



Surface Transportation Board
Washington, D.C. 20423-0001

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ENTERED
Office of Proceedings
June 8, 2022
Part of
Public Record

MEMORANDUM

TO: Cynthia T. Brown, Chief, Section of Administration, Office of Proceedings

FROM: Martin J. Oberman, Chairman

RE: Ex Parte Communication Related to Docket No. EP 711 (Sub-No.1)

DATE: June 8, 2022

On May 18, 2022, I and the other Board members received a memorandum from Jennifer Null, the business development and customer relations manager of Railco Repair of Illinois LLC (Railco), as a follow up to issues discussed between the Board members and Railco during ex parte meetings held in this docket between May 2 and May 6, 2022. Memoranda summarizing those discussions are available in the docket. Although Railco's May 18 communication was technically outside of the period for permitted ex parte communications, because it relates directly to these prior meetings, I ask that this memorandum and the enclosed material be placed in the public docket of Docket No. EP 711 (Sub-No.1).

Attachment

May 17, 2022

Railco would like to thank Chairman Oberman, Vice Chairman Primus, Members, and Staff for taking part in the ex parte communications. After concluding, we did further research to help further understanding of the anti-competitive issues we are facing at our New Auburn, Wisconsin facility. The primary question all the Members were asking was on for when, who, and why was track removed just south of the Canadian National interchange?

Timeline Summary of the Wisconsin Northern, Union Pacific, and Canadian National:

- 2004, October 27th, a lease agreement was reached between Wisconsin Central and PGR, the company that operates the Wisconsin Northern, in this lease agreement the WN would serve Cameron, Rice Lake, and Barron from Norma. (Docket No. 34600)¹
- 2012, May 4th, A 30-year lease was approved by the STB for PGR to lease operate 37.3 miles of track between MP 49 in Cameron and MP11.7 in Norma from Union Pacific. At this time, it was noted that although there is an interchange with Canadian National the line is officially out of service and would require extensive rehabilitation to be made operable. (Docket No. FD 35617)²
- 2012, July 5th, Canadian National (Wisconsin Central) petitioned with the STB for an effective transfer of service from PGR and that the WCL will continue operations of these lines itself a total of 23.97 miles of track. 16.92 miles of track from MP 80.88 at Almena and MP 97.8 at Cameron. With the remaining 7.05 miles between MP 49 in Cameron and MP 56.05 in Rice Lake. (Docket No. 1101X)³

We were able to narrow down just when sections of tracks were removed. Using Google Earth Pro, Railpictures.net, and Federal Register documents we can definitively say the line remained connected on September 29, 2012. A photo found that was dated December 1, 2012, the same date the 2004-lease between CN and PGR expired; Canadian National was installing a switch south of the Cameron interchange after they decided to take back their track rights from PGR with the frac sand business booming. After locating these photos, we reached out to the photographer that verified these dates and locations being correct.

A couple Members were questioning if the track was removed to facilitate constructing the overpass located on Highway 8 south of Cameron and seen in the photos below. Questioning if removing the rail was a function for building the overpass and rail never replaced. Railco's investigation shows that the overpass was constructed prior to April 1998. September 29, 2012, the rail line was connected, and trains could move from Cameron to Chippewa Norma. Other photo taken in 2014 shows the rail removed and dirt piles in place. We have concluded the overpass could not have been the reason as to why the rail was removed and dirt piles placed in center of tracks.

Closing, Railco has still yet to find anything approved under the 49 CFR Part 1152, with an approval that MP49 to the Canadian National interchange in Cameron to be approved for abandonment from October 27, 2004, to May 4, 2012. Wisconsin Northern was operating and running these tracks from 2004 to 2012. In 2012, when Wisconsin Central (CN) took back over their rights it was concluded they would operate this line including MP 49 north. But, on May 4, 2012, is when PGR stated that the MP49 north to the interchange was out of service.

Sincerely,



Jennifer Null
Customer Relations



Larry McGlumphy
General Manager - Wisconsin

May 17, 2022



Top: Rail Intact on September 29, 2012¹
Google Earth



Top: CN Installing Switch South of Cameron Interchange December 1, 2012²
Bottom: Location Photo was Taken
Photo Credits Travis Dewitz



Top: WN Locomotive Traveling North from Cameron to Rice Lake on June 13, 2011³
Photo Credits Travis Dewitz



1. <https://preview.app.goo.gl/earth.app.goo.gl/?link=https://earth.google.com/web/?fdl%3D1&apn=com.google.earth&isi=293622097&ibi=com.google.b612&ius=googleearth>
2. <https://railpictures.net/photo/458712/#remarks>
3. <https://railpictures.net/photo/400545/>

OMB receives it within 30 days of publication.

