western Railroad Corporation, FD 35696 (STB served Dec. 14, 2012).

preserve service for existing shippers located on those segments and create/retain jobs in economically depressed areas.²

While the Former Wabash Line is approximately 51 miles long, approximately seven miles of the Former Wabash Line has little to no traffic and does not routinely serve any active industries. As a result, NDW has limited its efforts to seeking public funding to rehabilitate only those segments of the Former Wabash Line which have sufficient traffic to support rehabilitation and revitalization. The Line is part of the seven miles that has little to no traffic. Accordingly, granting the discontinuance will allow NDW to reinvest its limited resources in more critical segments of rail line that have active traffic and serve rail dependent communities along the Former Wabash Line.

The Line is a small stub-ended portion of the Wabash Railroad Company, which in recent years has served only one shipper on an infrequent basis. The shipper, GHA, is a transload operator who ships Brick bats (STCC #4027116) sporadically. In fact, GHA tendered no traffic in 2013 or 2014, and GHA only shipped 6 car loads in 2015. Year to date, NDW has handled only a total of 13 carloads of Brick Bats, resulting in revenues of \$10,400. The avoidable costs to provide this service were approximately \$16,910.33.³ The Line currently operates as excepted track. To restore the Line to FRA Class I standards would cost approximately \$498,000. The Line does not have any overhead traffic. These losses are not short-term losses, but rather the

² Since acquiring the Former Wabash Line and in connection with ODOT and local municipalities, NDW/Pioneer has installed over 11,000 ties, 1500+ Gauge Rods, 134+ Rails, and performed signal/crossing work.

³ This does not account for maintenance costs. Based upon prior precedent, NSW estimates that it would cost approximately \$6,000 per mile to maintain the line at conditions necessary for safe operations. See Delta Southern Railroad Inc. – Abandonment Exemption – in Desha and Chicot Counties, AB-384 (Sub-No. 3X) (STB served March 25, 2011) and Conrail – Aband – between Warsaw and Valp Counties, Indiana, 9 ICC 2d 1299, 1304 (1993). Based on that average, NDW would incur annual maintenance costs of approximately \$32,580 for the Line.

losses will likely continue into perpetuity because rail traffic on the Line is minimal and rail traffic volumes are not anticipated to increase significantly anytime in the foreseeable future. There are currently no prospects for future additional shippers.

The Line also crosses, at grade, U.S. Highway 24 near Liberty Center. ORDC is concerned about the safety of this crossing. This is a divided, four-lane, limited-access highway. Absent the discontinuance and the cessation of rail service over the Line, due to the safety issues, ORDC believes that the crossing would require a separated grade crossing. Such a separated grade crossing would cost several million dollars. ORDC supports closing of the crossing so as to avoid this expense and improve highway safety.

In view of the Line's almost complete lack of traffic over the past three years, given that there are no prospects for any new shippers or new customers, and given the safety concerns of ORDC, NDW is seeking authority to discontinue its common carrier obligation over the Line. GHA does not oppose the discontinuance and has the support of ORDC. To ensure that GHA has full knowledge of this proceeding, NDW has served GHA with a copy of this Petition.

PETITIONER'S REPRESENTATIVE

NDW is represented by William A. Mullins and Crystal Zorbaugh of Baker & Miller PLLC, 2401 Pennsylvania Avenue, NW, Suite 300, Washington, DC 20037. Mr. Mullins can be reached at telephone: (202) 663-7820; facsimile: (202) 663-7849; and email: wmullins@bakerandmiller.com.

THE EXEMPTION STANDARDS HAVE BEEN MET

Under 49 U.S.C. § 10903, service over a rail line cannot be discontinued without prior Board approval. However, under 49 U.S.C. § 10502, the Board must exempt a transaction from application of section 10903 when it finds that – (1) regulation of the transaction is not necessary

to carry out the RTP of 49 U.S.C. § 10101; and (2) either (a) the transaction is of limited scope, or (b) regulation is not needed to protect shippers from the abuse of market power. This proposed discontinuance meets all of section 10502's statutory requirements.

