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November 22, 2019

300023

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20006

ENTERED
Office of Proceedings
November 22, 2019
Part of
Public Record

Re: **Docket No. FD 36367**
Davenport Industrial Railroad, LLC – Operation Exemption –
City of Davenport, Iowa

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding is an operation notice of exemption of the **Davenport Industrial Railroad, LLC**, filed pursuant to 49 C.F.R. part 1150, subpart D. Payment of the applicable filing fee of \$2,100.00 has been tendered electronically with this filing via Pay.gov.

If you have any questions regarding this filing, please contact me at either rwimbish@fletcher-sippel.com or (312) 252-1504. Thank you for your assistance on this matter.
Kind regards.

Respectfully submitted,



Robert A. Wimbish
Attorney for Davenport Industrial Railroad, LLC

Enclosures

FILED
November 22, 2019
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
November 22, 2019
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36367

DAVENPORT INDUSTRIAL RAILROAD, LLC
-- OPERATION EXEMPTION --
CITY OF DAVENPORT, IOWA

**VERIFIED NOTICE OF EXEMPTION OF
DAVENPORT INDUSTRIAL RAILROAD, LLC
PURSUANT TO 49 C.F.R. PART 1150, SUBPART D**

Robert A. Wimbish
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-2832
(312) 252-1500

**ATTORNEY FOR DAVENPORT
INDUSTRIAL RAILROAD, LLC**

Dated: November 22, 2019

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36367

DAVENPORT INDUSTRIAL RAILROAD, LLC
-- OPERATION EXEMPTION --
CITY OF DAVENPORT, IOWA

**VERIFIED NOTICE OF EXEMPTION OF
DAVENPORT INDUSTRIAL RAILROAD, LLC
PURSUANT TO 49 C.F.R. PART 1150, SUBPART D**

Pursuant to 49 C.F.R. part 1150, subpart D, Davenport Industrial Railroad, LLC (“DIR”), a non-carrier, hereby files this Verified Notice of Exemption (the “Notice”) to lease from the City of Davenport, Iowa (the “City”) an approximately 2.8-mile rail line (the “Line”). Based upon projected annual revenues, DIR expects to be a Class III rail carrier following consummation of the proposed transaction, and it anticipates that its annual operating revenues will be below \$5 million.

In accordance with the requirements of 49 C.F.R. § 1150.33, DIR submits the following information:

Name and Address of Applicant: 49 C.F.R. § 1150.33(a)

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

Davenport Industrial Railroad, LLC
6521 Old State Road
Edinboro, PA 16412

Applicant's Representative: 49 C.F.R. § 1150.33(b)

DIR’s representative to whom correspondence regarding this transaction should be sent is as follows:

Robert A. Wimbish
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 800
Chicago, IL 60606-3208
(312) 252-1500

Statement Concerning Agreement: 49 C.F.R. § 1150.33(c)

DIR is in the midst of finalizing lease terms with the City under which, among other things, DIR would assume a leasehold interest in, and provide common carrier service over, the Line. The parties anticipate that the subject lease transaction would be consummated as of January 1, 2020.

Operator of the Property: 49 C.F.R. § 1150.33(d)

DIR would be the operator of the Line.

Summary of the Transaction: 49 C.F.R. § 1150.33(e)

Pursuant to Surface Transportation Board (“Board”) authority, the City constructed the Line and subsequently installed Savage Davenport Railroad Company (“SDR”) as the Line’s leasehold operator.¹ More recently, SDR has determined that it does not wish to continue to provide service over the Line, and, to that end, has secured Board authority to discontinue common carrier operations effective as of January 1, 2020.² Following a public bid process, the City selected DIR as an operating successor to SDR, and the City and DIR are working to finalize lease terms under which DIR’s leasehold rights would take effect, and DIR

¹ City of Davenport, Iowa – Construction & Operation Exemption – in Scott County, Iowa, Docket No. FD 35237 (STB served Apr. 6, 2011); Savage Davenport Railroad Company – Lease and Operation Exemption – City of Davenport, Iowa, Docket No. FD 36142 (STB served Sep. 1, 2017).