Issued on: November 8, 2004.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 04-25208 Filed 11-10-04; 8:45 am]

BILLING CODE 4910-58-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2004-19529; Notice 1]

Toyota Motor North America, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

Toyota Motor Corporation has determined that the daytime running lamps (DRLs) on certain vehicles it manufactured in 1998-2005 do not comply with S5.5.11(a) of 49 CFR 571.108, Federal Motor Vehicle Safety Standard (FMVSS) No. 108, "Lamps, reflective devices, and associated equipment." Toyota Motor North America, Inc. (Toyota), on behalf of Toyota Motor Corporation, has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports."

Pursuant to 49 U.S.C. 30118(d) and 30120(h) and on behalf of Toyota Motor Corporation, Toyota has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Toyota's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

A total of approximately 75,355 model year 1998-2005 Lexus LX470 vehicles are affected. S5.5.11(a) of FMVSS No. 108 requires that

* * * each such lamp: (1) Has a luminous intensity not less than 500 candela at test point H-V, nor more than 3,000 candela at any location in the beam, when tested in accordance with Section S11 of this standard, unless it is: * * * (ii) An upper beam headlamp intended to operate as a DRL, whose luminous intensity at test point H-V is not more than 7,000 candela, and which is mounted not higher than 864 mm above the road surface as measured from the center of the lamp with the vehicle at curb weight.

The DRLs on the LX470s are provided by the upper beam headlamps operating at a lower intensity, with each lamp having a maximum luminous intensity of roughly 4,720 candela at the maximum point in the beam. However,

the specification of the height above the road surface as measured from the center of the lamps with the vehicles at curb weight is 895 mm, and therefore the DRLs exceed the maximum luminous intensity specified in S5.5.11(a)(1)(ii) of FMVSS No. 108.

Toyota believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Toyota states the following in its petition.

Toyota conducted subjective evaluations of the glare from the DRLs using 19 contractors for the subject vehicles under various conditions, and confirmed that glare from the subject vehicles is the same or better than vehicles that were modified to meet the maximum DRL luminous intensity permitted by the standard at the height limit of 864 mm. Toyota evaluated the glare from the subject vehicles' DRLs by observing them through the rearview mirror of a small passenger car as well as directly, as from an oncoming vehicle. According to Toyota's evaluation, the subject vehicles received overall ratings above 5 ("lamps are just acceptable"). Accordingly, in the scale, higher numbers indicate less glare.

Toyota indicates in its petition that a rating of 1 indicates "The headlamps are unbearable," while the highest rating of 9 indicates "The headlamps are just noticeable."

Toyota further states,

Toyota calculated the luminous intensity of light from the DRLs striking the rearview mirror of the preceding vehicle mounted 1,120 mm (44 inches) above the ground and 6.1 m (20 feet) in front of the DRL. We also indicated the allowable range of the regulation. * * * The assessment mirror height of 44 inches and distance of 20 feet are the same used in NHTSA's own evaluation as described in the final rule published in the Monday, January 11, 1993 *Federal Register* (58 FR 3500). * * * [W]e can confirm that luminous intensity from the subject vehicle DRL (4,720 candela, 895 mm high) is below the maximum luminous intensity of allowable range up to 864 mm high.

Toyota says in its petition that the subject vehicles meet all requirements of the Canadian motor vehicle standards, and that it has received no customer complaints or reports that allege a crash, injury or fatality due to problems arising from DRL glare by these vehicles.

Interested persons are invited to submit written data, views, and arguments on the petition described above. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods. Mail: Docket Management Facility, U.S. Department of Transportation, Nassif Building, Room

PL-401, 400 Seventh Street, SW., Washington, DC, 20590-0001. Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays. Comments may be submitted electronically by logging onto the Docket Management System Web site at <http://dms.dot.gov>. Click on "Help" to obtain instructions for filing the document electronically. Comments may be faxed to 1-202-493-2251, or may be submitted to the Federal eRulemaking Portal: go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the *Federal Register* pursuant to the authority indicated below.

Comment closing date: December 13, 2004.

