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ENTERED
Office of Proceedings
February 12, 2021
Part of
Public Record

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BRADON J. SMITH

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February 12, 2021

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 20423-0001

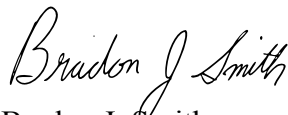
Re: **FD 36354**
Arkansas Southern Railroad L.L.C. —
Lease and Operation Exemption with Interchange Commitment —
The Kansas City Southern Railway Company

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding is a **Verified Notice of Exemption of Arkansas Southern Railroad L.L.C. Pursuant to 49 C.F.R. § 1150.42**, dated February 12, 2021. A confidential version of the notice has been filed separately. The 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 Arkansas Southern Railroad L.L.C.

FILED
BJS:bs February 12, 2021
SURFACE
TRANSPORTATION BOARD
Attachment

FEE RECEIVED
February 12, 2021
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36354

ARKANSAS SOUTHERN RAILROAD, L.L.C.
— LEASE EXEMPTION WITH INTERCHANGE COMMITMENT —
THE KANSAS CITY SOUTHERN RAILWAY COMPANY

**VERIFIED NOTICE OF EXEMPTION OF
ARKANSAS SOUTHERN RAILROAD, L.L.C.
PURSUANT TO 49 C.F.R. PART 1150, SUBPART E**

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

**ATTORNEYS FOR ARKANSAS SOUTHERN
RAILROAD, L.L.C.**

Dated: February 12, 2021

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36354

ARKANSAS SOUTHERN RAILROAD, L.L.C.
— LEASE EXEMPTION WITH INTERCHANGE COMMITMENT —
THE KANSAS CITY SOUTHERN RAILWAY COMPANY

**VERIFIED NOTICE OF EXEMPTION OF
ARKANSAS SOUTHERN RAILROAD L.L.C
PURSUANT TO 49 C.F.R. PART 1150, SUBPART E**

Pursuant to 49 C.F.R. Part 1150, subpart E, Arkansas Southern Railroad, L.L.C. (“ARS”), a Class III rail carrier, hereby files this Verified Notice of Exemption (the “Notice”) to amend and extend its leases from The Kansas City Southern Railway Company (“KCS”) of two lines of railroad extending between: (1) milepost 4.0 near Heavener, Oklahoma and milepost 33.0 at Waldron, Arkansas; and (2) milepost 32.0 at Ashdown, Arkansas and milepost 0.0 at Nashville, Arkansas (excluding the 601 track switch at Ashdown) (collectively, the “Lines”). In accordance with the requirements of 49 C.F.R. § 1150.43, ARS submits the following information:

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

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

Arkansas Southern Railroad, L.L.C.
315 W. Third Street
Pittsburg, KS 66762

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

ARS's representative to whom correspondence regarding this transaction should be sent is as follows:

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

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

On July 20, 2020 ARS and KCS executed amendments (the "Amendments") to the Amended and Restated Lease Agreements from 2016 (the "Restated Leases") currently governing ARS's lease and operation of the Lines. Among other things, the Amendments will extend the term of the leases through November 30, 2034, and will take effect upon the effectiveness of the exemption.

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

ARS will operate over, and will provide all rail common carrier freight service to customers on, the Lines.

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

ARS has reached an agreement with KCS to extend ARS's lease of two lines of railroad extending between: (1) milepost 4.0 near Heavener, Oklahoma, and milepost 33.0 at Waldron, Arkansas; and (2) milepost 32.0 at Ashdown, Arkansas, and milepost 0.0 at Nashville, Arkansas (excluding the 601 track switch at Ashdown). ARS has operated the Lines since 2005 pursuant to lease agreements with KCS. *Arkansas Southern Railroad Inc. — Lease Exemption —*

The Kansas City Southern Railway Company, FD 34760 (STB served Oct. 26, 2005).¹ KCS and ARS entered into the Restated Leases governing ARS’s continued possession and operation of the Lines in 2016. *Arkansas Southern Railroad, L.L.C. — Lease Exemption Containing Interchange Commitment — The Kansas City Southern Railway Company*, FD 36061 (STB served Oct. 7, 2016) (“*ARS-2016*”). The Lines comprise a total of approximately 61 route miles.

