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November 10, 2008



## VIA FEDERAL EXPRESS

Ms Anne K Quinlan  
Acting Secretary  
Surface Transportation Board  
395 E Street, S W  
Washington, DC 20024

**FILED**  
NOV 12 2008  
**SURFACE  
TRANSPORTATION BOARD**

Re **Finance Docket No. 35168**  
**Progressive Rail Inc. -- Intra-Corporate Family Transaction**  
**Exemption -- Airlake Terminal Railway Company, LLC**

Dear Secretary Quinlan

Enclosed for filing in the above-captioned proceeding are an original and ten copies of a **Verified Notice of Exemption Pursuant to 49 C.F.R. § 1180.2(d)(3)**, dated November 10, 2008. A check in the amount of \$1,400.00, representing the appropriate fee for this filing, is attached.

One extra copy of this transmittal letter and the Notice also are enclosed. I would request that you date-stamp those copies to show receipt of this filing and return them to me in the provided envelope.

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

Respectfully submitted,

Michael J. Barron, Jr  
Attorney for Progressive Rail Inc

**ENTERED**  
**Office of Proceedings**  
**NOV 12 2008**  
**Part of**  
**Public Record**

MJB arw  
Enclosures  
cc Progressive Rail Inc

**FEE RECEIVED**  
NOV 12 2008  
**SURFACE  
TRANSPORTATION BOARD**

**ORIGINAL**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**FINANCE DOCKET NO. 35168**

**PROGRESSIVE RAIL INC  
-- INTRA-CORPORATE FAMILY TRANSACTION EXEMPTION --  
AIRLAKE TERMINAL RAILWAY COMPANY, LLC**

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**ENTERED  
Office of Proceedings**

**NOV 12 2008**

**Part of  
Public Record**

**VERIFIED NOTICE OF EXEMPTION  
PURSUANT TO 49 C.F.R. § 1180.2(d)(3)**

**FEE RECEIVED**

**NOV 12 2008**

**SURFACE  
TRANSPORTATION BOARD**

**FILED**

**NOV 12 2008**

**SURFACE  
TRANSPORTATION BOARD**

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

**ATTORNEY FOR  
PROGRESSIVE RAIL INC.**

**Dated: November 10, 2008**

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. 35168

PROGRESSIVE RAIL INC  
-- INTRA-CORPORATE FAMILY TRANSACTION EXEMPTION --  
AIRLAKE TERMINAL RAILWAY COMPANY, LLC

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**VERIFIED NOTICE OF EXEMPTION  
PURSUANT TO 49 C.F.R. § 1180.2(d)(3)**

Progressive Rail Inc (“PGR”), a Class III common carrier by rail, hereby files this verified notice of exemption under 49 C F R § 1180 2(d)(3) to remain in control of Airlake Terminal Railway Company, LLC (“ATRC”), also a Class III common carrier by rail. ATRC is a limited liability company and PGR is and always has been its sole member. ATRC filed a notice of exemption to become a rail carrier in late 2002. See Airlake Terminal Railway Company -- Acquisition and Operation Exemption -- Rail Line of Empire Builder Investments and Progressive Rail, Incorporated, Finance Docket No. 34295 (STB served December 27, 2002)

In accordance with the requirements of 49 C F R § 1180 4(g), PGR submits the following information:

**Description of the Proposed Transaction: 49 C.F.R. § 1180.6(a)(1)(i)**

PGR is a common carrier which operates rail lines in Minnesota and Wisconsin. See, e.g., Progressive Rail, Incorporated -- Lease and Operation Exemption -- Rail Lines of Wisconsin Central Ltd., Finance Docket No. 34600 (STB served November 12, 2004). PGR also controls Central Midland Railway Company, a Class III common carrier by rail which leases and operates rail lines in the State of Missouri. Progressive Rail Inc -- Acquisition of Control

Exemption -- Central Midland Railway Company, Finance Docket No 35051 (STB served July 5, 2007).<sup>1</sup>