A. Regulation Is Not Necessary To Carry Out The Rail Transportation Policy

The RTP obviates the need for detailed Board scrutiny under 49 U.S.C. § 10903 in this instance. Granting NDW's Petition – rather than requiring it to incur the substantial costs and potential delays involved in submitting a full-blown application – promotes a fair and expeditious regulatory decision-making process; ensures the development and continuation of a sound rail transportation system with effective competition among rail carriers and other modes to meet the needs of the public; reduces regulatory barriers to exit from the industry; and provides for the expeditious handling and resolution of proceedings required or permitted to be brought under this part. See 49 U.S.C. §§ 10101(2), (4), (7), and (15).

Moreover, allowing NDW to discontinue service over the Line will promote a safe and efficient rail transportation system by enabling the railroad to avoid losses and, in turn, facilitate the railroad's ability to earn adequate revenues. See 49 U.S.C. § 10102(3). Finally, granting NDW's Petition to discontinue a line segment that the evidence proves is not remunerative will foster sound economic conditions, and will encourage efficient management in accordance with the RTP. See 49 U.S.C. §§ 10101(5) and (9).

As indicated above, the Line is unprofitable, is highly likely not to generate profit in the future, and represents a safety risk. The discontinuance is supported by the Line's only shipper, and is supported by ORDC, an arm of the Ohio Department of Transportation. For these reasons, the Board need not, and should not, require NDW to use the formal discontinuance

application procedures in order to carry out the RTP. Indeed, the proposed discontinuance and NDW's use of the Board's exemption procedures is consistent with that policy.

B. The Proposed Discontinuance Is of Limited Scope

The proposed discontinuance is of limited scope, involving only 5.43 miles of a low-density branch line that has handled only 13 carloads per year for one shipper and at considerable costs.⁴ There is only one active shipper on the Line, and NDW is assisting the shipper, GHA, with relocating its operations in connection with the discontinuance to avoid continuing to accrue operating losses. As previously stated, there is no overhead traffic over the Line.

C. Regulation of the Discontinuance Is Not Necessary to Protect Shippers from Market Power Abuse

The proposed discontinuance is of limited scope. As a result, NDW does not need to prove that regulation is not needed to protect shippers from market power abuse. But given the limited amount of carloads at issue and the fact that NDW is assisting the Line's sole shipper with relocating its operations, it is clear that the use of the Board's formal discontinuance procedures is not necessary to protect the sole shipper on the Line from any potential abuse of market power in this case.

⁴ The Board has granted individual exemptions in similar circumstances for comparable circumstances. See, CSX Transportation, Inc. – Discontinuance of Service Exemption – In Clark, Floyd, Lawrence, Orange, and Washington Counties, IN, AB-55 (Sub-No. 698X) (STB served April 7, 2010) (Board granted discontinuance petition for approximately 62.93 miles of rail line that was projected to handle 3 carloads of traffic during the forecast year); Norfolk Southern Railway Company – Discontinuance of Service Exemption – In Norfolk, VA, AB-290 (Sub-No. 269X) (STB served July 7, 2006) (Board granted discontinuance petition for approximately 1.63 mile rail line that was projected to handle 12 carloads annually); New York Central Lines, LLC – Discontinuance Exemption – In Henry County, IN; CSX Transportation, Inc. – Discontinuance Exemption – In Henry County, IN, AB-565 (Sub-No. 15X), AB-55 (Sub-No. 639X) (STB served December 5, 2003) (Board granted discontinuance petition for a 1.64-mile line of railroad that handled 19 carloads in the base year).

Indeed, due to the nature of GHA's transload business, GHA regularly make use of trucks and has the potential to use several other transload locations. In fact, because GHA's traffic is multi-modal and has several shipping options, such competitive constraints preclude NDW from exploring the sizeable rate increases that would make continuing rail service economically practicable. NDW has agreed to relocate GHA's operations on another part of the Wabash Railroad Company in order to retain their business and GHA supports the discontinuance. Clearly, regulation is not needed to protect GHA from market abuse.