The Amendments extend the Restated Leases through November 30, 2034. ARS intends for the Amendments to take effect on or shortly after the effective date of the subject class exemption.

The name and address of the railroad leasing the Lines to ARS is as follows:

The Kansas City Southern Railway Company
427 W. Twelfth St.
Kansas City, MO 64105

Map: 49 C.F.R. § 1150.43(f)

A map showing the Lines is attached as Exhibit A.

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

The projected revenues will not result in the creation of a Class I or Class II rail carrier. A certification to this effect is made with the verification of this Notice.

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

(i) The Restated Leases include an interchange commitment. Affected interchanges are with Kiamichi Railroad, LLC (“KRR”) at Ashdown² and Union Pacific Railroad

¹ In 2012, Arkansas Southern Railroad, Inc., became Arkansas Southern Railroad, L.L.C.

² ARS and KRR intersect at-grade at Ashdown, Ark., but neither carrier possesses a track connection to the other, which currently makes the interchange of traffic between the two railroads physically impossible. It is likely for that reason that KRR was excluded from the third-party carriers with which ARS “could physically interchange” in *ARS-2016*. However,

Company (“UP”) at Nashville, both of which are located on the Ashdown-Nashville line segment.

(ii) Complete, confidential versions of the Restated Leases and the Amendments thereto are filed under seal as Confidential Exhibit B.

(iii) Customers located on the Lines having made use of ARS rail service over the past two years are as follows: Chemtrade Logistics; Darling International; Phillips 66; Pilgrim’s Pride; Sand Hill Group; and Tyson Foods.

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

2018: [REDACTED]

2019: [REDACTED]

(v) ARS certifies that it has provided notice of the proposed transaction and interchange commitment to the above-listed shippers (see example transmittal letter attached as Exhibit C).

(vi) KRR and UP are the third-party carriers that could physically interchange with ARS on the Lines at the respective interchange points identified above.

(vii) KCS has informed ARS that it would not undertake the subject lease transaction with ARS absent the interchange commitment, and thus its value is inestimable.

(viii) ARS has noted the existence of an interchange commitment in the proceeding’s caption.

out of an abundance of caution and to avoid any possible delay in the processing of the present class exemption notice, ARS has elected to list KRR in response to the Board’s third-party interchange carrier disclosure requirement.

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

ARS' annual revenue is not anticipated to exceed \$5 million. Accordingly, the notice provisions set forth at section 1150.42(e) are inapplicable.

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

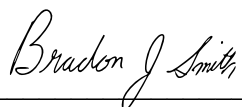
Under 49 C.F.R. § 1105.6(c)(2), this transaction is exempt from environmental reporting requirements because it will not result in significant changes in carrier operations, i.e., changes that exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5).

Under 49 C.F.R. § 1105.8(b)(1), the transaction—which is intended for the purpose of continued rail operations—is exempt from historic preservation reporting requirements. Separate Surface Transportation 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 to this Notice.

Respectfully submitted,

By: 

