

301384

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ENTERED

Office of Proceedings

December 21, 2020

Part of

Public Record

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December 21, 2020

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Re: **Docket No. FD 36454**
Strasburg Rail Road Company — Continuance in
Control Exemption — SRC Railway LLC

Attached for filing in the above-captioned proceeding is a **Verified Notice of Exemption of Strasburg Rail Road Company Pursuant to 49 C.F.R. § 1180.2(d)(2)** dated December 21, 2020. The sum of \$1,700, representing the appropriate fee for this filing, has been tendered electronically via Pay.gov.

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

Respectfully submitted,



Bradon J. Smith
Attorney for Strasburg Rail Road Company

FILED
December 21, 2020
SURFACE
TRANSPORTATION BOARD

BJS:bs

Attachment

FEE RECEIVED
December 21, 2020
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36454

STRASBURG RAIL ROAD COMPANY
— CONTINUANCE IN CONTROL EXEMPTION —
SRC RAILWAY LLC

**VERIFIED NOTICE OF EXEMPTION OF
STRASBURG RAIL ROAD COMPANY
PURSUANT TO 49 C.F.R. § 1180.2(d)(2)**

Thomas C. Paschalis
Braden J. Smith
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Chicago, Illinois 60606-3208
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**ATTORNEYS FOR
STRASBURG RAIL ROAD COMPANY**

Dated: December 21, 2020

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36454

STRASBURG RAIL ROAD COMPANY
— CONTINUANCE IN CONTROL EXEMPTION —
SRC RAILWAY LLC

**VERIFIED NOTICE OF EXEMPTION OF
STRASBURG RAIL ROAD COMPANY
PURSUANT TO 49 C.F.R. § 1180.2(d)(2)**

Strasburg Rail Road Company (“SRC”), a common carrier by rail, hereby files this notice of exemption under 49 C.F.R. § 1180.2(d)(2) to continue in control of SRC Railway LLC (“Railway LLC”) once Railway LLC leases a rail line and becomes a common carrier. Railway LLC is a non-carrier entity controlled by SRC that will lease and operate SRC’s 4 ¼ -mile rail line, the Strasburg Line, in Lancaster County, Pennsylvania.¹ Railway LLC is concurrently filing a

¹ While the transaction proposed herein is wholly within a corporate family, a recent Board decision seemed to direct that the devolution of a parent carrier entity’s operating rights to a new non-carrier subsidiary be processed as a continuance of control filing pursuant to 49 C.F.R. § 1180.2(d)(2), rather than as an intra-corporate family transaction under § 1180.2(d)(3). *Oregon International Port of Coos Bay and Coos Bay Rail Line, Inc. — Intra-corporate Family Transaction Exemption*, Docket No. FD 36199 (STB served Oct. 26, 2018), 4 (“*Port of Coos Bay*”) (“If Coos Rail would be under the control of the Port, that notice would require a related verified notice of exemption under 49 C.F.R. § 1180.2(d)(2) for the Port’s continuance in control of Coos Rail upon Coos Rail’s becoming a carrier, given that the Port is already a carrier.”). *See also, id.*, 3, n.2. Either approach, however, appears acceptable. *See, e.g., Fortress Investment Group — Exemption for Intra-Corporate Family Transaction — Ohio River Partners Shareholder LLC and Katahdin Railcar Services LLC*, Docket No. FD 36402 (STB served May 15, 2020), 1-2 (“*Fortress Investment Group*”) (transaction where parent’s carrier subsidiary would lease its line to a non-carrier affiliate for operation approved as intra-corporate family transaction under 49 C.F.R. § 1180.2(d)(3) where transaction would not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family); *American Railway Corporation of Texas — Control Exemption — Floydada & Plainview Railroad Company*, Docket No. FD 31647 (ICC served Apr. 20, 1990) [1990 WL 287924 at *1] (transaction is “exempt from the prior approval requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(2). This is also a transaction within a corporate family of the type specifically exempted from prior approval under 49 CFR 1180.2(d)(3).”) (emphasis supplied). In either event, where, as here, the parties contemplate uninterrupted operation and service, the grant of operating rights by an entity to an affiliate to operate a line of railroad owned by that entity plainly satisfies the criteria of 49 C.F.R. § 1180.2(d)(3). *E.g., Fortress Investment Group; Kansas City Southern, The Kansas City Southern Railway Company, and Meridian Speedway LLC — Exemption for Transactions within a Corporate Family*, Docket No. FD 34822 (STB served Feb. 16, 2006). Accordingly, if the Board determines that the “distinct” criteria of

notice of exemption pursuant to 49 C.F.R. § 1150.32 to lease and operate the Strasburg Line in *SRC Railway LLC — Lease and Operation Exemption — Strasburg Rail Road Company*, Docket No. FD 36453.