PUBLIC INTEREST FACTORS

Because this is a petition for exemption filed under 49 U.S.C. §10502, NDW need not discuss the public interest factors applicable to a discontinuance filed under 49 U.S.C. §10903. Nonetheless, NDW asserts that the public interest would not be harmed and thus there is no need to require NDW to follow the application process so as to protect the public interest. Clearly, based on the factual circumstances, there is simply no basis to presume that NDW's decision to seek discontinuance authority is driven by any consideration aside from the avoidance of future operating losses and continued investment in a Line whose traffic levels cannot support economical operations and due to ORDC's concerns over the safety of the Line. Continued operation of the Line would be wholly uneconomical and potentially unsafe unless a separated grade crossing was installed at considerable cost.

Even when factoring community and shipper interests against the Line's economic circumstances, the public interest militates in favor of the proposed discontinuance. The proposed discontinuance of service will have no significant impact upon the community, in large part because rail service has been a convenient, but non-essential, competitive alternative to existing truck transportation for the Line's shippers. If anything, because the Line currently

crosses a four lane highway that has previously been the site of a railroad grade crossing accident under prior management, the discontinuance should positively impact the safety of the community as NDW will no longer have to operate over the highway.

The discontinuance will also not adversely impact the sole shipper on the Line, particularly because NDW, in a desire to retain GHA's business, is relocating the Line's sole shipper to a site where it will in fact have continued access to rail. Indeed, even if NDW was not relocating the shipper, GHA would have several other alternatives – either relocating its facility to CSX or using trucking in lieu of rail. There is a nearby major CSXT mainline in proximity of the Line to be discontinued that extends from Chicago to the East. GHA also has competitive trucking options via Ohio's highways. The Line is located near U.S. Route 24. U.S. Route 24 is a West to East highway that extends from Colorado to Michigan for over 1,926 miles.⁵ As such, and given the low volumes and the principal commodity involved, even if GHA was not being relocated, there is no possibility of it suffering market abuse.

LABOR PROTECTIVE CONDITIONS

The interests of NDW employees who may be adversely affected by the proposed discontinuance will be adequately protected by the labor protective conditions in Oregon Short Line R. Co. – Abandonment – Goshen, 360 I.C.C. 91 (1979).

ENVIRONMENTAL IMPACTS REVIEW

Here, the discontinuance is exempt from environmental reporting requirements under 49 C.F.R. § 1105.6(c) and from historic reporting requirements under 49 C.F.R. § 1105.8(b) because NDW seeks only to discontinue service which does not normally require a carrier to

⁵ The highway extends from Interstate 70 in Colorado, follows the path of the Maumee River towards Toledo in Ohio, and terminates at I-75 in Independence Township, Michigan.

prepare and submit for review a combined environmental and historic report.⁶ NDW has no plans to engage in any salvage activities, including the removal of any potentially historic structures (such as bridges) as a result of obtaining discontinuance authority. Further Board approval is required for NDW to abandon service on the line. Accordingly, no environmental or historic report was prepared.

CONCLUSION

NDW seeks an exemption from the provisions of 49 U.S.C. § 10903 to discontinue service over approximately 5.43 miles of rail line located in Henry County, Ohio. For the reasons supplied herein, application of the Board's formal discontinuance procedures at section 10903 is not needed to carry out the RTP set forth at 49 U.S.C. § 10901, and, in fact, granting NDW's Petition would promote many of the elements of that policy. Likewise, the proposed discontinuance is of limited scope, and no potential for abuse of market power would result from the requested exemption. Further, the exemption is warranted in light of the substantial burden that continued operation of the Line would impose upon NDW and the public if it is required to put in a separated grade crossing. As such, the public interest does not outweigh the burden to NDW or public bodies. Accordingly, NDW urges prompt Board action to grant an exemption for the proposed discontinuance of service over the Line.

