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March 15, 2021
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March 15, 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: **Docket No. FD 36497**
D&I Railroad Company — Acquisition and Operation
Exemption -- In Lincoln, and Union Counties, SD, and
Lyon, Sioux And Plymouth Counties, IA

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding is a **Verified Notice of Exemption for D&I Railroad Company ("D&I")**, pursuant to **49 C.F.R. Part 1150, Subpart E** dated March 15, 2021. The sum of \$2,200, representing the appropriate fee for this filing, has been tendered electronically via Pay.gov. Also attached is D&I's petition for waiver of the labor notice requirements of 49 C.F.R. 1150.42(e) that would otherwise apply in this class exemption proceeding.

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

Respectfully submitted,

/s/ *R. A. Wimbish*

Robert A. Wimbish
Attorney for D&I Railroad Company

RAW:ah

Attachment
FEE RECEIVED
March 15, 2021
SURFACE
TRANSPORTATION BOARD

FILED
March 15, 2021
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36497

D&I RAILROAD COMPANY
— ACQUISITION AND OPERATION EXEMPTION —
IN LINCOLN, AND UNION COUNTIES, SD, AND
LYON, SIOUX AND PLYMOUTH COUNTIES, IA

**VERIFIED NOTICE OF EXEMPTION OF
D&I RAILROAD COMPANY
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
(312) 252-1500

**ATTORNEY FOR
D&I RAILROAD COMPANY**

Dated: March 15, 2021

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36497

D&I RAILROAD COMPANY
— ACQUISITION AND OPERATION EXEMPTION —
IN LINCOLN AND UNION COUNTIES, SD, AND
LYON, SIOUX AND PLYMOUTH COUNTIES, IA

**VERIFIED NOTICE OF EXEMPTION OF
D&I RAILROAD COMPANY
PURSUANT TO 49 C.F.R. PART 1150, SUBPART E**

Pursuant to 49 C.F.R. Part 1150, Subpart E, D&I Railroad Company (“D&I”), a Class III rail carrier, hereby files this Verified Notice of Exemption to acquire from the State of South Dakota, acting by and through its Department of Transportation (“SDDOT”) and operate two interconnected lines (known collectively as the “Sioux Valley Line”) extending, respectively, (a) from Milepost 0.0 at East Wye Switch, South Dakota, to Milepost 49.40 in Canton, South Dakota; and (b) from Milepost 0.00 at Hawarden, Iowa, to Milepost 18.60 in Beresford, South Dakota, in all, a total distance of approximately 68 miles. In accordance with the requirements of 49 C.F.R. § 1150.43, D&I 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:

D&I Railroad Company
350 S. Main Ave., Suite 400
Sioux Falls, SD 57104

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

D&I'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, Illinois 60606
(312) 252-1500

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

D&I and SDDOT have negotiated terms for the transfer of the Sioux Valley Line pursuant to a Sale Agreement that the parties executed on February 2, 2021, with closing to occur following the effective date of the requested exemption.

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

D&I will continue to operate the Sioux Valley Line as a common carrier.

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

D&I has operated the East Wye Switch – Canton portion of the Sioux Valley Line since 1982 pursuant to a modified certificate of public convenience and necessity issued under FD 29910,¹ and it has operated the Hawarden-Beresford portion of the Sioux Valley Line since 1986 pursuant to a modified certificate of public convenience and necessity issued under FD 30940.² As is reflected in those Interstate Commerce Commission (“ICC”) dockets, the Sioux Valley Line is owned by the State of South Dakota (then acting under its Railroad Authority),

¹ *D&I R.R. – Operation – Between Sioux Falls, SD and Sioux City, IA – Modified Rail Certificate*, FD 29910 (ICC served May 2, 1982).

² *D&I R.R. – Operation – Between Hawarden, IA and Beresford, SD*, FD 30940 (ICC served Nov. 24, 1986).

which acquired the trackage comprising the Sioux Valley Line from the estate of the bankrupt Chicago, Milwaukee, St. Paul & Pacific Railroad Company (“Milwaukee”) as railroad lines authorized for abandonment by the Milwaukee bankruptcy court and the ICC.³ In turn, SDDOT has leased the Sioux Valley Lines to the Sioux Valley Regional Railroad Authority (the “Authority”), which currently subleases the Sioux Valley Line to D&I. D&I has operated over the East Wye-Canton and Hawarden-Beresford segments of the Sioux Valley Line as a modified certificate operator for roughly 39 and 35 years, respectively. SDDOT has reached an agreement to sell the Sioux Valley Line to D&I, which agreement will result in the termination of SDDOT’s lease arrangement with the Authority, and the termination of the D&I-Authority sublease, with closing to occur following the grant of this exemption.⁴

