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November 3, 2021
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November 3, 2021

VIA E-FILING
49 C.F.R. §1150.42(e) WAIVER REQUESTED

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

Re: STB Docket No. FD 36545
Dallas, Garland & Northeastern Railroad, Inc.
- Lease and Operation Exemption Including Interchange Commitment -
Union Pacific Railroad Company

Dear Ms. Brown:

Enclosed for e-filing on behalf of Dallas, Garland & Northeastern Railroad, Inc. is a Notice of Exemption being filed in accordance with 49 CFR 1150.43. Included within this Notice of Exemption is a request for waiver of the notice requirements of 49 C.F.R. §1150.42(e).

The filing fee was paid using Pay.gov. Please let me know if there are any questions regarding this filing.

Sincerely,

Justin J. Marks
Counsel for Dallas, Garland &
Northeastern Railroad, Inc.

Enclosure
FILED
November 3, 2021
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
November 3, 2021
SURFACE
TRANSPORTATION BOARD

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36545

DALLAS, GARLAND & NORTHEASTERN RAILROAD, INC.
- LEASE AND OPERATION EXEMPTION
INCLUDING INTERCHANGE COMMITMENT –
UNION PACIFIC RAILROAD COMPANY

VERIFIED NOTICE OF EXEMPTION
UNDER 49 U.S.C. §10902

(includes color images)

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*Attorneys for Dallas, Garland &
Northeastern Railroad, Inc.*

Dated: November 3, 2021

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36545

DALLAS, GARLAND & NORTHEASTERN RAILROAD, INC.
- LEASE AND OPERATION EXEMPTION
INCLUDING INTERCHANGE COMMITMENT –
UNION PACIFIC RAILROAD COMPANY

VERIFIED NOTICE OF EXEMPTION
UNDER 49 U.S.C. §10902

Dallas, Garland & Northeastern Railroad, Inc. (“DGNO”), a Class III railroad, files this Notice of Exemption under 49 U.S.C. § 10902 to exempt from regulation DGNO’s entry into a renewed and amended lease agreement (“Amended Lease”) to amend the existing lease (the “Current Lease”) entered into between DGNO and Union Pacific Railroad Company (“UPRR”) in June 2001, and amended in August 2002 and June 2004. The Amended Lease covers the following approximately 30.7 miles of rail line (“Rail Lines”):

- 1) A portion of the Garland Subdivision (also known as and sometimes previously referred to as the “Greenville Subdivision”) from Milepost 741.3 near Lake Ray Hubbard to Milepost 713.6 at Greenville, Texas;
- 2) The Sprecher Lead (also known as and sometimes previously referred to as the “Safeway Lead”) at Garland, Texas. This segment has no official mileposts, but DGNO informally designates the mileposts as extending from milepost 0 to milepost 3 beginning at the switch at milepost 753.4.

The Amended Lease extends the lease term and revises other commercial terms, which will allow DGNO to continue operating the Rail Lines for an additional 10 years.

Notice

In accordance with 49 C.F.R. §1150.43, DGNO hereby provides the following information:

(a) The full name and address of Applicant: Dallas, Garland & Northeastern Railroad, Inc., 475 Gautney Street, Garland, TX 75040.

(b) Applicant's Representatives:

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(c) DGNO has been operating the Rail Lines under the Current Lease. DGNO and UPRR have now entered into the Amended Lease for the Rail Lines. The Amended Lease amends the Current Lease which itself superseded a prior lease.