⁶ See, e.g., Everett Railroad Company – Discontinuance of Service Exemption – In Blair County, PA, AB-271X slip op. at 2 n.2 (STB served Nov. 16, 2007) (“Because this is a discontinuance proceeding and not an abandonment, . . . no environmental or historical documentation is required here under 49 CFR 1105.6(c) and 1105.8(b), respectively”); Columbus and Greenville Railway Company – Discontinuance of Service Exemption – in Greenwood, MS, AB-297 (Sub-No. 103X), slip op. at 2 n.2 (STB served July 3, 2007) (same); Norfolk Southern Railway Company—Discontinuance Exemption—in Mahoning County, OH, AB-290 (Sub-No. 292X), slip op. at 2 n.2 (STB served March 15, 2007) (same); Chillicothe-Brunswick Rail Maintenance Authority—Discontinuance Exemption—in Livingston, Linn, and Chariton Counties, MO, AB-1001X, slip op at 2 n.3 (STB served Feb 23, 2007) (same).

Respectfully submitted,

Daniel A. LaKemper
General Counsel
MICHIGAN SOUTHERN RAILROAD
COMPANY D/B/A NAPOLEON, DEFIANCE &
WESTERN RAILWAY
1318 S. Johanson Rd.
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Dated: August 11, 2016


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Attorneys for Michigan Southern Railroad
Company, d/b/a Napoleon, Defiance & Western
Railway

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PETITION FOR EXEMPTION

EXHIBIT A

SUPPORT LETTERS

GLENN HUNTER & ASSOCIATES, INC.

1222 County Road 6
Delta, Ohio 43515
Phone: 419-533-0925
Fax: 419-533-0970

July 5, 2016

Surface Transportation Board
395 "E" Street, S.W.
Washington, D.C. 20423

RE: Michigan Southern Railroad Company – Discontinuance of Service Exemption – Henry
County, Ohio – STB Docket No. AB-1245X.

Dear Chairman Elliot:

On behalf of Glenn Hunter and Associates ("Glenn Hunter"), I submit this letter in support of Michigan Southern Railroad Company, d/b/a Napoleon, Defiance & Western Railroad's ("MSO") Petition of Exemption to discontinue service on a railroad segment extending from MP 33.43, near Napoleon, Ohio, to Milepost 28.0 at Liberty Center, Henry County, Ohio. Glenn Hunter is the only rail shipper on this segment. We began receiving inbound brick bats in 2015, and, so far this year, have received 13 railcars.

Glenn Hunter and MSO have arranged to relocate Glenn Hunter's facility to a better location, on the MSO line, in Napoleon, Ohio. This relocation will enhance our service, and we support the discontinuance Petition, and encourage you to grant the discontinuance of service over this segment as expeditiously as possible.

Sincerely yours,

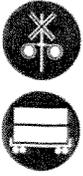


Dean Daenens, CEO

cc: Vice Chairman Miller.
Commissioner Begeman.



*Recycling Specialists for all Refractories to the Glass & Steel Industries
Custom Crushing, Screening, Blending, Bagging and Patented Steel Slag Separation*



OHIO RAIL DEVELOPMENT COMMISSION

Mail Stop #3140, 1980 West Broad Street, Columbus OH 43223

John R. Kasich, Governor • Mark Policinski, ORDC Chairman

August 11, 2016

Surface Transportation Board
395 "E" Street, S.W.
Washington, D.C. 20423

RE: Michigan Southern Railroad Company – Discontinuance of Service Exemption – Henry County, Ohio – STB Docket No. AB-1245X.

Dear Chairman Elliot:

The Ohio Rail Development Commission ("ORDC") submits this letter in support of Michigan Southern Railroad Company, d/b/a Napoleon, Defiance & Western Railroad's ("MSO") Petition of Exemption to discontinue service on a railroad segment extending from MP 33.43, near Napoleon, Ohio, to Milepost 28.0 at Liberty Center, Henry County, Ohio. The MSO line proposed for discontinuance crosses, at grade, U.S. Highway 24 near Liberty Center. ORDC is very concerned about the safety of this crossing. This is a divided, four-lane, limited-access highway. In the interest of safety, ORDC believes this crossing should be closed as soon as possible.

The ORDC, the Ohio Department of Transportation District 2 and MSO reached an agreement recently on the proposed removal of the crossings on the segment and improvements to MSO's remaining track, but the crossing cannot be removed until such time as the MSO discontinuance is granted. As such, ORDC fully supports the discontinuance Petition and requests that you give it expedited consideration.¹

Sincerely yours,

Matthew Dietrich, Executive Director
Ohio Rail Development Commission
1980 West Broad Street, #3140
Columbus, Ohio 43223

cc: Vice Chairman Miller
Commissioner Begeman

¹ ORDC also understands that the only customer on the segment has been relocated, and is in support of the Petition.