ATRC is a common carrier which operates approximately 235 miles of track in Lakeville, Minnesota owned and previously operated by PGR. Airlake Terminal Railway Company -- Acquisition and Operation Exemption -- Rail Line of Empire Builder Investments Incorporated and Progressive Rail, Incorporated, Finance Docket No 34295 (STB served December 27, 2002) ("ATRC Acquisition") At the time of ATRC Acquisition, PGR controlled ATRC by virtue of the fact that ATRC was a single-member LLC and PGR was the member PGR acknowledges that authority to remain in control of ATRC should have been sought prior to this time, but this was not done due to an oversight. PGR has filed this notice of exemption as soon as practicable after being made aware of the oversight

The exercise by PGR of the control authority granted herein will not result in adverse changes in service levels, will not result in any significant operational changes, and will not result in a change in the competitive balance with carriers outside the PGR corporate family

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

Progressive Rail Inc  
21778 Highview Avenue  
Lakeville, MN 55044

Any questions concerning this Notice should be sent to the representative of PGR at the following address

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<sup>1</sup> PGR recently obtained exemption authority to continue in control of another Class III subsidiary once that subsidiary became a rail carrier Progressive Rail Inc -- Continuance in Control Exemption -- Montgomery Short Line LLC, Finance Docket No 35092 (STB served November 9, 2007) The proposed transaction in Finance Docket No 35092 has not been consummated.

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

PGR already controls ATRC PGR anticipates receiving authority for this control on December 12, 2008 (30 days after filing the notice herein)

**Purpose Sought to be Accomplished: 49 C.F.R. § 1180.6(a)(1)(iii)**

The exemption will allow PGR to remain in control of ATRC, and will facilitate the continued provision of effective rail service through PGR's existing corporate structure

**States in Which Applicant's Property is Located: 49 C.F.R. § 1180.6(a)(5)**

PGR owns rail property interests in the States of Minnesota and Wisconsin, and controls a rail carrier with rail property interests in Missouri ATRC leases and operates rail property in the State of Minnesota

**Maps: 49 C.F.R. § 1180.6(a)(6)**

Maps of the lines owned, operated or controlled by PGR and those lines leased by ATRC are shown on the maps attached and incorporated herein as Exhibit A.

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

PGR already controls ATRC. No additional agreement is necessary or contemplated for PGR to remain in control of ATRC once this exemption herein becomes effective.

**Labor Protective Conditions: 49 C.F.R. § 1180.4(g)(1)(i)**

Because the proposed transaction involves only Class III rail carriers, employee protective conditions may not be imposed as a condition to this exemption. See 49 U.S.C. § 11326(c).

**Environmental and Historic Preservation Matters: 49 C.F.R. § 1180.4(g)(3)**

Under 49 C.F.R. § 1105.6(c)(2), the proposed continuance in control of ATRC by PGR 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 of 49 C.F.R. § 1105.7(e)(4) or (5).

Under 49 C.F.R. § 1105.8(b)(3), the proposed transaction also is exempt from historic preservation reporting requirements. This is simply a continuance in control exemption where the purpose is continued rail operations and there will be no change in the level of maintenance of any rail properties.

