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BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 35729 (SUB-NO. 1)

ANN ARBOR RAILROAD, INC.
— LEASE RENEWAL AND OPERATION EXEMPTION WITH
INTERCHANGE COMMITMENT—
NORFOLK SOUTHERN RAILWAY COMPANY

**VERIFIED NOTICE OF EXEMPTION OF
ANN ARBOR RAILROAD, INC.
PURSUANT TO 49 C.F.R. PART 1150, SUBPART E**

Robert A. Wimbish
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500
rwimbish@fletcher-sippel.com

**ATTORNEY FOR ANN ARBOR
RAILROAD, L.L.C.**

**FILED
March 20, 2024
SURFACE
TRANSPORTATION BOARD**

Dated: March 20, 2024

**FEE RECEIVED
March 20, 2024
SURFACE
TRANSPORTATION BOARD**

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**VERIFIED NOTICE OF EXEMPTION OF
ANN ARBOR RAILROAD, INC.
PURSUANT TO 49 C.F.R. PART 1150, SUBPART E**

Pursuant to 49 C.F.R. part 1150, subpart E, Ann Arbor Railroad, Inc. (“AARR”), a Class III rail carrier, files this Verified Notice of Exemption (the “Notice”) for an extension of a lease to operate two railroad lines located in Ohio (the “Lines” – identified below). Norfolk Southern Railway Company (“NSR”) owns the Lines, and AARR currently leases and operates them pursuant to previously-issued Surface Transportation Board (“Board”) authorization.¹ In accordance with 49 C.F.R. § 1150.43, AARR submits the following:

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

The full name and address of the applicant is:

Ann Arbor Railroad, Inc.
315 W. Third Street
Pittsburg, KS 66782

¹ *Ann Arbor Railroad, Inc. — Lease Exemption — Norfolk Southern Railway Company*, FD 35729 (STB served July 12, 2013).

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

Correspondence on this transaction should be sent to:

Robert A. Wimbish
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 800
Chicago, Illinois 60606
(312) 252-1500
rwimbish@fletcher-sippel.com

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

AARR and NSR have executed a First Amendment to Lease Agreement (the “First Amendment”) which, along with the original Lease Agreement from 2013, will govern AARR operations going forward as of the effective date of this Notice.

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

AARR will operate the Lines and provide all rail common carrier service to shippers on the Lines as it has done since 2013.

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

AARR has been the leasehold operator of the NSR-owned Lines since 2013.² AARR and NSR are renewing and amending the lease, which renewal and amendments would govern as of the effective date of this Notice. The Lines constitute 3.69 route miles of railroad over two segments between: (1) milepost CS 1.26 and milepost CS 2.65 in Toledo, Ohio, and (2) milepost GY 85.40 and GY 87.70 in Toledo.

² *Id.*

The name and address of the railroad leasing the Line to AARR is:

Norfolk Southern Railway Company
650 W. Peachtree St.
Atlanta, Georgia 30308

AARR anticipates commencing operations under the amended lease terms upon the effective date of the Notice, specifically on or after April 19, 2024

Maps: 49 C.F.R. § 1150.43(f)

A map of the Lines is attached as Exhibit A.

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

AARR certifies that its projected annual revenues as a consequence of the proposed transaction will not result in AARR becoming a Class I or Class II carrier under *Indexing the Annual Operating Revenues of Railroads*, EP 748 (STB served June 29, 2023). See Certification and Verification, attached.

Interchange Commitments: 49 C.F.R. § 1150.43(h)

The lease, as amended, includes an interchange commitment, the terms of which remain as they were in 2013, when the arrangement originally was entered into. Accordingly:

(i) The interchanges and carriers affected remain the same: NSR, Canadian National Railway Company (“CN”), CSX Transportation Inc., and Wheeling & Lake Erie Railway in Toledo; the Indiana and Ohio Railway and CN in Diann, Michigan; NSR in Milan, Michigan; and Great Lakes Central Railroad in Ann Arbor, Michigan.

(ii) AARR has tendered the amended lease documents including the interchange commitment under seal as Highly Confidential Exhibit B.

(iii) Customers located on the Lines having made use of AARR rail service over the past two years are as follows: Agri-Trading, Hansen Mueller, Libby Glass, Inc., Sunoco LP, and Toledo Harbor Warehousing.

(iv) The confidential aggregate number of carloads originated or terminated on the Lines by the above-listed shippers is as follows:

{{2022: }}

{{2023: }}

(v) AARR certifies it has provided notice of the proposed transaction and interchange commitment to each the above-listed customers via email. See Exhibit C.

(vi) See (i).

(vii) NSR has informed AARR that NSR would not undertake the amended lease extension absent the interchange commitment, and thus the value of the interchange commitment is inestimable.

(viii) The caption indicates the presence of an interchange commitment.