(Authority: 49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8)

Issued on: November 5, 2004.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 04-25215 Filed 11-10-04; 8:45 am]

BILLING CODE 4910-58-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34600]

Progressive Rail, Incorporated—Lease and Operation Exemption—Rail Lines of Wisconsin Central, Ltd.

Progressive Rail, Incorporated (PGR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease from Wisconsin Central, Ltd. and operate 23.97 miles of rail line consisting of (1) the Almena-Cameron Branch that extends between milepost 80.88 at or near Almena and milepost 97.80 at or near Cameron, a distance of 16.92 miles in Barron County, WI, and (2) the Rice Lake-Cameron Branch that extends between milepost 49.0 at or near Cameron and milepost 56.05 at or near Rice Lake, a

distance of 7.05 miles in Barron County.¹

PGR certifies that its projected revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier. The transaction was scheduled to be consummated no sooner than October 27, 2004, the effective date of the exemption (7 days after the exemption was filed).

If the verified 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.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34600, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on: Thomas F. McFarland, P.C., 208 South LaSalle St., Suite 1890, Chicago, IL 60604-1112.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: November 3, 2004.

By the Board, David M. Konschnik,
Director, Office of Proceedings,
Vernon A. Williams,
Secretary.

[FR Doc. 04-25054 Filed 11-10-04; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG-104924-98]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and

other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, REG-104924-98, Mark-to-Market Accounting for Dealers in Commodities and Traders in Securities or Commodities (§§ 1.475(e)-1 and 1.475(f)-2).

DATES: Written comments should be received on or before January 11, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Carol Savage at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622-3945, or through the Internet at CAROL.A.SAVAGE@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Mark-to-Market Accounting for Dealers in Commodities and Traders in Securities or Commodities.

OMB Number: 1545-1640.

Regulation Project Number: REG-104924-98.

Abstract: The collection of information in this proposed regulation is required by the Internal Revenue Service to determine whether an exemption from mark-to-market treatment is properly claimed. This information will be used to make that determination upon audit of taxpayers' books and records.

Current Actions: There is no change to this existing proposed regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organization and Individuals.

Estimated Number of Recordkeepers: 1,000.

Estimated Time Per Recordkeeper: 1 hour.

Estimated Total Annual Burden Recordkeeping Hours: 1,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long

as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 3, 2004.

Carol Savage,
Management and Program Analyst.

[FR Doc. 04-25126 Filed 11-10-04; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL-9-95]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, INTL-9-95 (TD 8702), Certain Transfers of Domestic Stock or Securities by U.S. Persons to Foreign Corporations (§ 1.367(a)-3).

DATES: Written comments should be received on or before January 11, 2005 to be assured of consideration.

¹ The rail line in the instant transaction was the subject of a notice of exemption originally filed by Wisconsin Northern Railroad Company, LLC (WNRC), a subsidiary of PGR, and voluntarily withdrawn by WNRC. See *Wisconsin Northern Railroad Company, LLC—Lease and Operation Exemption—Rail Lines of Wisconsin Central Ltd.* STB Finance Docket No. 34596 (STB served Oct. 22, 2004). The rail line in the instant transaction also connects in Barron County, WI, to another PGR rail line recently acquired in *Progressive Rail, Incorporated—Lease and Operation Exemption—Rail Line of Union Pacific Railroad Company*, STB Finance Docket No. 34597 (STB served Oct. 29, 2004).

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 effectiveness of the exemption. Petitions for stay must be filed no later than May 11, 2012 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35616, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423-0001. In addition one copy of each pleading must be served on Michael J. Barron, Jr., Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606.

Board decisions and notices are available on our Web site at "WWW.STB.DOT.GOV."

By the Board, Rachel D. Campbell,
Director, Office of Proceedings.

Decided: April 30, 2012.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2012-10820 Filed 5-3-12; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35617]

Progressive Rail, Incorporated—Lease and Operation Exemption—Rail Line of Union Pacific Railroad Company

Under 49 CFR 1011.7(a)(2)(x)(A), the Director of the Office of Proceedings (Director) is delegated the authority to determine whether to issue notices of exemption under 49 U.S.C. 10502 for lease and operation transactions under 49 U.S.C. 10902. However, the Board reserves to itself the consideration and disposition of all matters involving issues of general transportation importance. 49 CFR 1011.2(a)(6). Accordingly, the Board revokes the delegation to the Director with respect to issuance of the notice of exemption for lease and operation of the rail line at issue in this case. The Board determines that this notice of exemption should be issued, and does so here.