In preparing this Notice, DGNO determined that under previous ownership,¹ DGNO's acquisition of Board authority for the lease and operation of the Rail Lines under the Current Lease, as amended, appears to be incomplete. The record seems to indicate that DGNO only obtained authority for a portion of the Garland Subdivision that

¹ Genesee & Wyoming Inc. ("GWI") acquired ownership of DGNO in *Genesee & Wyoming Inc. – Control Exemption – RailAmerica, Inc., et al.* STB Finance Docket No. 35654 (served Dec. 20, 2012).

it is currently operating and now seeking authority to continue operating in this proceeding. *See Dallas, Garland & Northeastern Railroad, Inc. – Lease Exemption – Union Pacific Railroad Company*, STB Finance Docket No. 33686 (served Feb. 5, 1999) (granting DGNO authority to operate from milepost 741.3 to milepost 729.5). It also appears that DGNO never obtained Board authority to operate the Sprecher Lead.

In addition to seeking authority for the Amended Lease, DGNO is seeking to correct the Board's records of the Rail Lines operated by DGNO, and to confirm its authority to operate the Rail Lines.

- (d) The current operator of the Rail Lines is DGNO. DGNO will be the operator after the transaction.
- (e) Brief Summary of the Proposed Transaction: DGNO is currently operating the Rail Lines under the Current Lease. This proposed transaction extends the lease term and revises other commercial terms, which will allow DGNO to continue operating the Rail Lines for an additional 10 years. As noted above, this Notice also seeks to confirm the authority to operate the Rail Lines as described in the Amended Lease.
 - i. The name and address of the company leasing the Rail Lines is Union Pacific Railroad Company, 1400 Douglas Street, Mailstop 1350, Omaha, Nebraska 68179.
 - ii. The Amended Lease will be effective upon the effective date of this Notice of Exemption, thirty days after filing. DGNO is currently operating the Rail Lines under the terms of the Current Lease and will continue to do so until the Amended Lease becomes effective.
 - iii. The mileposts of the Rail Lines are 1) a portion of the Garland

Subdivision from Milepost 741.3 near Lake Ray Hubbard to Milepost 713.6 at Greenville, Texas; and 2) the Sprecher Lead at Garland, Texas (the Sprecher Lead has no official mileposts, but DGNO informally designates the mile post as extending from milepost 0 to milepost 3 beginning at the switch at milepost 753.4).

- iv. The total mileage to be leased and operated is approximately 30.7 miles.
- (f) Attached as Exhibit A to this Notice of Exemption is a map of the Rail Lines.
- (g) DGNO certifies that its projected revenues as a result of the transaction will not exceed those that would qualify it as a Class III carrier.
- (h) DGNO certifies that an interchange commitment will continue to apply during the term of the Amended Lease. The following additional information is provided by DGNO with respect to the interchange commitment:
 - i. The Amended Lease (like the Current Lease) contains an interchange commitment that affects interchange with carriers other than UPRR at the interchange point shown on the map attached as Exhibit A.
 - ii. A confidential version of the Amended Lease is being submitted under separate cover as part of a Confidential Appendix governed by 49 CFR 1104.14(a).
 - iii. Shippers who currently use or who have used the Rail Lines in the last two calendar years, and whose traffic is subject to the interchange commitment is attached hereto as Exhibit B.
 - iv. The aggregate number of carloads originated or terminated within the last two calendar years by the shippers identified in subparagraph (iii) above is included as part of the Confidential Appendix.

- v. DGNO hereby certifies that, as set forth in the certificate of service, it has provided notice of the proposed transaction and the interchange commitment by serving a copy of this Notice of Exemption on the shippers identified in subparagraph (iii) above.
- vi. UPRR and Kansas City Southern Railway Company can physically interchange with the Rail Lines at the points indicated on the map attached as Exhibit A.
- vii. DGNO does not have the information to estimate the difference between the rent with and without the interchange agreement. Accordingly, DGNO requested an estimate of the difference from UPRR as permitted by the Board. *Information Required in Notices and Petitions Containing Interchange Commitments*, STB Docket No. EP 714 (served September 5, 2013), slip op. at 5-6. Copies of the DGNO request and the UPRR response are included in the Confidential Appendix.
- viii. The caption of this Notice reflects the existence of the interchange commitment.