Respectfully submitted,

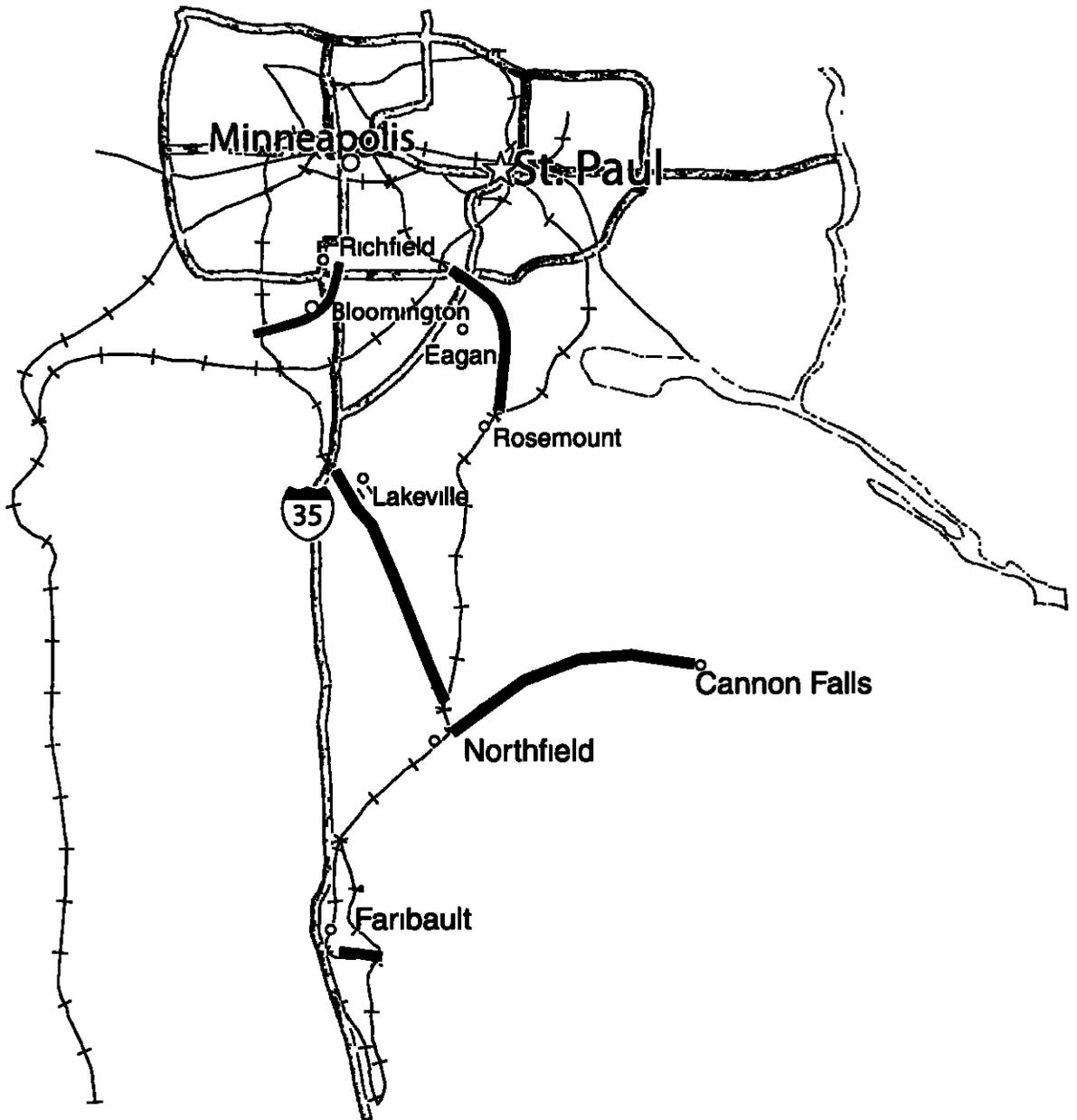
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