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

**ATTORNEYS FOR ARKANSAS SOUTHERN
RAILROAD, L.L.C.**

Dated: February 12, 2021

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36354

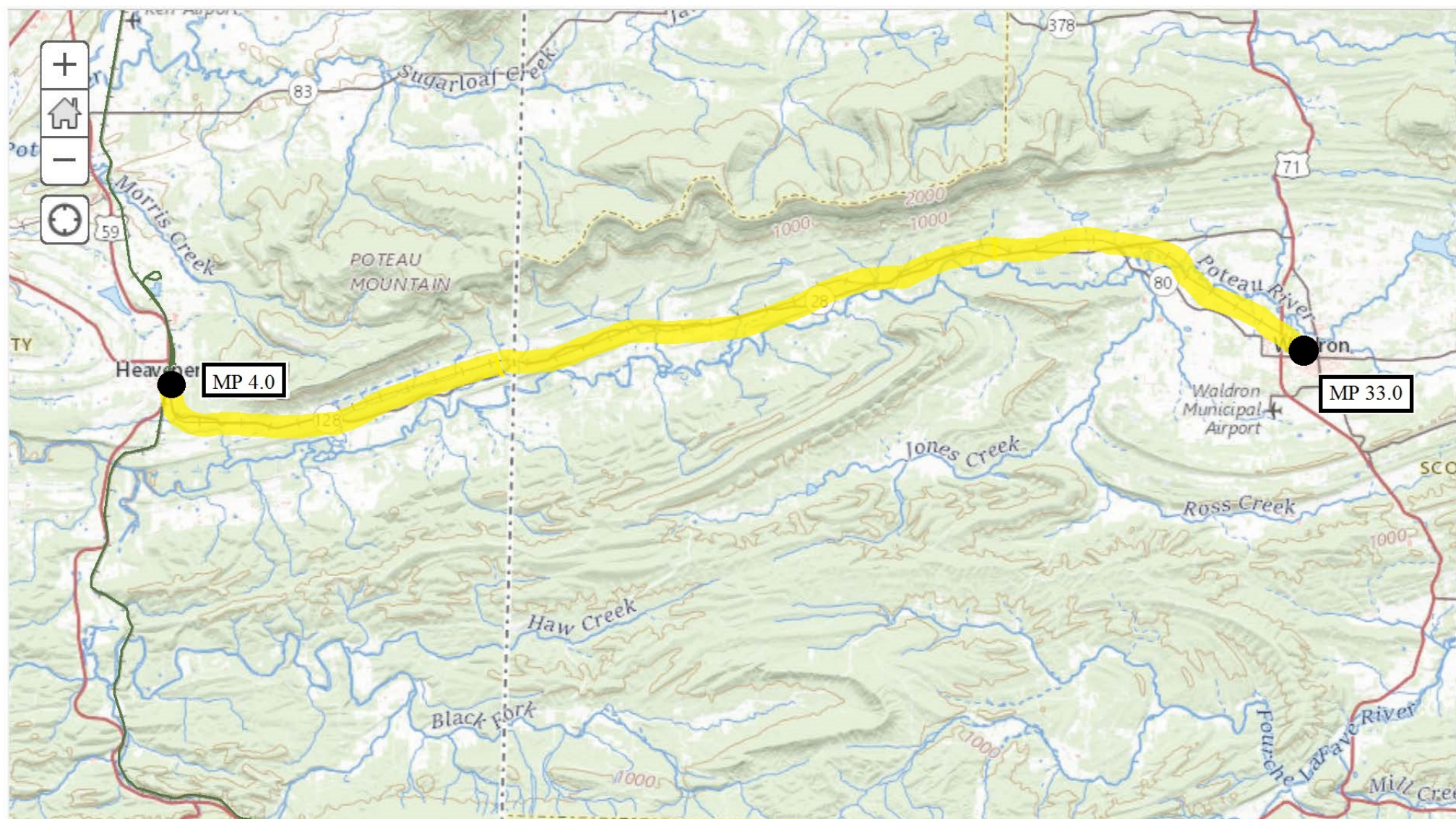
**ARKANSAS SOUTHERN RAILROAD, L.L.C
— LEASE EXEMPTION WITH INTERCHANGE COMMITMENT —
THE KANSAS CITY SOUTHERN RAILWAY COMPANY**