² Savage Davenport Railroad Company – Discontinuance of Service Exemption – In Scott County, Iowa, Docket No. AB-1277X (STB served Oct. 29, 2019) (“SDR-Discontinuance”) (discontinuance authority to take effect as of January 1, 2020).

would be entitled to commence operations, as of January 1, 2020, to coincide with SDR's discontinuance of service. The arrangements described above are intended by the City, DIR, and SDR to permit for the seamless transition of rail service over the Line.

The Line extends west and south from a point about 75 feet from a connection with the main line of the Dakota, Minnesota & Eastern Railroad Corporation ("DM&E") near DM&E milepost 191.2 near Davenport, Iowa, roughly 2.8 miles to the City-owned Davenport Transload Facility.³

The complete name and address of the owner/lessor of the Line is as follows:

City of Davenport, Iowa
226 West 4th Street
Davenport, IA 52801

As indicated above, DIR anticipates consummating the subject transaction on January 1, 2020.

Map: 49 C.F.R. § 1150.33(f)

A map showing the Line and the surrounding area is attached as Exhibit A.

Certificate of Compliance: 49 C.F.R. § 1150.33(g)

The appropriate certification of eligibility to invoke the subject class exemption procedures is included in the attached Certification and Verification.

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

DIR hereby certifies that the proposed railroad line transaction does not involve, and the agreement between the City and DIR does not include, any provision or agreement that would limit future interchange with a third-party connecting carrier.

³ The Line does not have railroad mileposts at this time.

Shipper Notice: 49 C.F.R. § 1150.32(b)

The incumbent carrier, SDR, recently sought and obtained Board authority to discontinue operations over the Line effective as of January 1, 2020,⁴ and DIR has agreed to assume common carrier operations on that same date, as of the consummation of SDR's discontinuance authority. Because SDR had proceeded with a discontinuance petition for exemption, DIR does not believe that the present transaction encompasses a "change of operator" in the conventional sense. Nevertheless, the subject Notice involves DIR seeking authority to take up common carrier operations on the Line in place of SDR on the same day that SDR's common carrier obligations over the Line would cease. Therefore, out of an abundance of caution, DIR will serve notice of the proposed lease transaction (including a copy of this Notice) upon Sterilite Corporation, the only active customer on the Line. See Exhibit B.

Advance Notice: 49 C.F.R. § 1150.32(e)

The projected annual revenues of DIR are not expected to exceed \$5 million. Accordingly, the advance notice requirements of 49 C.F.R. § 1150.32(e) are inapplicable. See Certification and Verification.

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

Under 49 C.F.R. § 1105.6(c)(1) (i), DIR's proposed lease and operation of the Line 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).

⁴ See SDR-Discontinuance.

Under 49 C.F.R. § 1105.8(b)(1), DIR's lease and operation of the Line also is exempt from historic preservation reporting requirements. The proposed transaction is for the purpose of continuing rail service. Additional Board approval would be required to abandon the Line or discontinue railroad service over it, 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. § 1150.34

A caption summary in appropriate form is attached as Exhibit C to this Notice.

