

301846

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ENTERED

Office of Proceedings

March 26, 2021

Part of

Public Record

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March 26, 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

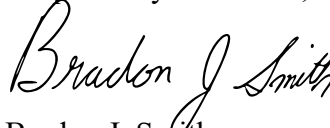
Re: **FD 36353**
Alabama Southern Railroad, L.L.C. — Lease Exemption with
Interchange Commitment — The Kansas City Southern Railway
Company

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding is the **Verified Notice of Exemption of Alabama Southern Railroad, L.L.C. Pursuant to 49 C.F.R. Part 1150, Subpart E** dated March 25, 2021. A **Petition for Waiver from the provisions of 49 C.F.R. § 1150.42(e)** is filed concurrently herewith. Payment of the requisite filing fee has been tendered electronically with this notice 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 Alabama Southern Railroad, L.L.C.

FILED
March 26, 2021
SURFACE
TRANSPORTATION BOARD

BJS:bs

Enclosure

FEE RECEIVED
March 26, 2021
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36353

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

**VERIFIED NOTICE OF EXEMPTION OF
ALABAMA 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
(312) 252-1500

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

Dated: March 26, 2021

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36353

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

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

Pursuant to 49 CFR Part 1150, Subpart E, Alabama Southern Railroad, L.L.C (“ABS”) a Class III rail carrier, hereby files this Verified Notice of Exemption (the “Notice”) to renew its lease from The Kansas City Southern Railway Company (“KCS”) of three lines of railroad extending between: (1) Milepost 17.0 near Columbus, Mississippi, and Milepost 78.9 at Tuscaloosa, Alabama (known as the “Tuscaloosa Subdivision”); (2) Milepost 0.0 at Tuscaloosa, Alabama and Milepost 9.3 near Fox, Alabama (known as the “Warrior Branch”); and (3) Milepost 443.5 at Brookwood Junction, Alabama, and Milepost 429.1 at Brookwood, Alabama (known as the “Brookwood Branch”), collectively, the “Leased Lines.” In accordance with the requirements of 49 C.F.R. § 1150.43, ABS 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:

Alabama Southern Railroad, L.L.C.
315 W. Third Street
Pittsburg, KS 66782

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

ABS'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)

KCS and ABS have negotiated and executed an amendment extending the term of the lease governing the Leased Lines (the lease as restated, the "Lease;" the amendment, the "Amendment"); the effectiveness of the Amendment is contingent on receipt of all necessary regulatory approvals.

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

ABS will continue to operate and provide all rail common carrier service to shippers on the Leased Lines.

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

ABS has leased and operated the Leased Lines since 2005. *Alabama Southern Railroad, Inc — Lease and Operation Exemption — The Kansas City Southern Railway Company*, FD 34754 (STB served Dec. 2, 2005) (the "2005 Notice").¹ The Lease was restated and amended in 2015 with a term through November 30, 2024. *Alabama Southern Railroad, L.L.C. — Lease and Operation Exemption Including Interchange Commitment — The Kansas City Southern*

¹ On December 10, 2010, Alabama Southern Railroad, Inc. became Alabama Southern Railroad, L.L.C.

Railway Company, FD 35889 (STB served Jan. 2, 2015) (the “2015 Notice”).² The Leased Lines constitute a total of approximately 85.6 miles of rail line.

ABS is filing this Notice /Amendment to extend the Lease through November 30, 2034. ABS intends to consummate the Amendment on or shortly after the receipt of all requisite regulatory approvals.

The name and address of the railroad leasing the Leased Lines to ABS is:

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

Map: 49 C.F.R. § 1150.43(f)

Maps showing the Leased Lines are attached as Exhibits A-1 through A-3 to this Notice.

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

The projected revenues will not result in the creation of a Class II or Class I 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 Lease Agreement includes an interchange commitment. Affected interchanges are with: Alabama & Gulf Coast Railway (“AGR”); BNSF Railway Company

² The 2005 Notice stated that ABS would acquire by assignment from KCS “overhead trackage rights over a 44.4-mile line of railroad owned by CSX Transportation, Inc. [“CSXT”], extending between milepost 429.2 at Brookwood, AL, and milepost 384.8 at Birmingham, AL” as incidental to the lease transaction. When the 2005 lease was written, KCS intended to assign to ABS KCS’s rights under a 1992 CSX-SouthRail trackage rights for interchange purposes only that had been assigned to KCS when KCS acquired the MidSouth system. See *Southrail Corp. — Trackage Rights Exemption — CSX Transportation, Inc.*, FD 32138. However, CSX refused to allow assignment of those rights leading KCS to terminate the 1992 agreement. As a result, ABS never acquired trackage rights and effects interchange at Brookwood.

(“BNSF”) and Columbus & Greenville Railway (“CAGR”); at Columbus³; Norfolk Southern Railway Company (“NS”) at Tuscaloosa; and CSXT at Brookwood.