Progressive Rail, Incorporated (PGR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease from Union Pacific Railroad Company (UP) and operate a 37.3-mile line of railroad between milepost 49.00 at or near Cameron and milepost 11.70 at or near Norma, in Barron and Chippewa Counties, Wis. (the Line). According to PGR, PGR and

UP have entered into a new Lease Agreement (Agreement) for PGR to lease the Line from UP.¹ The term of the lease is 30 years.

As required at 49 CFR 1150.43(h), PGR has disclosed that the Agreement contains an interchange commitment in the form of an adjustment in the amount of rent payable in each year, depending on the percentage of total traffic transported over the Line that is interchanged with UP in that year.² Attached to PGR's notice of exemption is the verified statement of David Fellon, President of PGR. PGR states that a relatively high percentage of traffic interchanged with UP would result in a relatively low amount of rent, and *vice versa*. According to PGR, it believes that it can substantially grow its outbound traffic if it is able to make significant improvements to the Line. PGR states that the interchange commitment will enable it to make "major renewals of main tracks, sidetracks, and bridges, and to construct a number of new sidings and yard tracks to enable staging of railcars for loading and to achieve efficiencies in railcar switching," to the benefit of the shipping public. PGR also states that (1) although there is a Canadian National Railway Company (CN) line at Cameron, the CN line is officially out of service and would require extensive rehabilitation to be made operable, and (2) there is a CN line at Chippewa Falls, but the Line does not extend to Chippewa Falls.

PGR certifies that its projected annual revenues as a result of this transaction will not result in PGR becoming a Class I or Class II rail carrier. PGR further certifies that its projected annual revenues will not exceed \$5 million.

The earliest the transaction can be consummated is May 18, 2012, the effective date of the exemption (30 days after the exemption was filed).

If the verified 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 effectiveness of the exemption. Stay petitions must be filed no later than May 11, 2012 (at least

7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35617, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604-1112.

Board decisions and notices are available on our Web site at "www.stb.dot.gov."

It is ordered:

1. The delegation of authority to the Director of the Office of Proceedings under 49 CFR 1011.7(a)(2)(x)(A) to determine whether to issue a notice of exemption in this proceeding is revoked.

2. This decision is effective on the date of service.

Decided: May 1, 2012.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Begeman. Vice Chairman Mulvey dissented with a separate expression. Vice Chairman Mulvey, dissenting:

I disagree with the Board's decision to allow a transaction containing a significant interchange commitment to be processed under the Board's class exemption procedures at 49 CFR part 1150. In general, the Board should be carefully scrutinizing transactions that include interchange commitments before deciding whether to permit them to go into effect.

The notice in this particular case does not allow me to conclude summarily—without any examination—that the lease is consistent with the public interest. 49 U.S.C. 10902(c). The notice asserts that there really are no competitive interchange options for PGR because the CN line that connects to the Line is not operational. Yet, disregarding this claimed reality, the lease nonetheless contains an interchange commitment with substantial economic rewards for PGR if it interchanges with UP. One has to wonder why such an economic incentive is necessary if there is little chance that PGR would interchange with CN in any event. The lease term is 30 years, which is far longer than some other recent transactions involving paper barriers. See e.g., *Middletown & New Jersey R.R.—Lease & Operation Exemption—Norfolk S. Ry.*, FD 35412 (STB served Sept. 23, 2011) (10-year lease term). Moreover, we do not know how many shippers will be affected, what volume of traffic will be affected, or whether CN has plans to rehabilitate its connecting line. Nor do we know whether the 2004 lease that PGR and UP

¹ PGR previously obtained an exemption in 2004 to lease and operate the Line. See *Progressive Rail, Inc.—Lease & Operation Exemption—Rail Line of Union Pac. R.R.*, FD 34597 (STB served Oct. 29, 2004). The new lease for which an exemption is sought in this proceeding will replace the lease for which the prior exemption was obtained.

² Concurrently with its verified notice of exemption, PGR has filed under seal, pursuant to 49 CFR 1150.43(h)(1)(ii), a confidential, complete version of the Agreement.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35617]

Progressive Rail, Incorporated--Lease and Operation Exemption--
Rail Line of Union Pacific Railroad Company

Under 49 CFR 1011.7(a)(2)(x)(A), the Director of the Office of Proceedings (Director) is delegated the authority to determine whether to issue notices of exemption under 49 U.S.C. 10502 for lease and operation transactions under 49 U.S.C. 10902. However, the Board reserves to itself the consideration and disposition of all matters involving issues of general transportation importance. 49 CFR 1011.2(a)(6). Accordingly, the Board revokes the delegation to the Director with respect to issuance of the notice of exemption for lease and operation of the rail line at issue in this case. The Board determines that this notice of exemption should be issued, and does so here.

