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Office of Proceedings
July 29, 2021
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July 29, 2021

By e-filing

Ms. Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024

Re: Finance Docket No. 36533, *Squaw Creek Southern Railroad, Inc. -- Change in Operators Exemption -- Southwind Shortline Railroad Company*

Dear Ms. Brown:

Hereby transmitted is a Verified Notice Of Exemption Under 49 C.F.R. § 1150.41(c) for filing with the Board in the above referenced matter.

The filing fee of \$2,200 is being paid electronically via *pay.gov*.

Respectfully submitted,

/s/ Thomas F. McFarland
Thomas F. McFarland
Attorney for Squaw Creek Southern Railroad, Inc.

TMcF:mg:1913\efSTB1

FILED
July 29, 2021
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
July 29, 2021
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

SQUAW CREEK SOUTHERN)
RAILROAD, INC. -- CHANGE IN) FINANCE DOCKET
OPERATORS EXEMPTION --) NO. 36533
SOUTHWIND SHORTLINE RAILROAD)
COMPANY

**VERIFIED NOTICE OF EXEMPTION
UNDER 49 C.F.R. § 1150.41(c)**

SQUAW CREEK SOUTHERN RAILROAD, INC.
4944 Old State Route 261, Suite 15
Newburgh, IN 47630

Applicant

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
2230 Marston Lane
Flossmoor, IL 60642-1336
(708) 704-7679 (cell)
mcfarland@aol.com

Attorney for Applicant

Date Filed: July 29, 2021

BEFORE THE
SURFACE TRANSPORTATION BOARD

SQUAW CREEK SOUTHERN	)	
RAILROAD, INC. -- CHANGE IN	)	FINANCE DOCKET
OPERATORS EXEMPTION --	)	NO. 36533
SOUTHWIND SHORTLINE RAILROAD	)	
COMPANY		

**VERIFIED NOTICE OF EXEMPTION
UNDER 49 C.F.R. § 1150.41(c)**

Pursuant to 49 U.S.C. § 10502(a) and 49 C.F.R. § 1150.41(c), SQUAW CREEK SOUTHERN RAILROAD, INC. (SCS), a Class III rail carrier, hereby provides verified notice of its class exemption from 49 U.S.C. § 10902 for its change in operators of approximately 33,012 feet of rail line, plus a storage yard consisting of three storage tracks and a sidetrack, at Southwind Maritime Centre (Southwind Centre), Posey County, Indiana (the Rail Line).

VERIFICATION AND MAP

A map of the railroad facilities at Southwind Centre is attached as Appendix 1. The facts alleged in this Notice are verified by Mr. Terry Respondek, Vice President of SCS, attached as Appendix 2.

NOTIFICATION OF SHIPPERS

As required by 49 C.F.R. § 1150.42(b), the shippers on the Rail Line have been notified of the proposed change in operators from Southwind Shortline Railroad Company (SPR) to SCS. The names and addresses of the shippers on the Rail Line are shown in Appendix 3 attached to this Notice.

BACKGROUND

The Ports of Indiana (POI) is a body corporate and politic under Indiana State Law. POI was created by the Indiana legislature at Ind. Code 8-10-1-1. That statute provides POI with authority to develop, maintain and operate ports on behalf of the State of Indiana.

POI operates three Ports in Indiana:

- (1) Ports of Indiana - Mt. Vernon, Indiana, formerly known as Southwind Maritime Centre;
- (2) Ports of Indiana - Jeffersonville, Indiana, formerly known as Clark Maritime Centre; and
- (3) Ports of Indiana - Burns Harbor, Indiana, formerly known as Burns International Harbor.

The present case involves the Rail Line at Mt. Vernon, IN. The Indiana Port Commission (IPC), a predecessor of the Ports of Indiana (POI), created Southwind Shortline Railroad Company (SPR) to acquire and operate the Rail Line at the Ports of Indiana - Mt. Vernon, formerly known as Southwind Centre, Mt. Vernon, IN. *See* Finance Docket No. 32113, encompassed in *Clark Shortline Railroad Company -- Acq. & Oper. Exempt. -- Indiana Port Commission*, 1998 WL 242461, decision served May 14, 1998 (the 1998 Decision). Theretofore, the Rail Line was operated as excepted spur tracks by several contract rail operators, including CSX Transportation, Inc. (CSXT). *See* the 1998 decision.