Advanced Notice to Labor

In addition to the information set forth above, DGNO certifies that its revenues currently exceed \$5,000,000. However, since DGNO will continue to be the operator of the Rail Lines both before and after the transaction, DGNO is requesting a waiver of the labor notice requirements under 49 C.F.R. §1150.42(e). *See* request for waiver set forth below.

Labor Protection

DGNO is a Class III carrier, and pursuant to 49 U.S.C. §10902(d), approval of this transaction may not be subjected to labor protection conditions. Additionally, since DGNO is already operating the Rail Lines, there will be no employees adversely affected by the amended

lease arrangements.

Environmental and Historic Reports

This is a lease for continued rail operations that will not result in changes in carrier operations that will exceed the thresholds established in 49 C.F.R. §1105.7(e)(4) or (5). Further Board approval is required for DGNO to discontinue (or for UPRR to abandon service), or to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older. Accordingly, no environmental or historic documentation is required. *See* 49 C.F.R. §1105.6(c)(2); 49 C.F.R. §1105.8(b)(1).

Caption Summary

Attached hereto as Exhibit C is the caption summary required by 49 C.F.R. §1150.44.

Request for Waiver of Notice Requirements of 49 C.F.R. §1150.42(e)

As noted above, DGNO's total revenues exceed \$5,000,000. Under the Board's regulations at 49 C.F.R. §1150.42(e), DGNO would be required to give sixty days' notice to employees working on the Rail Lines (and the national offices of their collective bargaining representatives). However, the Board has held: "The purpose of 49 CFR 1150.42(e) is to ensure that rail labor unions and employees who would be affected by the transfer of a line are given sufficient notice of the transaction before consummation." *Louisiana & Delta Railroad, Inc. – Lease Amendment and Operation Exemption – Union Pacific Railroad Company*, STB Finance Docket No. 36379, slip op. at 2 (served Mar. 4, 2020). *See also Acquisition of Leased Lines under 49 USC 10901 and 10902 – Advance Notice of Proposed Transactions* ("Advanced Notice of proposed Transactions"), 2 STB 592 (1997). In adopting the notice requirement, the Board specifically recognized that "exceptional situations may occur necessitating acquirer requests for

waiver of the 60 day notice provision ...” *Advanced Notice of Proposed Transactions, supra* at 601.

In this instance, DGNO should not be required to comply with the requirements of Section 1150.42(e) because there will be no changes for any employees working on the Rail Lines. DGNO already leases the rail facilities and has been the sole common carrier operator providing local service of the Rail Lines since at least 2001. The Amended Lease extends the term of DGNO’s lease and DGNO will continue to be the sole common carrier operator of the Rail Lines. No employees of the transferring carrier, UPRR, have worked on the Rail Lines since at least 2001 and there are no employees of UPRR who will be affected or have to make any career choices as a result of the sale. Posting notices on the Rail Lines would not provide notice to any UPRR employees since none work on the Rail Lines. Further, there will be no operational changes, and no employees of DGNO will be affected.² Thus, under the circumstances of this transaction, compliance with the notice requirements will not further the purposes of the rule and should be waived. Granting DGNO a waiver would be consistent with other circumstances in which the Board has granted waivers from the labor notice requirements when a common carrier has filed to extend the term of its operation of a line it was previously leasing and to remain as the common carrier operator on the line. *See North Carolina & Virginia Railroad Company, LLC, Chesapeake & Albemarle Railroad Division – Lease Amendment Exemption – Norfolk Southern Railway Company*, STB Docket No. FD 35564 (Sub-No. 1) (served December 23, 2011). *See also Louisiana Southern Railroad, LLC – Lease Exemption*

² Notwithstanding that there will be no effect on employees of DGNO, DGNO is providing notice of the Amended Lease to the national office of the union that represents employees working on the Rail Lines by serving it with a copy of this Notice of Exemption.

containing Interchange Commitment – The Kansas City Southern Railway Company, STB
Docket No. FD 35983 (served February 18, 2016).