The Strasburg Line is the sole line owned by SRC; lease to Railway LLC does not constitute a connection within the corporate family. *See, e.g., Port of Coos Bay*, 2 (“The Line is the only rail line owned or operated by the corporate family, and therefore: it does not connect with any other railroads in the corporate family . . .”). Nor does this proposed control transaction involve a Class I carrier. SRC’s continuance in control of Railway LLC is accordingly exempt under 49 C.F.R. § 1180.2(d)(2).

In accordance with the requirements of 49 C.F.R. § 1180.4(g), SRC submits the following information:

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

SRC is a common carrier by rail; it exists and operates according to a corporate charter of 1832, predating the Interstate Commerce Act. *Strasburg R.R. Co.*, 119 I.C.C. 723 (1926); *see gen.* 8 Fed. Reg. 17491, General Order No. 1 (War Department served Dec. 9, 1943). SRC provides common carrier freight service and intrastate excursion passenger service on the 4 ¼ - mile Strasburg Line extending between Leaman Place and East Strasburg, Pennsylvania.

Railway LLC is a new non-carrier entity controlled by SRC which will lease the Strasburg Line from SRC and assume freight rail operations on the line. SRC proposes to continue

§ 1180.2(d)(3) are more appropriately applied here (*Port of Coos Bay*, 3, n.2), SRC asks that this notice of exemption be processed under that provision in accordance with long-standing precedent. *David Monte Verde et. al. — Corporate Family Transaction — Genesee Valley Transportation Co. et. al.*, Docket No. FD 31840 (ICC served Mar. 15, 1991).

in control of Railway LLC once Railway LLC exercises authority pursuant to its notice filed in Docket No. FD 36453 to lease and operate the Strasburg Line and becomes a rail carrier.

The full name and address of the Applicant herein is:

Strasburg Rail Road Company
Route 741 East
P.O Box 96
Strasburg, Penna. 17579
(717) 687-8421

Any questions concerning this Notice should be sent to SRC's representative at the following address:

Bradon J. Smith
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

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

SRC intends to consummate the proposed continuance in control transaction upon Railway LLC's exercise of its lease and operation authority in Docket No. FD 36453, but in no event sooner than January 21, 2021. *See* 49 C.F.R. § 1180.4(g)(1).

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

The exemption sought herein will allow SRC to continue to control Railway LLC and, in turn, allow Railway LLC to proceed with the lease and operation of the Strasburg Line as contemplated in Docket No. FD 36453. The authorizations sought herein are in support of a corporate operational reorganization that will facilitate the development of SRC's non-freight rail operating activities. Service to shippers on the Strasburg Line will continue uninterrupted and without material change.

States in Which Property of Applicants is Located: 49 C.F.R. § 1180.6(a)(5)

The Strasburg Line is located in the commonwealth of Pennsylvania. SRC does not own rail property in any other state.

Map - Exhibit 1: 49 C.F.R. § 1180.6(a)(6)

A map of the Strasburg Line—the entirety of SRC’s system—is attached hereto as Exhibit 1.

Agreement - Exhibit 2: 49 C.F.R. § 1180.6(a)(7)(ii)

SRC already controls Railway LLC, currently a non-carrier. No agreement is contemplated or necessary for SRC to continue in control of Railway LLC once Railway LLC leases the Strasburg Line and commences operations.

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

The proposed transaction involves only existing or future Class III carriers. Accordingly, labor protections do not apply in accordance with 49 U.S.C. § 11326(c). *Cathcart Rail, LLC — Continuance in Control Exemption — Belpre Industrial Parkersburg Railroad, LLC*, Docket No. FD 36421 (STB served Aug. 7, 2020), 2 (“Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.”).

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

Under 49 C.F.R. § 1105.6(c)(2)(i) and (ii), the proposed control transaction is exempt from environmental reporting requirements. SRC’s continuance in control of Railway LLC 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)(3), the proposed continuance in control also is exempt from historic preservation reporting requirements. That control transaction will not substantially change the level of maintenance of any railroad property.

Interchange Commitments: 49 C.F.R. § 1180.4(g)(4)

The proposed continuance in control transaction does not itself involve the acquisition or operation of a rail line, and thus the provisions of 49 C.F.R. § 1180.4(g)(4) are not applicable. The lease transaction that is the subject of the Docket No. FD 36453 proceeding does not include a provision restricting Railway LLC from interchanging traffic with a third-party connecting carrier.