Progressive Rail, Incorporated (PGR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease from Union Pacific Railroad Company (UP) and operate a 37.3-mile line of railroad between milepost 49.00 at or near Cameron and milepost 11.70 at or near Norma, in Barron and Chippewa Counties, Wis. (the Line). According to PGR, PGR and UP have entered into a new Lease Agreement (Agreement) for PGR to lease the Line from UP.\1\ The term of the lease is 30 years.

\1\ PGR previously obtained an exemption in 2004 to lease and operate the Line. See Progressive Rail, Inc.--Lease & Operation Exemption--Rail Line of Union Pac. R.R., FD 34597 (STB served Oct. 29, 2004). The new lease for which an exemption is sought in this proceeding will replace the lease for which the prior exemption was obtained.

As required at 49 CFR 1150.43(h), PGR has disclosed that the Agreement contains an interchange commitment in the form of an adjustment in the amount of rent payable in each year, depending on the percentage of total traffic transported over the Line that is interchanged with UP in that year.\2\ Attached to PGR's notice of exemption is the verified statement of David Fellon, President of PGR. PGR states that a relatively high percentage of traffic interchanged with UP would result in a relatively low amount of rent, and vice versa. According to PGR, it believes that it can substantially grow its outbound traffic if it is able to make significant improvements to the Line. PGR states that the interchange commitment will enable it to make

`major renewals of main tracks, sidetracks, and bridges, and to construct a number of new sidings and yard tracks to enable staging of railcars for loading and to achieve efficiencies in railcar switching,' to the benefit of the shipping public. PGR also states that (1) although there is a Canadian National Railway Company (CN) line at Cameron, the CN line is officially out of service and would require extensive rehabilitation to be made operable, and (2) there is a CN line at Chippewa Falls, but the Line does not extend to Chippewa Falls.

\2\ Concurrently with its verified notice of exemption, PGR has filed under seal, pursuant to 49 CFR 1150.43(h)(1)(ii), a confidential, complete version of the Agreement.

PGR certifies that its projected annual revenues as a result of this transaction will not result in PGR becoming a Class I or Class II rail carrier. PGR further certifies that its projected annual revenues will not exceed \$5 million.

The earliest the transaction can be consummated is May 18, 2012, the effective date of the exemption (30 days after the exemption was filed).

If the verified 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 effectiveness of the exemption. Stay petitions must be filed no later than May 11, 2012 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35617, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604-1112.

Board decisions and notices are available on our Web site at www.stb.dot.gov.

It is ordered:

1. The delegation of authority to the Director of the Office of Proceedings under 49 CFR 1011.7(a)(2)(x)(A) to determine whether to issue a notice of exemption in this proceeding is revoked.

2. This decision is effective on the date of service.

Decided: May 1, 2012.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Begeman. Vice Chairman Mulvey dissented with a separate expression.

Vice Chairman Mulvey, dissenting:

I disagree with the Board's decision to allow a transaction containing a significant interchange commitment to be processed under the Board's class exemption procedures at 49 CFR part 1150. In general, the Board should be carefully scrutinizing transactions that include interchange commitments before deciding whether to permit them to go into effect.

The notice in this particular case does not allow me to conclude summarily--without any examination--that the lease is consistent with the public interest. 49 U.S.C. 10902(c). The notice asserts that there really are no competitive interchange options for PGR because the CN line that connects to the Line is not operational. Yet, disregarding this claimed reality, the lease nonetheless contains an interchange commitment with substantial economic rewards for PGR if it interchanges with UP. One has to wonder why such an economic incentive is necessary

if there is little chance that PGR would interchange with CN in any event. The lease term is 30 years, which is far longer than some other recent transactions involving paper barriers. See e.g., Middletown & New Jersey R.R.--Lease & Operation Exemption--Norfolk S. Ry., FD 35412 (STB served Sept. 23, 2011) (10-year lease term). Moreover, we do not know how many shippers will be affected, what volume of traffic will be affected, or whether CN has plans to rehabilitate its connecting line. Nor do we know whether the 2004 lease that PGR and UP

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are currently operating under also included an interchange commitment and, if it did not, why such a provision became necessary eight years later.