The Brotherhood of Locomotive Engineers (BLE), a national rail labor union, filed a petition to revoke the exemption for SPR's acquisition and operation, primarily on the ground that SPR would not be a rail carrier subject to STB jurisdiction because it would not operate the

Rail Line (1998 WL 242461 at *2). In denying BLE's petition to revoke, the Board said (1998 WL 242461 at *3):

...Even though...SWSL [SPR] (has) contracted with operators who actually perform rail service,...[SPR] (has) the residual common carrier obligation to provide service at the respective facilities...These factors...supported the ICC's jurisdiction over the transaction and permitted it to issue the notices of exemption to...[SPR] under 49 C.F.R. 1150 subpart D...

It is proposed that SCS perform rail switching at POI - Mt. Vernon pursuant to an operating agreement.^{1/} SCS is an experienced Class III rail operator subject to the Board's jurisdiction. See *Squaw Creek Southern Railroad, Inc. -- Oper. Exempt. -- Norfolk Southern Ry. Co.*, 2002 WL 1824979, Finance Docket No. 34230, decision served August 9, 2002; *see, also, Squaw Creek Southern Railroad, Inc. -- Lease & Oper. Exempt. -- Central of Georgia Railroad Co.*, 2008 WL 2015083; Finance Docket No. 35134, decision served May 12, 2008. Shippers have been notified of the proposed change.

COMMON CARRIER RAILROAD SWITCHING

SPR has performed railroad switching at POI - Mt. Vernon as a rail common carrier holding out its services to all shippers. SCS will likewise perform railroad switching at POI - Mt. Vernon as a rail common carrier.

^{1/} The current rail facilities at Southwind Maritime Centre in Mt. Vernon are the same as the facilities identified in the *1998 Decision*, except that POI - Mt. Vernon has added a storage yard consisting of three storage tracks and a sidetrack. The storage yard and sidetrack are ancillary facilities that do not require Board approval or exemption for their construction and operation. However, if the Board deems that an exemption for acquisition and operation of those facilities is required, the Board is respectfully requested to grant such an exemption.

INFORMATION REQUIRED BY 49 C.F.R. § 1150.43

(a) The full name and address of the applicant;

Applicant is Squaw Creek Southern Railroad, Inc. (SCS), 4944 Old State Route 261,
Suite 15, Newburgh, IN 47630.

(b) The name, address, and telephone number of the representative of the applicant who should receive correspondence;

Applicant's representative is Thomas F. McFarland, Thomas F. McFarland, P.C. 2230
Marston Lane, Flossmoor, IL 60422-1336, ph (708) 704-7679, mcfarland@aol.com.

(c) A statement that an agreement has been reached or details about when an agreement will be reached;

An agreement in principle has been reached between SPR and SCS for a change in
operators from SPR to SCS.

(d) The operator of the property;

SCS will perform rail switching over the Rail Line.

(e) A brief summary of the proposed transaction, including:

(1) The name and address of the railroad transferring the subject operating authority,

Southwind Shortline Railroad Company, 150 West Market Street, Suite 450,
Indianapolis, IN 46204 is currently operating the Rail Line and will transfer operations to
SCS.

(2) The proposed time schedule for consummation of the transaction,

The transaction will be consummated no earlier than the 30th day after the day on
which this Verified Notice is filed.

(3) The mile-posts of the subject property, including any branch lines; and

The Rail Line is in a terminal area. It is not described by reference to mileposts.

(4) The total route miles being acquired;

A total of 33,012 feet of rail line will be operated, equating to approximately 6.25 miles.

(f) A map that clearly indicates the area to be served, including origins, termini, stations, cities, counties, and States; and

The required map is attached as Appendix 1 showing the current rail network of the Ports of Indiana - Mt. Vernon.

(g) A certificate that applicant's projected revenues do not exceed those that would qualify it as a Class III carrier.

SCS hereby certifies that its projected annual revenues will not result in its becoming a Class I or II rail carrier. See Appendix 2.

(h) The filing party must certify whether or not a proposed acquisition or operation of a rail line involves a provision or agreement that may limit future interchange with a third-party connecting carrier, whether by outright prohibition, per-car penalty, adjustment in the purchase price or rental, positive economic inducement, or other means ("interchange commitment").

SCS hereby certifies that the proposed operation does not involve an Interchange Commitment.

LABOR PROTECTION

It is provided in 49 U.S.C. § 10901(c) that labor protective conditions are not to be imposed on this proposed operation that involves two Class III rail carriers.

ENVIRONMENTAL AND HISTORIC CONSIDERATIONS

The proposed operation does not require environmental or historic reporting or findings. *See* 49 C.F.R. § 1105.6(c)(2) and 49 C.F.R. § 1150.8(b)(1).