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AB-1245X

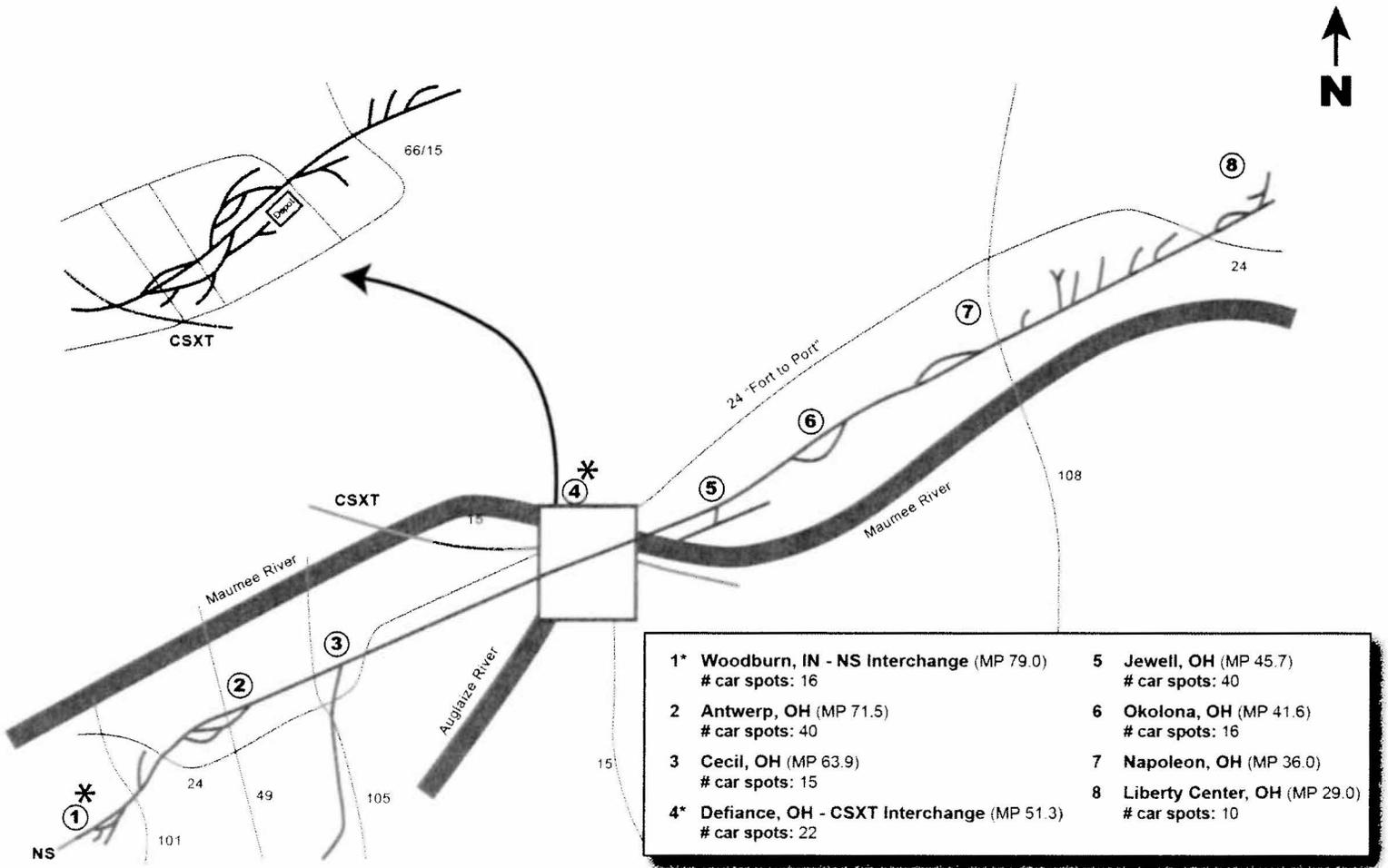
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WESTERN RAILWAY
– DISCONTINUANCE OF SERVICE EXEMPTION –
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PETITION FOR EXEMPTION

EXHIBIT B

MAP

Michigan Southern Railroad Company d/b/a Napoleon, Defiance & Western Railway



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EXHIBIT C

DRAFT FEDERAL REGISTER NOTICE

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[AB-1245X]

Michigan Southern Railroad Company, d/b/a Napoleon, Defiance & Western Railway –

Discontinuance of Service Exemption – In Henry County, Ohio

On August 11, 2016, Michigan Southern Railroad Company, d/b/a Napoleon, Defiance & Western Railway (“NDW”) filed with the Surface Transportation Board, an individual petition for exemption for the discontinuance of service over a rail line located in Henry County, Ohio extending from milepost MP TN-28.0 (near Liberty Center) to milepost 33.43 (near Napoleon, Ohio) (hereinafter, the “Line”), which traverses United States Postal Service ZIP Codes 43545 and 43532. The Line for which the discontinuance exemption request was filed includes one station - Liberty Center, Ohio, which will be discontinued in connection with this transaction.

The Line does not contain federally-granted rights-of-way. Any documentation in the railroad’s possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in Oregon Short Line Railroad – Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

Any offer of financial assistance will be due no later than 10 days after service of a decision granting the petition for exemption.

All interested persons should be aware that following abandonment of rail service, and salvage of the line, the Line may be suitable for other public use, including interim trail use.

Any request for a public use condition and any request for trail use/rail banking will be due no later than 20 days after notice of the filing of the petition for exemption is published in the FEDERAL REGISTER.

Persons seeking further information concerning the Board's abandonment procedures may contact the Surface Transportation Board or refer to the full abandonment and discontinuance regulations at 49 CFR Part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis (OEA) at (202) 245-0295.

An environmental assessment (EA) or environmental impact statement (EIS), if necessary, will be prepared by the Office of Environmental Analysis and will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of any EA (or EIS) may contact the Board's Office of Environmental Analysis. EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

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

Decided: _____.

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

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EXHIBIT D

CERTIFICATIONS OF SERVICE/PUBLICATION

Certificate of Service

49 C.F.R. § 1152.60(d) – Notice

I certify that, in keeping with 49 C.F.R. § 1152.60(d), I caused the following parties to be served with a copy of Michigan Southern Railroad Company, d/b/a Napoleon, Defiance & Western Railway foregoing discontinuance petition for exemption:

David Dorfman
Headquarters Military Surface Deployment and Distribution Command
Transportation Engineering Agency
ATTN: SDTE-SA
Railroads for National Defense Program
1 Soldier Way, Building 1900W
Scott AFB, IL 62225

Thomas L. Tidwell, Chief
Forest Service
U.S. Department of Agriculture
Sidney R. Yates Federal Building
201 14th Street SW
Washington, DC 20024

Charlie Stockman
National Park Service
Rivers and Trails Conversation Program
1201 Eye Street, NW, 9th Floor (Org. Code 2220)
Washington, DC 20005

Matthew Dietrich, Executive Director Ohio Rail Development Commission
The Ohio Department of Transportation
1980 West Broad Street, Mail Stop #3140
Columbus Ohio 43223

The Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215

In addition, I also hereby certify that I have served the following past users of the subject rail line with a copy of the foregoing discontinuance petition for exemption:

Glenn Hunter & Associates
1222 County Road 6
Delta, Ohio 43515

August 11, 2016



William A. Mullins
Attorney for Michigan Southern Railroad Company,
d/b/a Napoleon, Defiance & Western Railway

Certificate of Newspaper Publication

49 C.F.R. § 1105.12 – Newspaper Notice

I hereby certify that a “Notice of Intent to Discontinue Rail Service” was published in the form prescribed by the Board for a Petition for Exemption (49 C.F.R. § 1105.12). The notice was published one time in The Liberty Press, a paper of general circulation in Henry County, OH. Attached is an Affidavit of Publication and Tear Sheet from The Liberty Press.