DGNO asks that the waiver of the labor notice requirements be granted expeditiously so that this Notice of Exemption can become effective as scheduled 30 days after it is filed.

Conclusion

Accordingly, DGNO requests that the Board issue a notice allowing the Amended Lease to become effective 30 days from the filing of this Notice of Exemption.

Respectfully submitted,



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*Attorneys for Dallas, Garland & Northeastern
Railroad, Inc.*

Dated: November 3, 2021

VERIFICATION

I, James E. Irvin, President of Dallas, Garland & Northeastern Railroad, Inc., verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on November 2, 2021

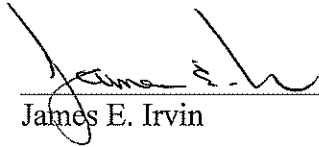

James E. Irvin

EXHIBIT A

MAP

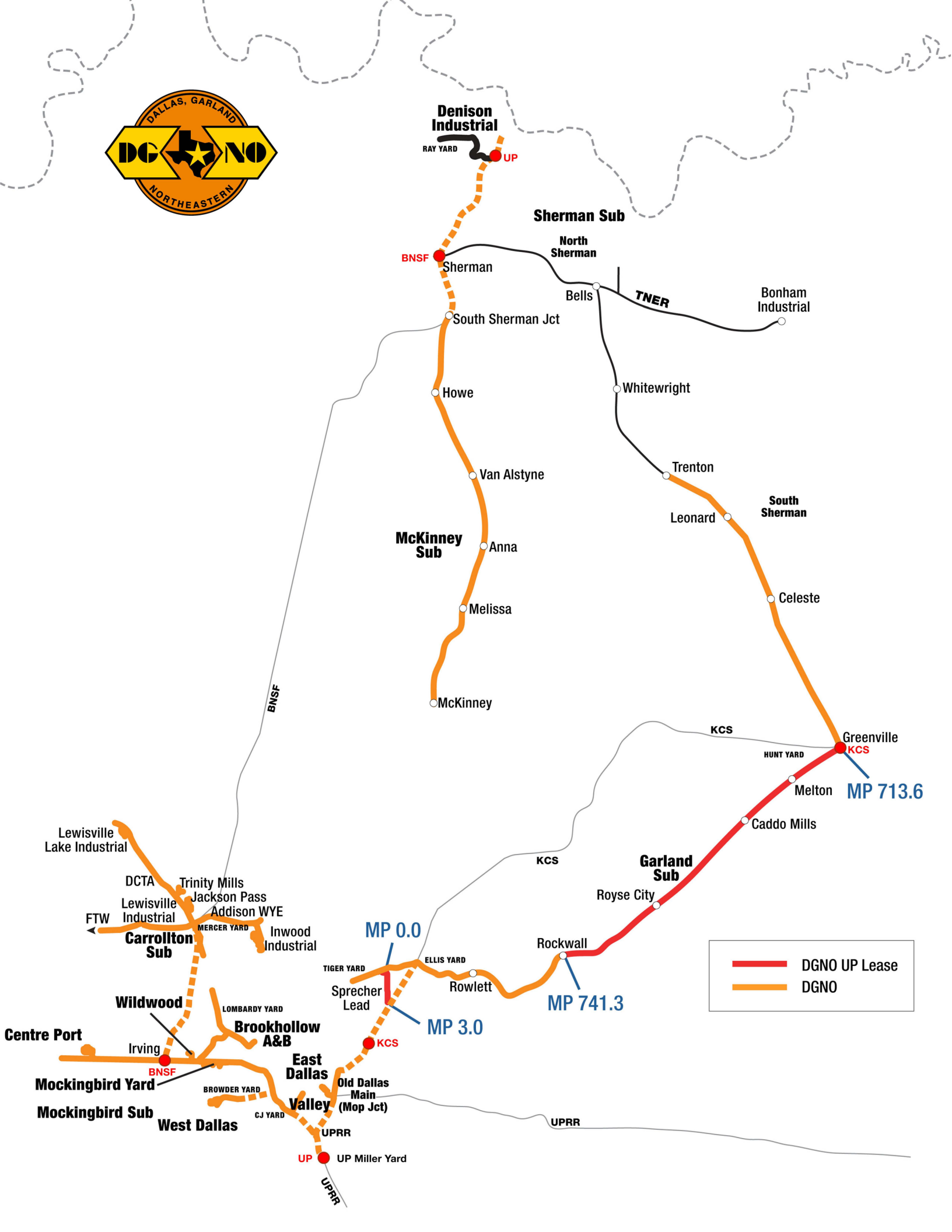


EXHIBIT B

LIST OF SHIPPERS

CTS CEMENT
CUSTOM FORM TRANSPORTATION
GRAHAM PACKAGING
HIXSON LUMBER SALES
METALWEST LLC
OWENS CORNING
RHINO LININGS CORPORATION
SPR PACKAGING

EXHIBIT C

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

Notice of Exemption

STB Docket No. FD 36545

**DALLAS, GARLAND & NORTHEASTERN RAILROAD, INC.
- LEASE AND OPERATION EXEMPTION
INCLUDING INTERCHANGE COMMITMENT –
UNION PACIFIC RAILROAD COMPANY**

**VERIFIED NOTICE OF EXEMPTION
UNDER 49 U.S.C. §10902**

Dallas, Garland & Northeastern Railroad, Inc. (“DGNO”), a Class III railroad, files this Notice of Exemption under 49 U.S.C. § 10902 to exempt from regulation DGNO’s entry into a renewed and amended lease agreement (“Amended Lease”) to amend the existing lease (the “Current Lease”) entered into between DGNO and Union Pacific Railroad Company (“UPRR”) in June 2001, and amended in August 2002 and June 2004, The Amended Lease covers the following approximately 30.7 miles of rail line (“Rail Lines”):