The Board needs to take a close look at long-term leases that have the potential to control the competitive environment for shippers--thus affecting rates and service--for years to come. At a time of far different economic circumstances in the railroad industry, our predecessor agency, the Interstate Commerce Commission, approved long-term leases and sales involving interchange commitments with little or no analysis. Years later, the Board is still grappling with the economic and competitive consequences of those transactions.

Jeffrey Herzig,
Clearance Clerk.

[FR Doc. 2012-10813 Filed 5-3-12; 8:45 am]
BILLING CODE 4915-01-P



Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August 24, 2012, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,¹ formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),² and trail use/rail banking requests under 49 CFR 1152.29 must be filed by August 6, 2012. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28³ must be filed by August 14, 2012, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423-0001.

A copy of any petition filed with the Board should be sent to BNSF's representative: Karl Morell, Of Counsel, Ball Janik LLP, Suite 225, 655 Fifteenth Street NW., Washington, DC 20005.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

BNSF has filed a combined environmental and historic report that addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by July 30, 2012. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423-0001) or by calling OEA at (202) 245-0305. Assistance for the hearing impaired is available through the Federal Information Relay Service at 1-800-877-8339. Comments on environmental and historic preservation matters must

be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by BNSF's filing of a notice of consummation by July 25, 2013, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at "WWW.STB.DOT.GOV."

Decided: July 19, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Derrick A. Gardner, Clearance Clerk.

[FR Doc. 2012-18152 Filed 7-24-12; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 1101X]

Progressive Rail, Incorporated— Discontinuance of Service Exemption—In Barron County, WI

On July 5, 2012 Progressive Rail, Incorporated (PGR) and Wisconsin Central Ltd. (WCL) (collectively, Petitioners) filed with the Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to discontinue rail service provided by PGR over approximately 23.97 miles of rail line in Barron County, Wis. (the Lines), consisting of: (1) 16.92 miles of rail line between milepost 80.88 at or near Almena and milepost 97.80 at or near Cameron, and (2) 7.05 miles of rail line between milepost 49.0 at or near Cameron and milepost 56.05 at or near Rice Lake. The Lines are owned by WCL and have been operated by PGR since 2004 under lease from WCL.¹ WCL intends to resume operating the Lines itself. The Lines traverse U.S. Postal Service Zip Codes 54805, 54812, 54822, and 54868. The Lines include the stations of Almena (MP 81.0), Poskin (MP 85.4), Barron (MP 91.10), Cameron (MP 96.1), and Rice Lake (MP 56.05).

¹ See *Progressive Rail, Inc.—Lease & Operation Exemption—Rail Lines of Wis. Cent., Ltd.*, FD 34600 (STB served Nov. 12, 2004).

WCL states that the Lines do not contain any federally granted rights-of-way. Any documentation in Petitioners' possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by October 23, 2012.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) to subsidize continued rail service will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a \$1,500 filing fee. See 49 CFR 1002.2(f)(25).²

All filings in response to this notice must refer to Docket No. AB 1101X and must be sent to: (1) Surface Transportation Board, 395 E Street SW., Washington, DC 20423-0001, and (2) David A. Hirsh, Harkins Cunningham LLP, 1700 K Street NW., Suite 400, Washington, DC 20006-3804. Replies to the petition are due on or before August 20, 2012.

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245-0238 or refer to the full abandonment and discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis (OEA) at (202) 245-0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.

Board decisions and notices are available on our Web site at "www.stb.dot.gov."

Decided: July 19, 2012. By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Derrick A. Gardner, Clearance Clerk.

[FR Doc. 2012-18128 Filed 7-24-12; 8:45 am]

BILLING CODE 4915-01-P

² Because this is a discontinuance proceeding and not an abandonment proceeding, trail use/rail banking and public use conditions are not appropriate. Similarly, no environmental or historic documentation is required under 49 CFR 1105.6(c)(2) and 1105.8.

¹ The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Serv. Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

² Each OFA must be accompanied by the filing fee, which is currently set at \$1,500. See 49 CFR 1002.2(f)(25).

³ BNSF states that the abandonment will facilitate LACMTA's desire to construct and operate the Crenshaw/LAX Transit Corridor Project (Project), a light rail line that will begin at the Metro Green Line near the existing Aviation/LAX station and end on Crenshaw Boulevard at the Metro Exposition Light Rail Line. As a result, BNSF states that the line is not available for public purposes other than the Project.