D&I’s proposed acquisition and operation of the involved trackage is eligible for authorization under the class exemption procedures set forth at 49 C.F.R. § 1150.41, *et seq.*

SDDOT’s contact information is as follows:

Program Manager, Office of Railroads
South Dakota Department of Transportation
700 Broadway Avenue East
Pierre, SD 57501-2586

D&I’s contact information is as follows:

³ *Richard B. Ogilvie, Trustee of the Property of Chicago, Milwaukee, St. Paul & Pacific Railroad Company – Abandonment – In South Dakota, Iowa and Nebraska*, Docket No. AB-7 (Sub-No. 88) (ICC served May 14, 1980); *In the Matter of Chicago, Milwaukee, St. Paul & Pacific Railroad Company, Debtor*, No. 77 B 8999, Order No. 341 (N.D. Ill., May 27, 1980); Order No. 342A (N.D. Ill., June 9, 1980).

⁴ Although likely unnecessary, given the proposed change in ownership to a private entity and the continuation of service by the incumbent operator thereafter, D&I has agreed that it will soon notify the State of South Dakota, the Board and persons that have used the Sioux Valley Line in the past six months that it will cease providing service under the modified certificates but will continue to provide service pursuant to this Notice of Exemption. *See* 49 C.F.R. § 1150.24.

D&I Railroad Co.
350 S. Main Ave., Suite 400
Sioux Falls, SD 57104

The agreement governing SDDOT's sale of the Sioux Valley Line to D&I provides that the parties are to close on the asset transfer on April 15, 2021, the day following the anticipated April 14, 2021 effective date of this exemption notice.

Map: 49 C.F.R. § 1150.43(f)

A map of the Sioux Valley Line is attached as Exhibit A.

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

D&I's projected revenues following consummation of the proposed transactions will not result in the creation of a Class I or II rail carrier; a certification to this effect is made with the verification of this Notice of Exemption.

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

The transaction does not involve any provision or agreement that may limit interchange with a third-party connecting carrier. See attached Certification and Verification.

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

D&I's annual revenue exceeds \$5 million. However, because D&I has operated over the Sioux Valley Line for well over 20 years, and because the proposed transaction and continued operations of D&I – (1) would not involve displacing employees of any other railroad (no other railroad operates over the subject lines); and (2) would have no impact on D&I's employees or the railroad's ongoing operations, D&I concurrently is seeking with this Notice of Exemption a waiver of the advance notice requirements of Section 1150.42(e) in keeping with

established agency practice and precedent to permit closing of the proposed transaction to take place on April 15, 2021.

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 intended is for the purpose of continued rail operations—is exempt from historic preservation reporting requirements. Separate Surface Transportation Board approval would be required to discontinue any 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 B to this Notice.