Respectfully submitted,

By: 
Robert A. Wimbish
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

**ATTORNEY FOR DAVENPORT
INDUSTRIAL RAILROAD, LLC**

Dated: November 22, 2019

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

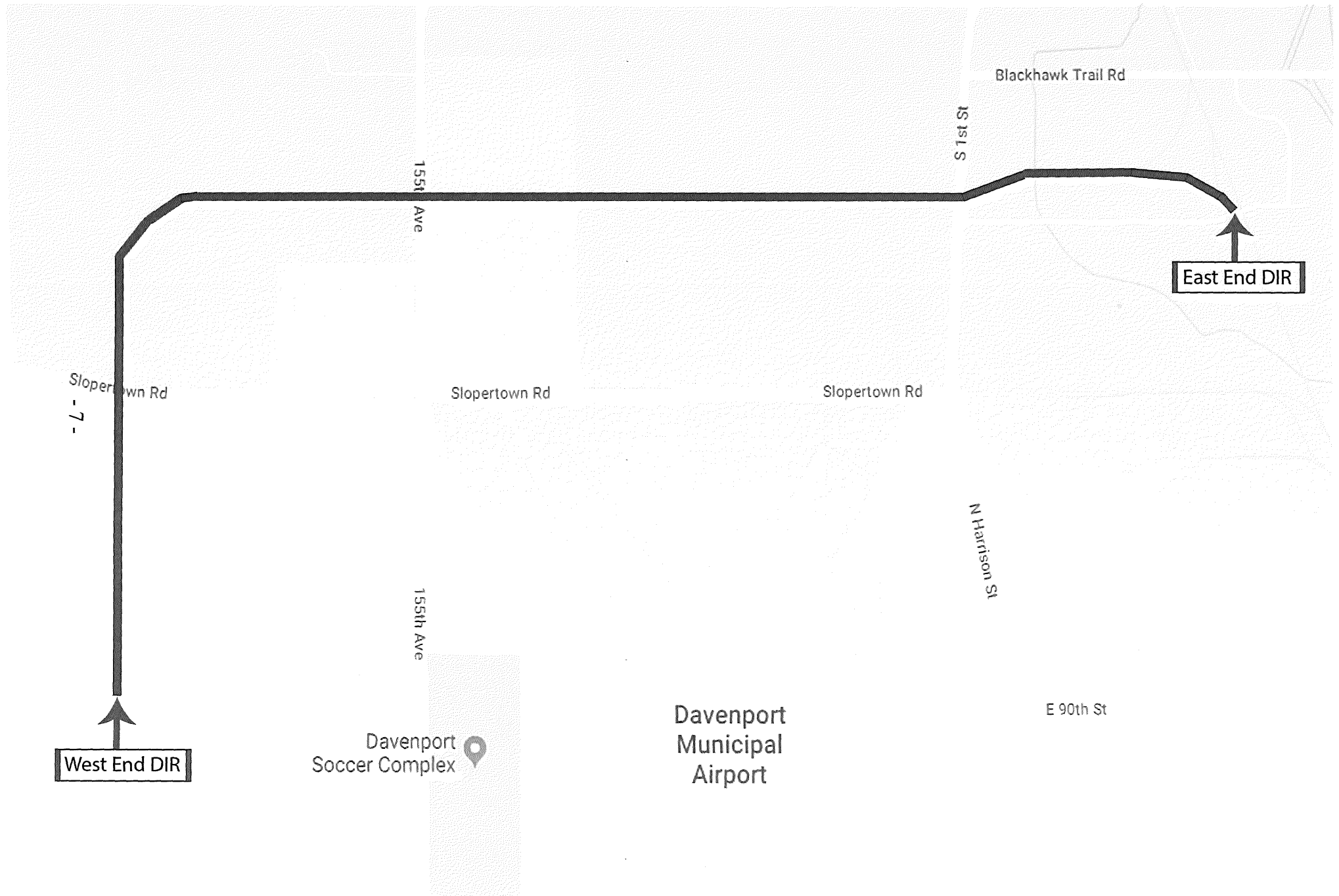
STB DOCKET NO. FD 36367

**DAVENPORT INDUSTRIAL RAILROAD, LLC
-- OPERATION EXEMPTION --
CITY OF DAVENPORT, IOWA**

EXHIBIT A

MAP

Davenport Industrial Railroad, LLC



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. FD 36367

**DAVENPORT INDUSTRIAL RAILROAD, LLC
-- OPERATION EXEMPTION --
CITY OF DAVENPORT, IOWA**

EXHIBIT B

EVIDENCE OF NOTICE TO CUSTOMER

FLETCHER & SIPPEN LLC

ATTORNEYS AT LAW

29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208

Phone: (312) 252-1500
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www.fletcher-sippel.com