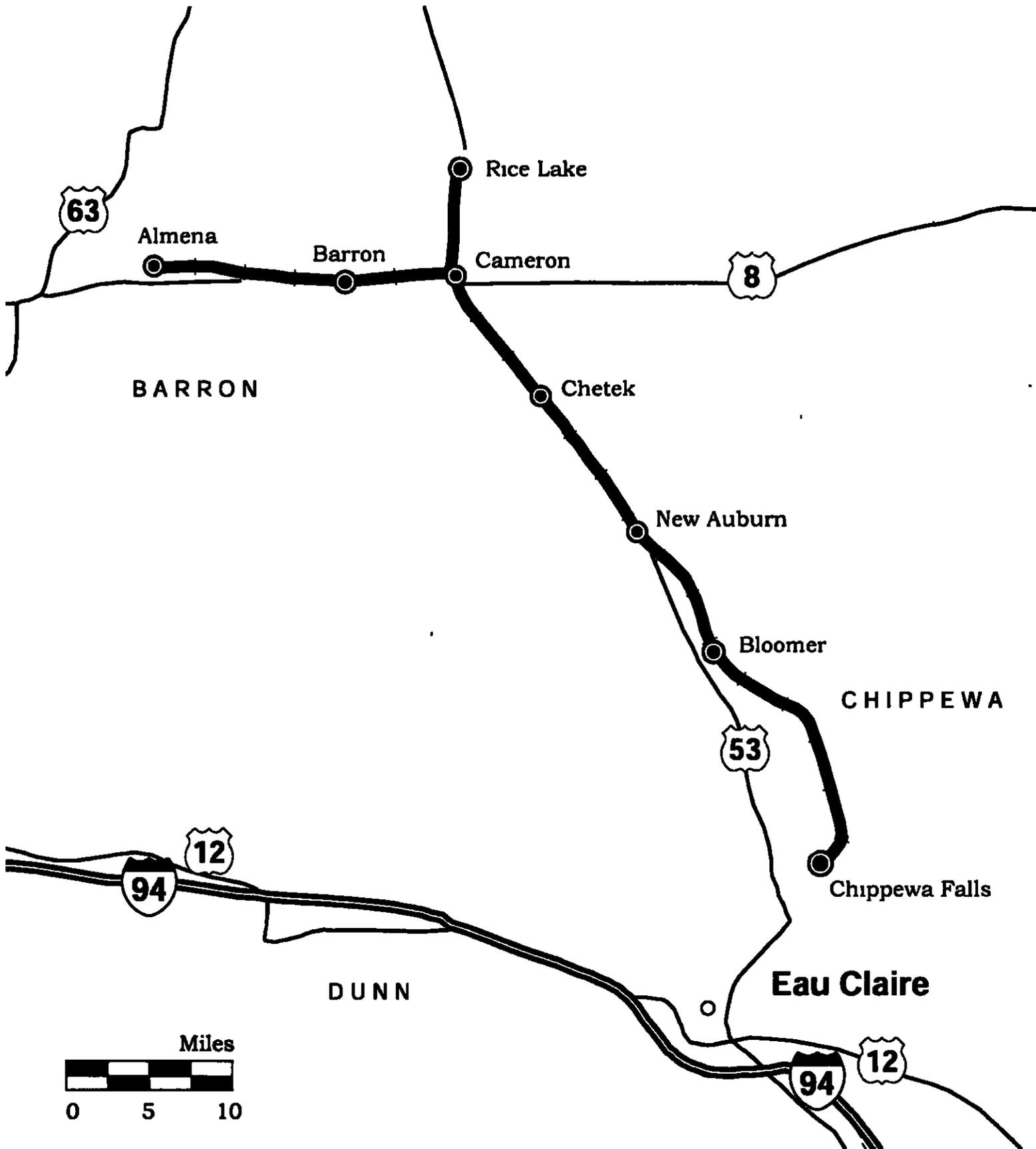
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**ATTORNEY FOR  
PROGRESSIVE RAIL INC.**