August 11, 2016


William A. Mullins
Attorney for Michigan Southern Railroad Company,
d/b/a Napoleon, Defiance & Western Railway

PROOF OF PUBLICATION

Henry County:
State of Ohio

I, Shawn E. Miller being duly sworn, do upon my oath depose and say that I am bookkeeper of The Liberty Press, a newspaper published at Liberty Center, Ohio, county of Henry, and of general circulation herein, and that the annexed 3x9 Notice of Intent AB-1245X advertisement was published in said Liberty Press for the period of ONE consecutive weeks from and after the 4th day of August A.D., 2016.

Sworn to and subscribed before me this 4 day of August A.D., 2016.

(written signature) Jennifer Clapp
(typed or printed name) Jennifer Clapp

Notary Public, State of Ohio

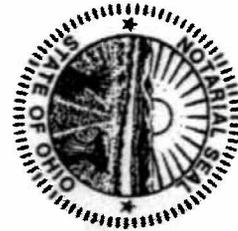
My commission expires 7-1-18

NOTICE OF INTENT TO DISCONTINUE RAIL SERVICE - AB-1245X

Michigan Southern Railroad Company, d/b/a Napoleon, Defiance & Western Railway ("NDW") gives notice that on or about August 5, 2016 it intends to file with the Surface Transportation Board ("STB"), Washington, DC 20423, an individual petition for exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, permitting NDW to discontinue service over approximately 5.43 miles of rail line (hereinafter, the "Line") located in Henry County, Ohio. The Line extends from milepost MP TN-28.0 (near Liberty Center) to milepost 33.43 (near Napoleon, Ohio) and traverses United States Postal Zip Code territories 43545 and 43532. The proceeding has been docketed as AB-1245X.

The proposed action entails the discontinuance of rail service over the Line for which further Board approval would be required for NDW to abandon service on the line. Accordingly, this proceeding is exempt from environmental reporting requirements under 49 C.F.R. § 1105.6(c) and from historic reporting requirements under 49 C.F.R. § 1105.8(b), and the STB will not prepare an environmental assessment.

Appropriate offers of financial assistance to continue rail service under a subsidy can be filed with the Board. Because the proposed action is for the discontinuance of service over, but not the abandonment of the Line, requests for public use conditions and rail banking/trails will not be accepted. An original and 10 copies of any pleading in response to the proposed discontinuance of service (such as offers of financial assistance) must be filed directly with the Board's Section of Administration, Office of Proceedings, 395 E Street, S.W., Washington, DC 20423 [See 49 C.F.R. §§ 1104.1(a) and 1104.3(a)], and one copy must be served on NDW's representative [See 49 CFR § 1104.12(a)]. Questions regarding offers of financial assistance or other such matters may be directed to the Board's Office of Public Assistance, Governmental Affairs, and Compliance at 202-245-0230. Copies of any comments or requests for specific Board action should be served on NDW's representative: William A. Mullins, BAKER & MILLER PLLC, 2401 Pennsylvania Ave., N.W., Suite 300, Washington, DC 20037; phone: 202-663-7820; fax 202-663-7849.



JENNIFER CLAPP
NOTARY PUBLIC - OHIO
MY COMMISSION EXPIRES 7-1-18

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-1245X

**MICHIGAN SOUTHERN RAILROAD COMPANY, D/B/A NAPOLEON, DEFIANCE &
WESTERN RAILWAY
– DISCONTINUANCE OF SERVICE EXEMPTION –
IN HENRY COUNTY, OHIO**

PETITION FOR EXEMPTION

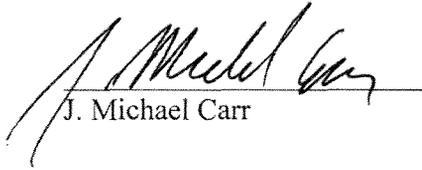
EXHIBIT E

**VERIFICATION OF J. MICHAEL CARR, PRESIDENT AND CEO, PIONEER RAIL
CORP.**

VERIFICATION

I, J. Michael Carr, verify under penalty of perjury that I am, that I have read the foregoing petition for exemption, know its contents, and that the same is true and correct to the best of my knowledge and belief.

Executed on August 9, 2016.


J. Michael Carr