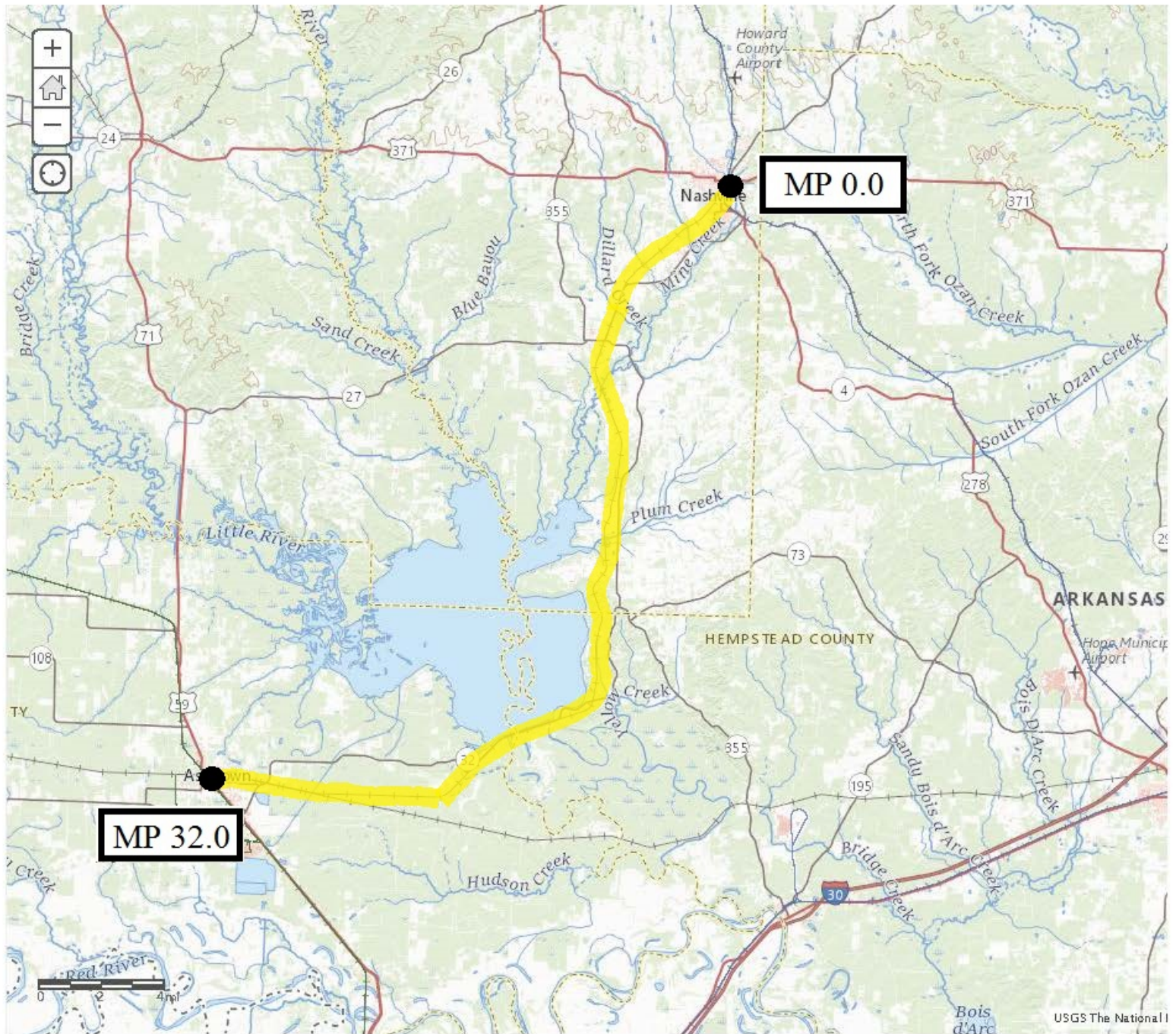
EXHIBIT A

MAPS

PUBLIC

FD 36354 Exhibit A





**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36354

**ARKANSAS SOUTHERN RAILROAD, L.L.C
— LEASE EXEMPTION WITH INTERCHANGE COMMITMENT —
THE KANSAS CITY SOUTHERN RAILWAY COMPANY**