(ii) The complete, confidential version of the Lease and the Amendment thereto subject to this Notice is filed under seal as Exhibit B.

(iii) A list of shippers located on the Leased Lines that have made use of rail service over the past two years are ABH Enterprises; BF Goodrich; Dixie Pulp & Paper; Eddie Kane Steel Products; 84 Lumber; GAF Materials; Graphic Packaging; Hanna Steel; Hunt Refining; KMG-Bernuth; Merichem; Nucor Steel; PECO Foods; Southern Ionics; Tuscaloosa Warehouse; and Warrior Asphalt.

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

[REDACTED]

[REDACTED]

(v) ABS certifies that it has provided notice of the proposed transaction and interchange commitment to the above-listed shippers, under cover of the letter attached hereto as Exhibit C.

(vi) AGR; BNSF, CAGR; NS, and CSXT are the third-party carriers that could physically interchange with ABS on the Leased Lines (and at Birmingham) at the respective interchange points described under (i) of this section.

³ The potential connection with AGR; BNSF; and CAGR at Columbus, exists on a KCS-owned segment of railroad line that ABS does not lease (and will not be leasing pursuant to the present transaction), but over which ABS operates strictly for purposes of effecting interchange with KCS at Artesia, Mississippi. AGR and CAGR were not included in the *2015 Notice*.

(vii) KCS has informed ABS that it would not undertake the Lease Agreement absent the interchange commitment, and thus its value is inestimable.

(viii) ABS has filed this Notice of Exemption with the existence of an interchange commitment designated in the caption.

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

ABS's annual revenue is anticipated to exceed \$5 million. Concurrent with this Notice, ABS is seeking a waiver of the application of section 1150.52(e) in keeping with *Alabama Southern Railroad, L.L.C. — Lease and Operation Exemption Including Interchange Commitment — The Kansas City Southern Railway Company*, Docket No. FD 35889 (STB served Jan. 13, 2015) at 1.

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

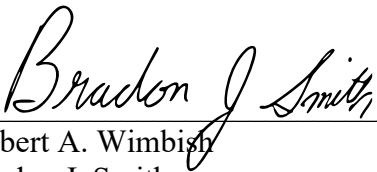
Under 49 C.F.R. § 1105.6(c)(2), the proposed Amendment is exempt from environmental reporting requirements. The proposed transaction will not result in significant changes in carrier operations, i.e., changes that exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5).

Under 49 C.F.R. § 1105.8(b)(1), ABS's lease of the Leased Lines also is exempt from historic preservation reporting requirements. The proposed transaction is for the purpose of continued rail operations. Further Board approval is 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 C to this Notice.

Respectfully submitted,

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

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

Dated: March 26, 2021

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36353

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

EXHIBIT A

MAPS

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36353

**ALABAMA 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 36353

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

EXHIBIT C

NOTICE TO CUSTOMERS

March 26, 2021

Re: **Docket No. FD 36353**
Alabama Southern Railroad, L.L.C. — Lease Exemption with
Interchange Commitment — The Kansas City Southern Railway Company

Dear Sirs:

Alabama Southern Railroad, L.L.C. (“ABS”) has filed a Notice of Exemption (the “Notice”) with the Surface Transportation Board (“STB”) to renew its lease from The Kansas City Southern Railway Company (“KCS”) of three lines of railroad extending between: (1) Milepost 17.0 near Columbus, Mississippi, and Milepost 78.9 at Tuscaloosa, Alabama; (2) Milepost 0.0 at Tuscaloosa, Alabama and Milepost 9.3 near Fox, Alabama; and (3) Milepost 443.5 at Brookwood Junction, Alabama, and Milepost 429.1 at Brookwood, Alabama. The amended lease terms will take effect on or after April 25, 2021.

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 Alabama Southern Railroad, L.L.C.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36353

**ALABAMA 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

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

Alabama Southern Railroad, L.L.C., (“ABS”) a carrier, has filed a notice of exemption (“the Notice”) to renew its lease from The Kansas City Southern Railway Company (“KCS”) of three lines of railroad extending between: (1) Milepost 17.0 near Columbus, Mississippi, and Milepost 78.9 at Tuscaloosa, Alabama; (2) between Milepost 0.0 at Tuscaloosa, Alabama, and Milepost 9.3 near Fox, Alabama; and (3) between Milepost 443.5 at Brookwood Junction, Alabama, and Milepost 429.1 at Brookwood, Alabama.

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

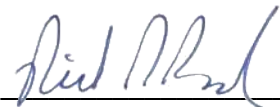
The notice is filed under 49 C.F.R. § 1150.41. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

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 Alabama Southern Railroad, L.L.C. ("ABS").
2. The annual rail revenues of ABS will not result in ABS 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: March 26, 2021



Rick D. Baden