Respectfully submitted,

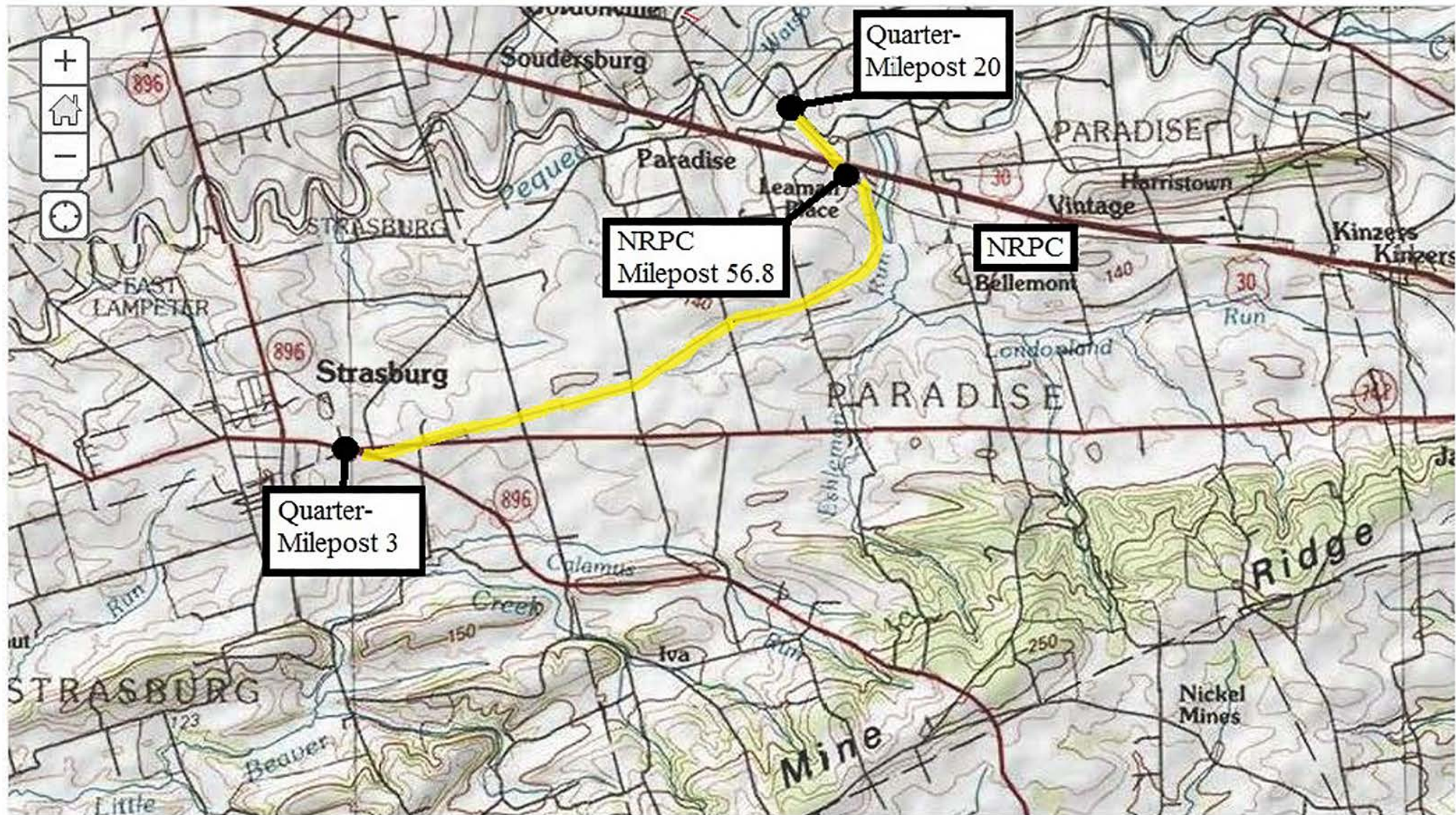
By: Bradon J. Smith
Thomas C. Paschalis
Bradon J. Smith
Fletcher & Sippel LLC
29 North Wacker Drive
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Chicago, Illinois 60606-3208
(312) 252-1500

**ATTORNEYS FOR
STRASBURG RAIL ROAD COMPANY**

Dated: December 21, 2020

EXHIBIT 1

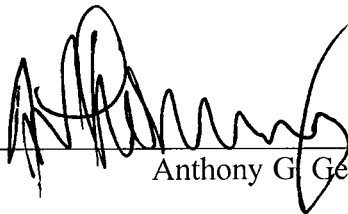
Docket No. FD 36454
Strasburg Rail Road Company -
Continuance in Control Exemption -
SRC Railway LLC



VERIFICATION

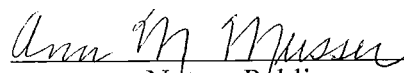
Commonwealth of Pennsylvania)
)
County of Lancaster) ss:

Anthony G. Gebbia, being duly sworn, deposes and says that: he is Chief Executive Officer of the Strasburg Rail Road Company; he has read the foregoing Notice of Exemption and knows the facts asserted therein; and the same are true as stated.



Anthony G. Gebbia

SUBSCRIBED AND SWORN TO
before me this 11th day
of December, 2020.



Notary Public

My Commission expires:

Commonwealth of Pennsylvania - Notary Seal
Ann M. Musser, Notary Public
Lancaster County
My commission expires March 14, 2022
Commission number 1118227
Member, Pennsylvania Association of Notaries