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

AARR is an existing Class III carrier with annual rail revenues greater than \$5 million. However, because AARR has been the exclusive leasehold operator of the Lines since 2013, the proposed transaction does not trigger the concerns that the workforce advance notice requirement at 49 C.F.R. § 1150.42(e) is intended to remedy. For that reason, AARR is asking for a waiver of this advance notice requirement in a concurrently-filed petition.

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

Under 49 C.F.R. § 1105.6(c)(1), this transaction is exempt from environmental reporting requirements because it 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 transaction – which is intended for the purpose of continued rail operations by the incumbent carrier – is exempt from historic preservation reporting requirements. Separate Board approval would be required to discontinue service, and 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. § 1150.42(a)

A caption summary in appropriate form is attached as Exhibit D.

Respectfully submitted,

R. A. Wimbish

Robert A. Wimbish
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500
rwimbish@fletcher-sippel.com

**ATTORNEY FOR ANN ARBOR
RAILROAD, INC.**

Dated: March 20, 2024

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EXHIBIT A

MAP



**BEFORE THE
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HIGHLY CONFIDENTIAL EXHIBIT B

LEASE AND AMENDMENT

**BEFORE THE
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— LEASE RENEWAL AND OPERATION EXEMPTION WITH
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NORFOLK SOUTHERN RAILWAY COMPANY**

EXHIBIT C

TEXT OF NOTICE TO CUSTOMERS

Re: **FD 35729 (Sub-No. 1)**
Ann Arbor Railroad, Inc. — Lease Renewal and Operation Exemption with
Interchange Commitment— Norfolk Southern Railway Company

Ann Arbor Railroad, Inc. (“AARR”), a Class III carrier, has filed with the Surface Transportation Board (“STB”) a notice of exemption (the “Notice” – attached) to renew and amend its lease with Norfolk Southern Railway Company governing AARR’s operation of two segments of NSR-owned railroad lines, consisting of 3.69 route miles of railroad, extending between: (1) milepost CS 1.26 and milepost CS 2.65 in Toledo, Ohio, and (2) milepost GY 85.40 and GY 87.70 in Toledo (collectively, the “Lines”).

AARR has been providing common carrier service over the Lines since 2013, and, as such, the scope of AARR’s operations will be unchanged as a result of the proposed amended lease renewal.

AARR anticipates that its operations will be subject to the amended lease terms as of the effective date of the Notice (expected on or about April 19, 2024 or as soon thereafter as possible). AARR will continue providing rail service to your facility.

We are providing you with this information in keeping with STB shipper-notice requirements. You are not required (or expected) to respond or to this Notice or to otherwise participate in the above-captioned STB proceeding. Please contact the undersigned if you have any questions.

Respectfully,

Robert A. Wimbish
Attorney for Ann Arbor Railroad, Inc.

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— LEASE RENEWAL AND OPERATION EXEMPTION WITH
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EXHIBIT D

DRAFT FEDERAL REGISTER NOTICE

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

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ANN ARBOR RAILROAD, INC.
— LEASE RENEWAL AND OPERATION EXEMPTION WITH
INTERCHANGE COMMITMENT—
NORFOLK SOUTHERN RAILWAY COMPANY

Ann Arbor Railroad, Inc., a Class III carrier, has filed a notice of exemption (the “Notice”) to renew (as amended) its lease from Norfolk Southern Railway Company of 3.69 route miles of railroad over two segments between: (1) milepost CS 1.26 and milepost CS 2.65 in Toledo, Ohio, and (2) milepost GY 85.40 and GY 87.70 in Toledo.

Comments must be filed with the Board and served on:

Robert A. Wimbish
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 800
Chicago, Illinois 60606
(312) 252-1500
rwimbish@fletcher-sippel.com

The Notice is filed under 49 C.F.R. § 1150.41. If the Notice contains false or misleading information, the exemption is void *ab initio*. The filing of a petition to revoke will not automatically stay the transaction.

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CERTIFICATION AND VERIFICATION

VERIFICATION AND CERTIFICATION

Rick D. Baden, being duly sworn, states as follows:

1. I am Executive Vice-President and Chief Financial Officer of Ann Arbor Railroad, Inc. (“AARR”).
2. I certify that AARR is not a Class I or II rail common carrier, and that the expected annual revenues of AARR exceed \$5 million, and that the transaction proposed herein will not result in KRR becoming Class I or II rail carrier under the thresholds set forth at 49 C.F.R. § 1201 (1-1).
3. I certify that the proposed transaction contains an interchange commitment.
4. I am qualified and authorized to tender this Verification and Certification.
5. I hereby verify have read the foregoing Notice of Exemption and know that the facts stated herein are true and correct to the best of my information and belief.

Dated: March 20, 2024

A handwritten signature in blue ink, appearing to read "Rick D. Baden", is written over a horizontal line. The signature is stylized and cursive.