CONFIDENTIAL EXHIBIT B

TRANSACTION DOCUMENTS

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36354

**ARKANSAS SOUTHERN RAILROAD, L.L.C
— LEASE EXEMPTION WITH INTERCHANGE COMMITMENT —
THE KANSAS CITY SOUTHERN RAILWAY COMPANY**

EXHIBIT C

NOTICE TO CUSTOMERS

FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

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

Phone: (312) 252-1500
Fax: (312) 252-2400
www.fletcher-sippel.com

BRADON J. SMITH
(312) 252-1516
bsmith@fletcher-sippel.com

February 12, 2020

Pilgrims Pride
200 E. Shepherd
Nashville, AR 71852

Re: **FD 36354**
Arkansas Southern Railroad, L.L.C. — Lease Exemption with
Interchange Commitment — The Kansas City Southern Railway
Company

Dear Sirs:

Arkansas Southern Railroad, L.L.C., (“ARS”), a carrier, has filed a notice of exemption (the “Notice”) to extend the term of its lease from The Kansas City Southern Railway Company (“KCS”) of two lines of railroad as follows: (1) between milepost 4.0 near Heavener, Oklahoma, and milepost 33.0 at Waldron, Arkansas; and (2) between milepost 32.0 at Ashdown, Arkansas, and milepost 0.0 at Nashville, Arkansas, excluding the 601 track switch at Ashdown.

The amended lease terms will take effect on or after the effective date of the subject Notice. In the interim, ARS will continue providing rail service to your facility under existing lease terms with KCS.

We are providing you with this information in keeping with STB shipper notice requirements. You are not required to respond or to this letter or otherwise participate in the STB proceeding. If you have any questions regarding this matter, please feel free to contact me.

Very truly yours,



Bradon J. Smith
Attorney for Arkansas Southern Railroad, L.L.C.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36354

**ARKANSAS SOUTHERN RAILROAD, L.L.C
— LEASE EXEMPTION WITH INTERCHANGE COMMITMENT —
THE KANSAS CITY SOUTHERN RAILWAY COMPANY**

EXHIBIT D

FEDERAL REGISTER NOTICE

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FD 36354

ARKANSAS SOUTHERN RAILROAD, L.L.C.
— LEASE EXEMPTION WITH INTERCHANGE COMMITMENT —
THE KANSAS CITY SOUTHERN RAILWAY COMPANY

Arkansas Southern Railroad, L.L.C., (“ARS”), a Class III carrier, has filed a notice of exemption (“the Notice”) to extend the term of its lease from The Kansas City Southern Railway Company (“KCS”) for the following lines of railroad (the “Lines”) extending between: (1) milepost 4.0 near Heavener, Oklahoma and milepost 33.0 at Waldron, Arkansas; and (2) milepost 32.0 at Ashdown, Arkansas and milepost 0.0 at Nashville, Arkansas, excluding the 601 track switch at Ashdown.

Comments must be filed with the Board and served on:

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

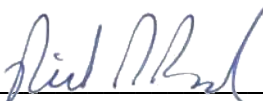
The notice is filed under 49 C.F.R. § 1150.41. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

CERTIFICATION AND VERIFICATION

Rick D. Baden hereby certifies and verifies under penalty of perjury as follows:

1. I am the Executive Vice President and Chief Financial Officer of the Arkansas Southern Railroad, L.L.C. ("ARS").
2. The annual rail revenues of ARS will not result in ARS becoming Class I or II rail carrier under the thresholds set forth at 49 C.F.R. § 1201 (1-1).
3. I have read the foregoing Notice of Exemption and know that the facts stated herein are true.

Dated: February 12, 2021



Rick D. Baden