ROBERT A. WIMBISH
(312) 252-1504
rwimbish@fletcher-sippel.com

November 22, 2019

VIA EMAIL

Sterlite Corporation
c/o Thomas F. McFarland
Law Offices of Thomas F. McFarland, P.C.
208 South La Salle Street, Suite 1666
Chicago, IL 60604-1228
mcfarland@aol.com

Re: **Docket No. FD 36367**
Davenport Industrial Railroad, LLC —
Operation Exemption — City of Davenport, Iowa

Dear Mr. McFarland:

Davenport Industrial Railroad, LLC (“DIR”) has filed a Notice of Exemption (the “Notice”) with the Surface Transportation Board (“STB”) lease from the City of Davenport, Iowa, and to operate a roughly 2.8-mile line of railroad (the “Line”) extending west and south from a point about 75 feet from a connection with the main line of the Dakota, Minnesota & Eastern Railroad Corporation (“DM&E”) near DM&E milepost 191.2 near Davenport, Iowa, to the City-owned Davenport Transload Facility. DIR intends to consummate the subject transaction on January 1, 2020, replacing Savage Davenport Railroad Company as the provider of rail common carrier service over the Line in the process.

We are providing you with this information in the event that such notice is required under the class exemption procedures that DIR has invoked. As you know, your client, Sterlite Corporation, is not required to respond or to this letter or otherwise participate in the above-referenced STB proceeding. If you have any questions regarding this matter, please feel free to contact me.

Very truly yours,



Robert A. Wimbish
Davenport Industrial Railroad, LLC

Enclosures

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. FD 36367

**DAVENPORT INDUSTRIAL RAILROAD, LLC
-- OPERATION EXEMPTION --
CITY OF DAVENPORT, IOWA**

EXHIBIT C

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

DOCKET NO. FD 36367

DAVENPORT INDUSTRIAL RAILROAD, LLC
-- OPERATION EXEMPTION --
CITY OF DAVENPORT, IOWA

Davenport Industrial Railroad, LLC (“DIR”), a non-carrier, has filed a Verified Notice of Exemption (“Notice”) under 49 C.F.R. § 1150.31 to lease from the City of Davenport, Iowa, and to operate a roughly 2.8-mile line of railroad (the “Line”) extending west and south from a point about 75 feet from a connection with the main line of the Dakota, Minnesota & Eastern Railroad Corporation (“DM&E”) near DM&E milepost 191.2 near Davenport, Iowa, to the City-owned Davenport Transload Facility.⁵

DIR certifies that its projected annual revenues as a result of this transaction will not result in the creation of a Class I or Class II rail carrier, and will not exceed \$5 million. DIR also states that there are no provisions or agreements limiting interchange with other carriers.

DIR expects to consummate the subject lease and operation transaction on January 1, 2020.

Comments must be filed with the Board and served on:

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

⁵ The Line does not have railroad mileposts at this time.

If the Notice contains false or misleading information, the exemption is void ab 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 effectiveness of the exemption. Petitions to stay must be filed no later than December __, 2019 (at least seven days before the exemption becomes effective).

Dated: November 22, 2019

By the Board

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. FD 36367

**DAVENPORT INDUSTRIAL RAILROAD, LLC
-- OPERATION EXEMPTION --
CITY OF DAVENPORT, IOWA**

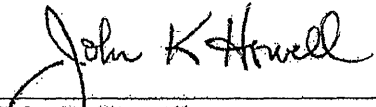
CERTIFICATION AND VERIFICATION

CERTIFICATION AND VERIFICATION

I, John K. Howell, hereby certify and verify under penalty of perjury as follows:

1. I am a Member Representative of Davenport Industrial Railroad, LLC ("DIR"), and, accordingly, I am qualified and authorized to make the subject "Certification and Verification" on behalf DIR.
2. The annual rail revenues of DIR are not expected to exceed \$5 million, and DIR's anticipated revenues will not result in it becoming Class I or II rail carrier under the thresholds set forth at 49 C.F.R. § 1201 (11).
3. I have read the foregoing Notice of Exemption, and hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on: November 20, 2019.



John K. Howell
Davenport Industrial Railroad, LLC