Respectfully submitted,

By: /s/ *R. A. Wimbish*

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

**ATTORNEY FOR D&I RAILROAD
COMPANY**

Dated: March 15, 2021

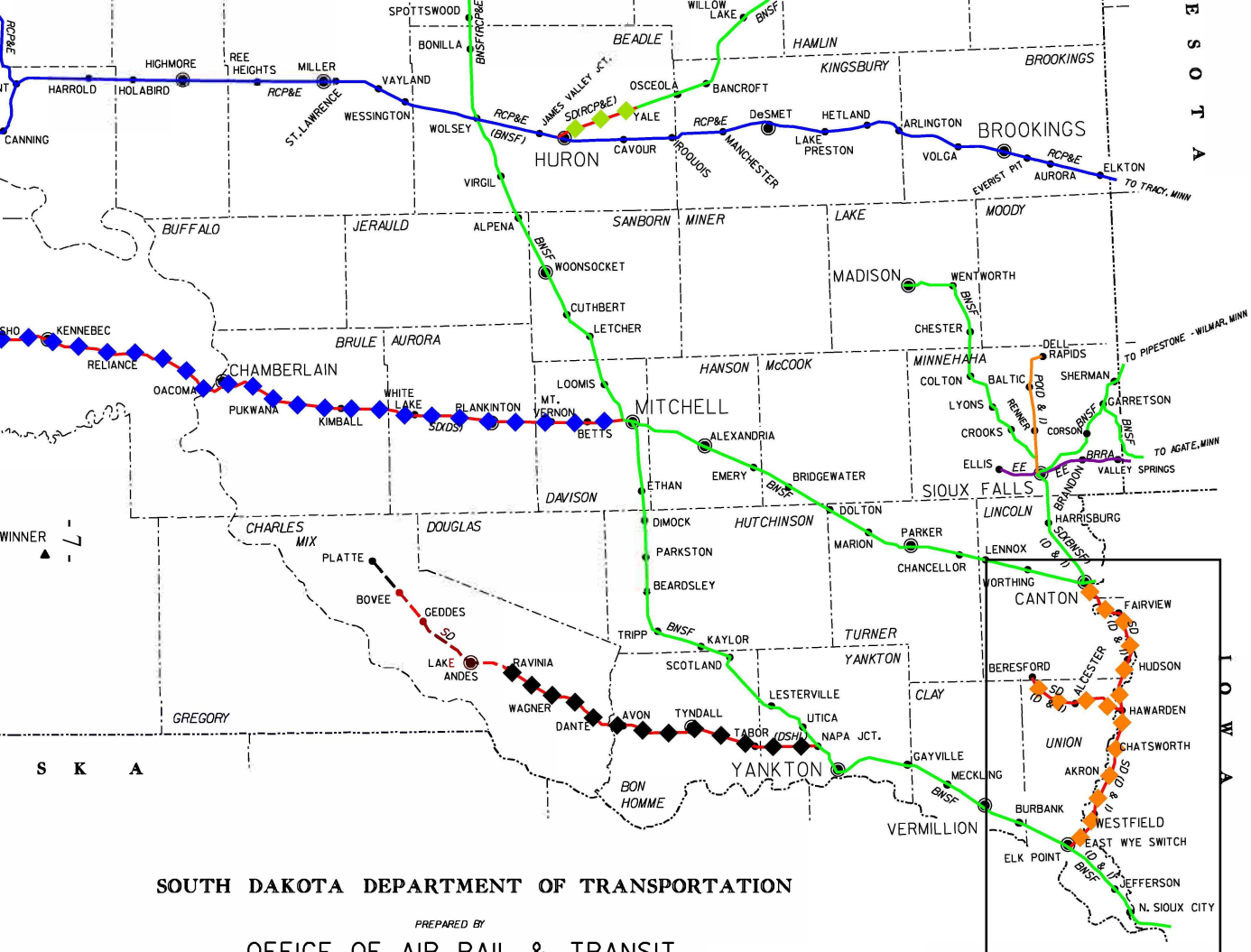
**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36497

**D&I RAILROAD COMPANY
— ACQUISITION AND OPERATION EXEMPTION —
IN LINCOLN AND UNION COUNTIES, SD, AND
LYON, SIOUX AND PLYMOUTH COUNTIES, IA**

EXHIBIT A

MAP



SIoux CITY, IA.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36497

**D&I RAILROAD COMPANY
— ACQUISITION AND OPERATION EXEMPTION —
IN LINCOLN AND UNION COUNTIES, SD, AND
LYON, SIOU, AND PLYMOUTH COUNTIES, IA**

EXHIBIT B

FEDERAL REGISTER NOTICE

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FD 36497

D&I RAILROAD COMPANY
— ACQUISITION AND OPERATION EXEMPTION —
IN LINCOLN AND UNION COUNTIES, SD, AND
LYON, SIOUX AND PLYMOUTH COUNTIES, IA

D&I Railroad Company (“D&I”), a Class III carrier, has filed a notice of exemption (the “Notice”) to – (1) acquire from the State of South Dakota, acting by and through its Department of Transportation (“SDDOT”) and operate two interconnected railroad lines (known collectively as the “Sioux Valley Line”) extending, respectively, (a) from Milepost 0.0 at East Wye Switch, South Dakota, to Milepost 49.40 in Canton, South Dakota; and (b) from Milepost 0.00 at Hawarden, Iowa, to Milepost 18.60 in Beresford, South Dakota, in all, a total distance of approximately 68 miles.

The agreement governing SDDOT’s sale of the Sioux Valley Line to D&I provides that the parties are to close on the asset transfer on April 15, 2021, the day following the April 14, 2021 effective date of this exemption notice.

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

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.

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— ACQUISITION AND OPERATION EXEMPTION —
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CERTIFICATION AND VERIFICATION

I, Richard Everist, III, hereby certifies and verifies under penalty of perjury as follows:

1. I am Vice President, D&I Railroad Company (“D&I”). I am authorized to make this Certification and Verification on behalf of D&I.
2. The annual rail revenues of D&I will not result in D&I becoming a Class I or II rail carrier under the thresholds set forth at 49 C.F.R. § 1201 (1-1).
3. The transaction described in the foregoing Notice of Exemption does not involve any provision or agreement that may limit interchange with a third party connecting carrier.
4. I have read the foregoing Notice of Exemption and know that the facts stated herein are true.

Dated: March 15, 2021



Richard Everist, III
Vice President, D&I Railroad Company