PROJECTED ANNUAL REVENUES LESS THAN \$5 MILLION

SCS hereby certifies that the projected annual revenue from the proposed operation, together with the operator's current annual revenues, will not exceed \$5 million. *See* Appendix 2.

CAPTION SUMMARY

As required by 49 C.F.R. § 1150.44, a Caption Summary of the proposed operation is attached as Appendix 4.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, for the reasons stated, the Board should accept this Verified Notice of Exemption for Change in Operators under 49 C.F.R. § 1150.41(c), for filing, and should publish it in the *Federal Register* within 16 days of filing of the Verified Notice, as required by 49 C.F.R. § 1150.42(b).

Respectfully submitted,

SQUAW CREEK SOUTHERN RAILROAD, INC.
4944 Old State Route 261, Suite 15
Newburgh, IN 47630

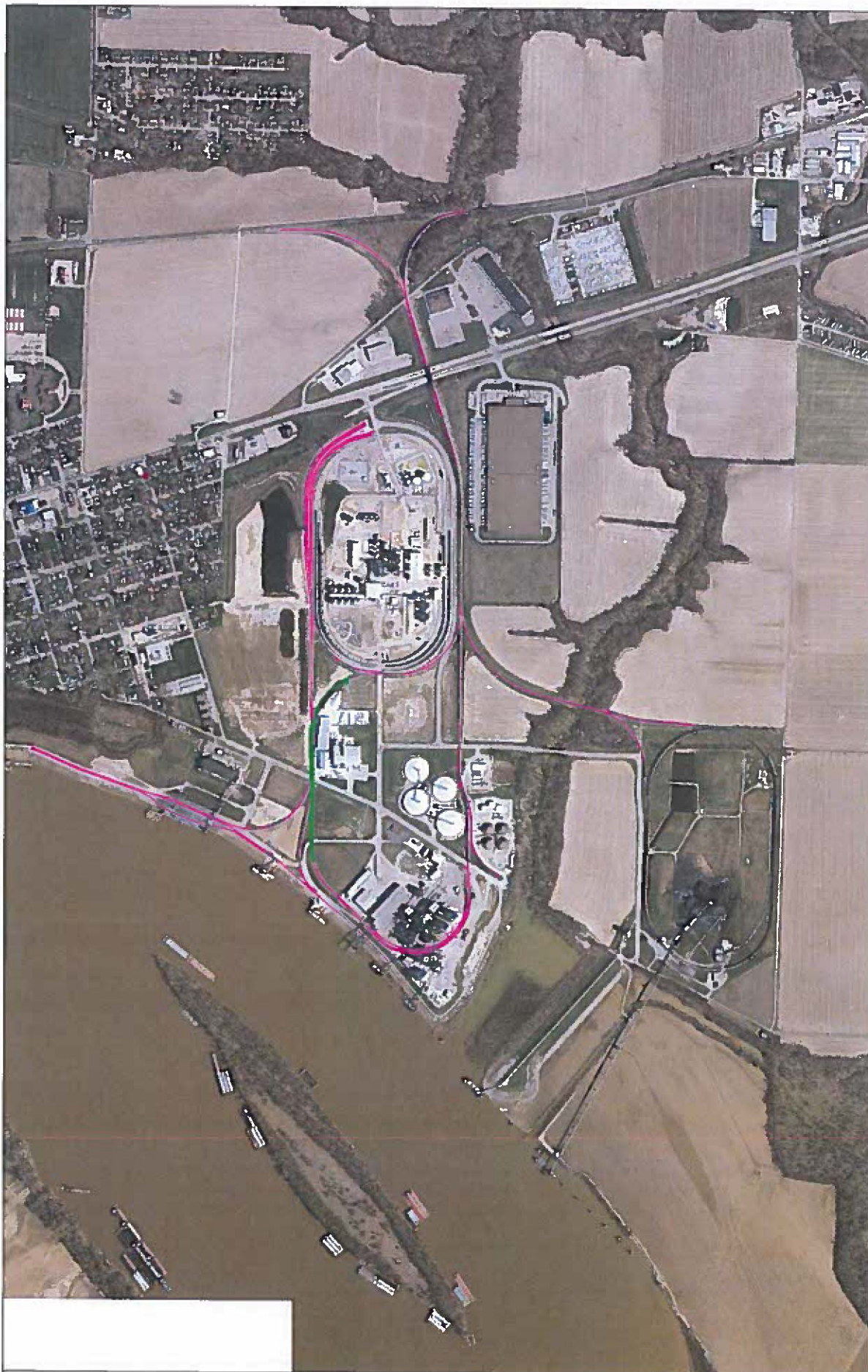
Applicant

/s/ Thomas F. McFarland

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
2230 Marston Lane
Flossmoor, IL 60642-1336
(708) 704-7679 (cell)
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Attorney for Applicant

Date Filed: July 29, 2021



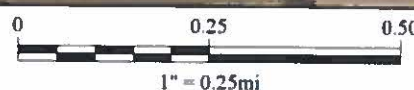
**POI Railroad
Feature Name:**

- 1
- 2008 CGB Trac
- On Site Tenant
- POI RR
- RAILROAD
- Sheet 7-5
- Sht 10-10
- Sht 2492-4
- Sht 2492-5
- Sht 2492-7
- Sht 31-4
- Sht 42-5
- Sht 4303-3
- Sht 45-4
- Sht 45-5
- Sht 56-5
- Sht 56-6
- Sht 7-6
- Sht 7-7a
- Sht. 20-3
- Sht. 20-4
- Sht. 37-4
- Sht. 42-4

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Port Rail Terminal Map



Appendix 2

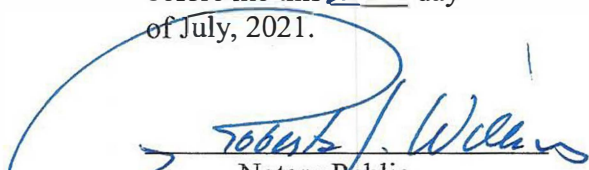
STATE OF INDIANA)
) SS:
COUNTY OF WARRICK)

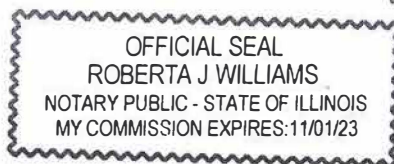
VERIFICATION

TERRY RESPONDEK, being duly sworn, states that he is Vice President of Squaw Creek Southern Railroad, Inc. (SCS); that the proposed operation does not contain a provision or agreement that may limit future interchange with a third party connecting rail carrier; that the projected annual revenues of SCS, together with SCS' current annual revenues, will not exceed the annual revenues for classification as a Class III rail carrier, nor will such revenues exceed \$5 million; and that all other allegations in the Verified Notice of Exemption are true and correct.


TERRY RESPONDEK

SUBSCRIBED AND SWORN to
before me this 27th day
of July, 2021.


Notary Public



My Commission Expires: 11/01/23

Appendix 3

Mount Vernon
Shipper List

CIMBAR Performance Minerals MV, LLC
2700 Bluff Rd.
Mount Vernon, IN 47620

Consolidated Grain and Barge Company
Grain Division
P.O. Box 547
2701 Bluff Rd.
Mount Vernon, IN 47620

Consolidated Grain and Barge Company
Soybean Processing Division
P.O. Box 289
2701 Bluff Rd.
Mount Vernon, IN 47620

Consolidated Terminals and Logistics Co.
P.O. Box 548
2701 Bluff Rd.
Mount Vernon, IN 47620

Mt. Vernon Transfer Terminal, LLC
3300 Bluff Rd.
Mount Vernon, IN 47620

Nutrien
2501 Bluff Rd.
Mount Vernon, IN 47620

Nutrien Ag Solutions
2900 Bluff Rd.
Mount Vernon, IN 47620

Valero Renewables
7201 Port Rd.
Mount Vernon, IN 47620

Appendix 4

CAPTION SUMMARY

**SURFACE TRANSPORTATION BOARD
VERIFIED NOTICE OF EXEMPTION**

(Finance Docket No. 36533)

**SQUAW CREEK SOUTHERN RAILROAD, INC. -- CHANGE IN OPERATORS
EXEMPTION -- SOUTHWIND SHORTLINE RAILROAD COMPANY**

Squaw Creek Southern Railroad, Inc. has filed a Verified Notice of Exemption for a change in operators of 33,012 feet of rail line currently operated by Southwind Shortline Railroad Company at Ports of Indiana - Mt. Vernon, formerly known as Southwind Maritime Centre, at Mt. Vernon, Posey County, Indiana.

Comments must be filed with the Board and must be served on Applicant's representative, Thomas F. McFarland, Thomas F. McFarland, P.C., 2230 Marston Lane, Flossmoor, IL 60422-1336, ph (708) 704-7679, mcfarland@aol.com.

This Verified 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.

(SEAL)

By the Board