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- 2) The Sprecher Lead (also known as and sometimes previously referred to as the “Safeway Lead”) at Garland, Texas. This segment has no official mileposts, but DGNO informally designates the mileposts as extending from milepost 0 to milepost 3 beginning at the switch at milepost 753.4.

Comments must be filed with the Board and served on DGNO’s representative, Justin J. Marks, Clark Hill, PLC, 1001 Pennsylvania Ave. N.W. Suite 1300 South, Washington DC 20004, jmarks@clarkhill.com; (202) 772-0916.

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.

Board decisions and notices are available at www.stb.gov.

Decided: _____, 2021.

By the Board, Allison C. Davis, Director, Office of Proceedings.

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing document was served by U.S. first class mail, postage pre-paid on the following shippers subject to the interchange commitment and on the following national representatives of DGNO employees working on the Rail Lines:

CTS CEMENT
12442 Knott Street
Garden Grove, CA 92841

METALWEST LLC
3730 Forest Lane
Garland, TX 75042

CUSTOM FORM TRANSPORTATION
1036 S International Road
Garland, TX 75042

OWENS CORNING
201 N Nursery Road
Irving, TX 75061

GRAHAM PACKAGING
700 Industrial Blvd.
Rockwall, TX 75087

RHINO LININGS CORPORATION
1001 Ed Rutherford Dr.
Greenville, TX 75402

HIXSON LUMBER SALES
1001 Brewton Indust Dr.
Caddo Mills, TX 75135

SPR PACKAGING
1480 Justin Rd.
Rockwall, TX 75087

David Wier
Vice President-Transportation Division
International Union of Sheet Metal, Air, Rail and Transportation Workers
dwief@smar-union.org

Bobby Taylor
General Chairman, SMART-TD
Bobby2023@hotmail.com

Danny Mahan
Vice General Chair, SMART-TD
dmrailroadman@yahoo.com



Justin J. Marks

Dated: November 3, 2021