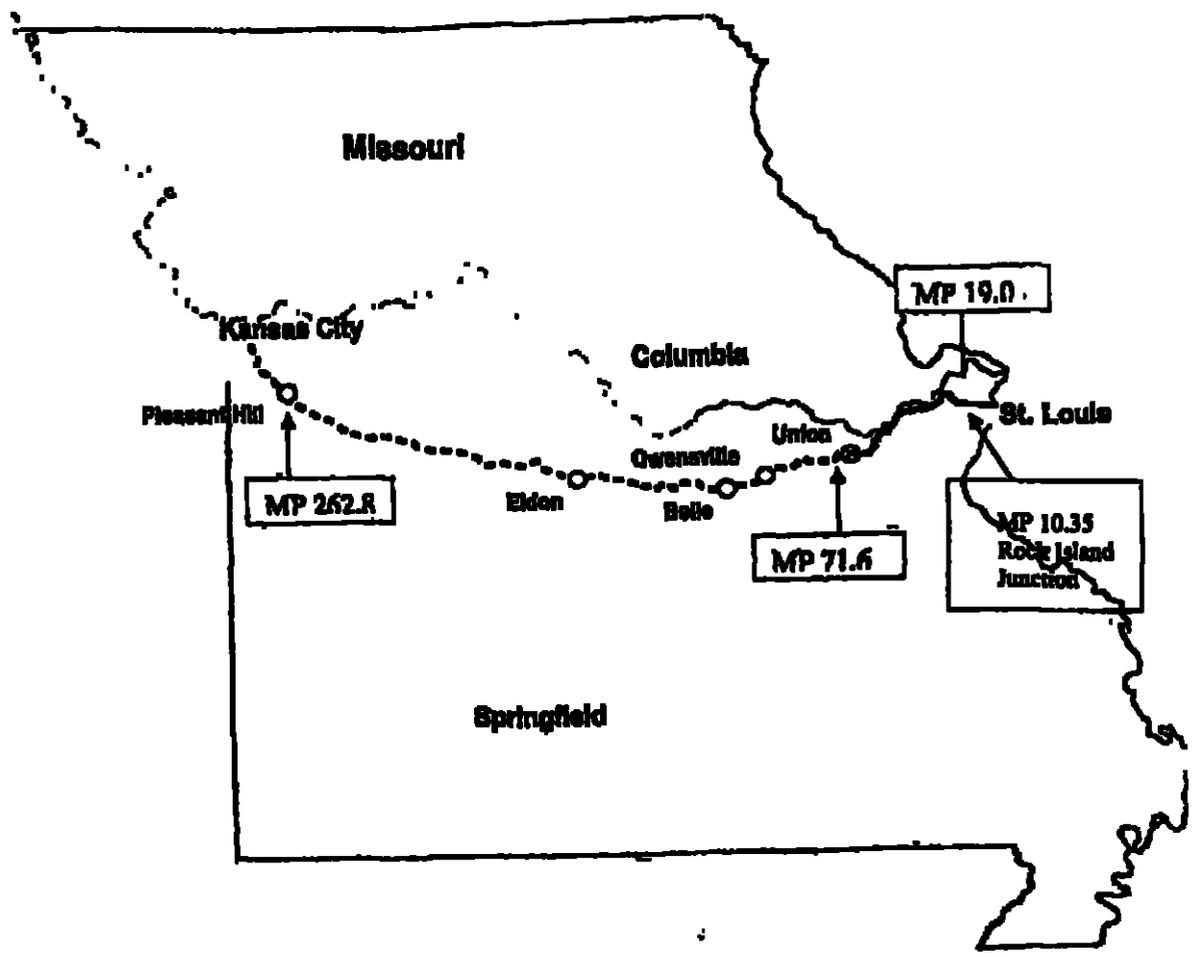
Dated: November 10, 2008

**PROGRESSIVE RAIL INCORPORATED** —



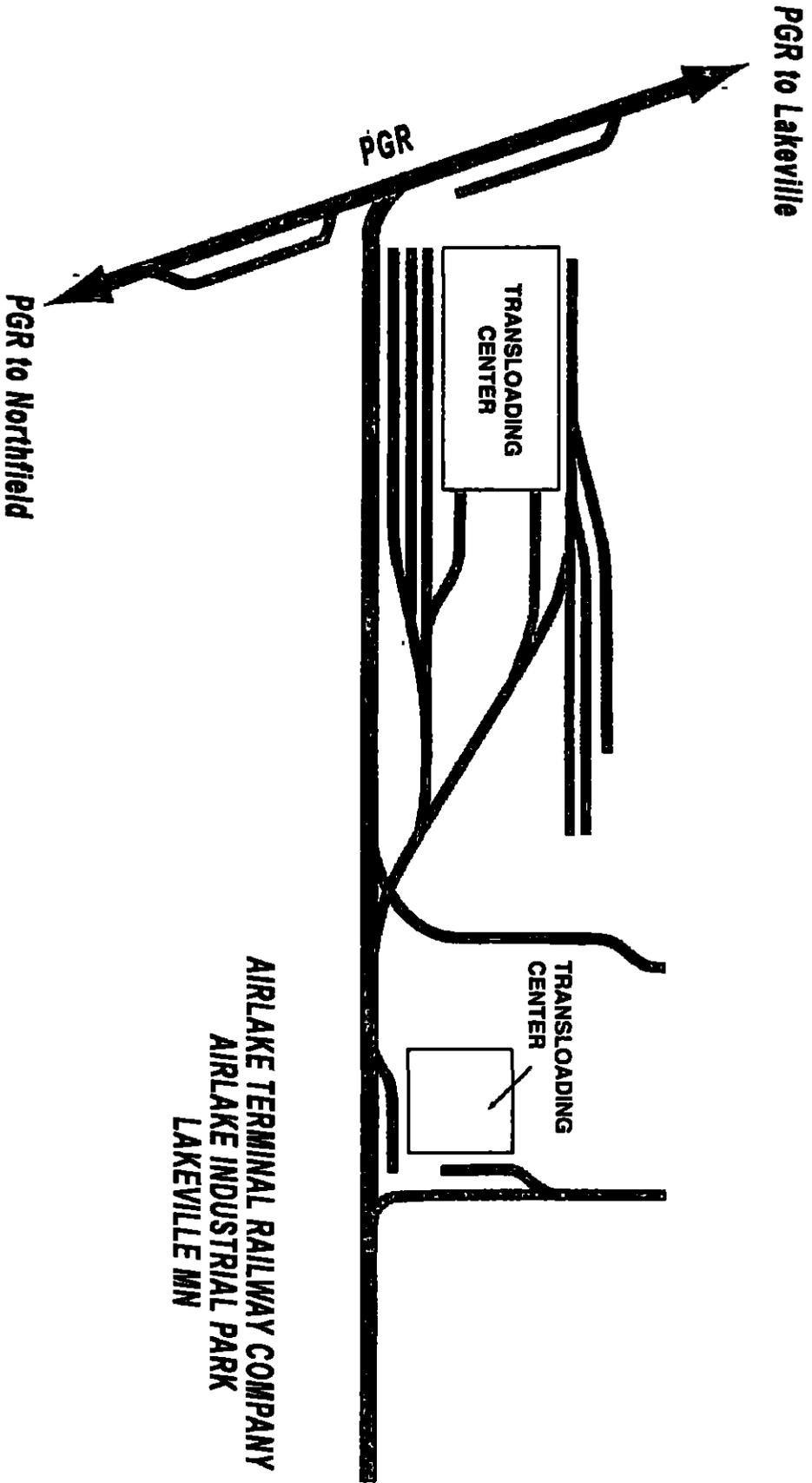


**EXHIBIT A**



**LINES OPERATED BY  
CENTRAL MIDLAND RAILWAY COMPANY**

**EXHIBIT A**

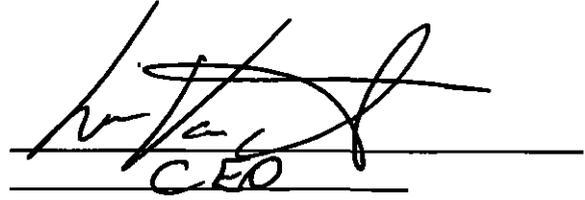


**EXHIBIT A**

**VERIFICATION**

State of Minnesota            )  
                                          )  
County of Dakota            )        ss:

LOW VAN GEMERT, being duly sworn, on behalf of Progressive Rail  
Inc, deposes and says that he is duly authorized to sign this verification, that he has read the  
foregoing Notice of Lxemption and knows the facts asserted therein, and that the same are true as  
stated

  
\_\_\_\_\_  
CEO

SUBSCRIBED AND SWORN TO  
before me this 29<sup>th</sup> day  
of October, 2008

  
\_\_\_\_\_  
Notary Public

My Commission expires:

